IN THE SUPREME COURT OF THE STATE OF WASHINGTON

SECOND AMENDMENT FOUNDATION; CITIZENS COMMITTEE FOR THE RIGHT TO KEEP AND BEAR ARMS (CCRKBA); TAYLER G. MILLER; JANE AND JOHN DOES,

Petitioners,

v.

KIM WYMAN, in her capacity as the Secretary of State; PAUL KRAMER, INITIATIVE MEASURE NO. 1639 SPONSOR; and SAFE SCHOOLS SAFE COMMUNITIES PAC (aka YES ON 1639),

Respondents.

No. 96022-4

RULING DENYING MOTIONS AND DISMISSING ORIGINAL ACTION AGAINST STATE OFFICER

A coalition of gun rights advocates and individual voters (petitioners) jointly filed an original action in this court, urging the court to declare that petitions seeking to place Initiative 1639 (I-1639) on the November 2018 general election ballot are invalid and to issue a writ prohibiting Secretary of State Kim Wyman from accepting signed I-1639 petitions for filing. Because petitioners have filed this action against certain respondents who are not state actors, and because they may not seek judicial review of the Secretary of State's decision whether to file the initiative petitions in any event, the original action is dismissed.

In apparent response to a series of mass shootings, a campaign has been underway to gather signatures on petitions in support of placing I-1639 on the ballot. The initiative is intended to amend Washington's firearm statutes in several respects, such as banning "bump stocks"[1] and raising the minimum age at which a Washington resident may buy a "semiautomatic assault rifle." Each petition consists of a cover page with the ballot title, summary, and lines for voters' signatures with identifying information. The full text of the proposed legislation as the proponents intend it to appear in the Revised Code of Washington, without underlined or stricken portions signifying where the related firearm statutes will be amended, is attached to the signature page. According to petitioners, the deadline for submitting signatures to the Secretary of State is July 6, 2018.

On June 29, 2018, petitioners filed the instant original action in the form of a petition for writ of mandamus and an emergency motion for declaratory and injunctive relief, naming as respondents the Secretary of State, Paul Kramer (the citizen sponsoring the initiative), and Safe Schools Safe Communities PAC (an advocacy organization supporting the initiative). Petitioners claim the I-1639 petitions are invalid because they set forth the text of the proposed measure in unreasonably small font and fail to include underlining and cross-through edits of the proposed amended portions of the statute. Claiming that the I-1639 petitions violate article II, section 37 of the Washington Constitution, which requires that the text of a revised or amended act be "set forth at full length" in the petition, petitioners demand that this court enjoin the Secretary of State from "processing" the petitions.

This court has original jurisdiction in mandamus "as to all state officers." Wash. Const. art. IV, § 4; *see also* RAP 16.2(a). Now before me for determination is whether

[1] A bump stock is a device that allows a semiautomatic rifle to fire at a much higher rate, approaching that of a fully automatic weapon.

to retain this original action for a decision in this court, transfer it to a superior court, or dismiss it. RAP 16.2(a), (d).

This is a simple matter to decide.[2] As a preliminary matter, neither Mr. Kramer nor the targeted advocacy group is a "state officer," and thus they may not be hailed into court as respondents in an original action against a state officer. Wash. Const. art. IV, § 4; RAP 16.2(a).[3] As for the Secretary of State, she "*may* refuse to file any initiative or referendum petition being submitted" if it is deficient in one or more enumerated ways. RCW 29A.72.170 (emphasis added). If there is no such deficiency, "the Secretary of State must accept and file the petition." *Id.* "Judicial review of the administrative decision of the Secretary of State is authorized only if the Secretary *refuses* to file the petition. The right to challenge is limited to the persons submitting it for filing." *Schrempp v. Munro*, 116 Wn.2d 929, 934, 809 P.2d 1381 (1991) (citing former statute). This is so because proponents of an initiative exercise their right to petition under article II, section 1 of the Washington Constitution. *Id.* at 935. The applicable statutes facilitate this constitutional right. *Id.* In contrast, opponents to an initiative have no constitutional or statutory basis to impede the proponents' exercise of their right of petition. *Id.* The opponents' interests in this matter are protected by their constitutional right to express opposition to the initiative, including urging voters to reject it at the polls. *See id.* at 935-36. In sum, petitioners have no standing to seek judicial review of the Secretary of State's discretionary act of determining whether I-1639 petitions are properly submitted, and if properly submitted, her mandatory duty to file them. *See id.* at 934-36; RCW 29A.72.170.

[2] I deemed it unnecessary to call for a response. RAP 16.2(c).

[3] I recognize that petitioners also seek declaratory relief, but the immediate remedy they pray for is a writ of mandamus or prohibition directed to the Secretary of State.

The emergency motion for declaratory and injunctive relief is denied and the original action is dismissed.

Michael E Johnston
COMMISSIONER

July 3, 2018