No. 102569-6

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

VET VOICE FOUNDATION et al.,
Petitioners,

v.

STEVE HOBBS, IN HIS OFFICIAL CAPACITY AS WASHINGTON SECRETARY OF STATE et al.,
Respondents.

AMICI CURIAE BRIEF OF SCHOLARS OF STATE CONSTITUTIONS AND ELECTION LAW IN SUPPORT OF PETITIONERS

Amanda Beane, WSBA # 33070
LAW OFFICE OF AMANDA BEANE, P.C.
7724 35th Ave. NE, P.O. Box 15526
Seattle, WA 98115
(206) 531-0224
amanda@amandabeanelaw.com
Counsel for Amici Curiae
Scholars of State Constitutions and Election Law

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IDENTITY AND INTEREST OF AMICI

Amici, identified in the accompanying Motion for Leave to File, are eight nationally recognized legal scholars with expertise in state constitutional law and the law of democracy. They have researched and published extensively in these areas, and they have a professional interest in promoting a proper understanding of the constitutional and democratic principles at issue in this case.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Washington Constitution requires close judicial scrutiny of laws—like the state's signature verification requirement, RCW 29A.40.110(3)—that disenfranchise qualified voters. Heightened scrutiny flows from the Constitution's text and underlying democratic imperatives and is common in state courts around the country.

I.A. To facilitate and preserve popular self-government, the Washington Constitution expressly and expansively guarantees the right to vote. *See* Wash. Const. art. I, § 19, art. VI,

§ 1. This right is foundational to Washington's system of government. When laws impair the right to vote, they silence voices that are constitutionally entitled to be heard and risk producing election outcomes that diverge from the popular will. Close judicial scrutiny of such laws serves as a vital democratic safeguard—something this Court has long recognized. *See, e.g.*, *Madison v. State*, 161 Wn.2d 85, 99, 163 P.3d 757, 767 (2007) ("[B]ecause the right to vote has been recognized as fundamental for all citizens, restrictions on that right generally are subject to strict scrutiny, meaning they must be narrowly tailored to further a compelling state interest.").

I.B. Heightened scrutiny properly reflects the respective constitutional roles of the legislature and the judiciary. Lawmakers are tasked with facilitating inclusive elections that accurately translate public preferences into representation and policy. Courts are tasked with ensuring that, as the legislature carries out its responsibilities, it does not impose rules that needlessly inhibit electoral participation.

I.C. Because the Washington Constitution's textual and structural commitments to voting and democracy go well beyond those of the U.S. Constitution, this Court should decline to import the relatively toothless federal *Anderson-Burdick* standard favored by Respondents. Applying that standard would essentially render Washington's state-specific protections mere surplusage. Given voting's status as a fundamental right indispensable to Washington's constitutional order, this Court should clarify that a more stringent test applies.

II. Rigorous judicial review of voting restrictions is a mainstream practice in the nation's state courts. Consistent with the robust voting rights and democratic commitments spelled out in state constitutions, courts commonly express the need for strict scrutiny or other elevated forms of review that are meaningfully more protective than the federal *Anderson-Burdick* standard.

ARGUMENT

I. WASHINGTON'S CONSTITUTION REQUIRES EXACTING JUDICIAL SCRUTINY OF LAWS THAT IMPAIR THE FUNDAMENTAL RIGHT TO VOTE.

The right to vote is the linchpin of Washington's constitutional structure. The legislature's power to create and regulate a system of voting must be exercised to advance the people's fundamental right to vote and self-govern. When qualified voters have their ballots excluded, the laws or practices that produce that result are properly subjected to heightened judicial scrutiny.

A. Through its text, structure, and history, the Washington Constitution zealously protects the free exercise of the right of suffrage.

The Washington Constitution broadly confers and unequivocally protects the right to vote. The text could not be clearer. Unless they have been disqualified based on a criminal conviction or judicial declaration of incompetence, all adult resident citizens "shall be entitled to vote at all elections." Wash. Const. art. VI, § 1. The text doubles down on this

promise by separately guaranteeing that "[a]ll Elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage." *Id*. art. I, § 19.

Situating these provisions in their broader context underscores the indispensable role of the right to vote in Washington's constitutional system. *Cf. State v. Gunwall*, 106 Wn.2d 54, 62, 720 P.2d 808, 812 (1986) (directing courts to consider constitutional structure when determining when the state constitution extends broader rights than the U.S. Constitution). The bedrock premise and promise of the Washington Constitution is that the people should rule themselves. Immediately following the Preamble's affirmation that the document is a charter of "We the people," the Declaration of Rights begins by foregrounding the Constitution's democratic underpinnings: "All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to

protect and maintain individual rights." Wash. Const. art. I, § 1. Article I then proceeds to enumerate a litany of rights vital to sustaining self-government—guarantees of due process and equality; rights to speak, petition, and peaceably assemble; a prohibition on "hereditary emoluments, privileges, or powers"; and, crucially, "free and equal" elections and "the free exercise of the right of suffrage." *Id*. §§ 3-5, 12, 19. Article I also urges "[a] frequent recurrence to fundamental principles" to secure "the perpetuity of free government." *Id*. § 32.

Having laid this groundwork, the Constitution then establishes institutions that enable the people to govern. For all three branches of government, Washingtonians choose through elections the officials who exercise authority in their name. *See id*. art. II, §§ 4-6 (legislative); art. III, § 1 (executive); art. IV, § 3 (judicial). As an additional accountability device, the Constitution subjects these elected officials to popular recall. *Id*. art. I, § 33. It also provides for direct democracy, recognizing that "the people [have] reserve[d] to themselves" the power to

set policy "at the polls" through the initiative and referendum. *Id*. art. II, § 1.

Because these governance mechanisms all hinge on the people's ability to participate in elections, the Constitution reinforces the guarantees of Article I, § 19, with an entire Article on "Elections and Elective Rights." *Id.* art. VI. Beyond confirming that "[a]ll" qualified electors are "entitled to vote at all elections," *id*. § 1, this Article deems electoral participation so vital that it establishes a privilege from arrest "during [voters'] attendance at elections and in going to, and returning therefrom" and relieves electors from "military duty on the day of any election except in time of war or public danger," *id*. § 5. To ensure that voters can make their choices freely, it also guarantees "every elector absolute secrecy in preparing and depositing his ballot." *Id*. § 6.

The sum of these parts is a constitutional system that uses elections to keep the people in the driver's seat and relies on the free exercise of the right to vote to ensure that those elections

fully and fairly reflect the people's collective will by giving voice to all eligible Washingtonians. In short, the right to vote is fundamental—a reality this Court has long recognized and no party here disputes. *See, e.g.*, *Foster v. Sunnyside Valley Irrigation Dist.*, 402 Wn.2d 395, 407, 687 P.2d 841, 848 (1984) ("The right of all constitutionally qualified citizens to vote is fundamental to our representative form of government.").

These democratic precepts have suffused the Washington Constitution from the start, and the document's historical trajectory has been toward increasingly open and equal electoral participation. In the words of two leading commentators, the Constitution was designed to be "a more responsive 'political' document than its federal counterpart." Robert F. Utter & Hugh D. Spitzer, *The Washington State Constitution* 4 (2013). Concerned about potential abuses of authority, the Constitution's drafters sought to keep "power close to the people." *Id*. at 10. And over time, the Constitution has given more of the people a say. Washington was among the first states

to extend the franchise to women, Morgan Christen, *Winning, Losing, and Regaining the Franchise*, 30 W. L. Hist. 45, 45 (2019), and other constitutional amendments further expanded participation, including by eliminating a year-long residency requirement and an English literacy requirement, *compare* Wash. Const. art. VI, § 1 (1896), *with id*. (1974). Such changes have helped to fulfill the Constitution's promise of a people's government, which hinges on the ability of the people to vote.

When the ballots of qualified voters are not counted, the entire constitutional order is undermined. Laws and practices that result in such exclusion stifle voices that are constitutionally entitled to be heard and risk producing election outcomes that do not align with the popular will.

This is why rigorous judicial scrutiny of exclusionary electoral practices is vital. "Nothing is more important in a democracy than the accurate recording of the untrammeled will of the electorate." *State ex rel. Pub. Disclosure Comm'n v. 119 Vote No! Comm.*, 135 Wn.2d 618, 657, 957 P.2d 691, 711

(1998) (Johnson, J., concurring); *see also Gold Bar Citizens for Good Gov't v. Whalen*, 99 Wn.2d 724, 730, 665 P.2d 393, 397 (1983) ("The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government.") (quoting *Reynolds v. Sims*, 377 U.S. 533, 555 (1964)). In an array of contexts, this Court has strictly scrutinized laws that encroach upon fundamental rights. *See, e.g.*, *Macias v. Dep't of Lab. & Indus. of State of Wash.*, 100 Wn.2d 263, 271, 668 P.2d 1278, 1283 (1983) (applying strict scrutiny to law alleged to impair fundamental right to travel); *In re Parentage of C.A.M.A.*, 154 Wn.2d 52, 60-61, 109 P.3d 405, 410 (2005) (applying strict scrutiny to alleged inference with fundamental right to autonomy in child-rearing decisions). The right to vote—a right that safeguards all other rights and makes self-government possible—requires similarly robust judicial protection.

The need for stringent review becomes even more important when a voting law or practice not only excludes but does so in a manner that disproportionately impacts particular subsets of the electorate. Where, as here, evidence points to such disparities, there is an acute danger of democratic distortion, with election outcomes potentially diverging from the majority's true preferences. *See* Br. of Pet'rs at 22–27 (describing how signature verification disproportionately disenfranchises voters of color, young voters, first-time voters, and non-English speakers). This danger exists whether or not the disparities were intentional, and countering it through rigorous judicial scrutiny of disparity-producing laws is vital to fulfilling the Constitution's foundational commitment to popular self-government.

B. Heightened scrutiny of exclusionary voting laws fully respects the legislature's constitutional role.

Despite acknowledging the fundamental nature of the right to vote, Respondents urge "a more deferential standard of

review" that would give wide berth to the legislature's election-related decisions. Hobbs Cross-Reply Br. of Resp't at 19. There is no doubt that the legislature has the authority—indeed, the duty—to establish laws that structure the electoral process.[1] But the legislature's election-related authorities derive from and are subordinate to the Constitution's overarching guarantees of government by and for the people. *Cf.* Utter & Spitzer, *supra*, at 10 (explaining that the Constitution's drafters sought to

[1] As the basis for this authority, Respondents specifically invoke Article VI, Section 7, which directs the legislature to "enact a registration law" and require "compliance with such law before any elector shall be allowed to vote." The signature verification law, however, does not appear to have been adopted as a registration law. It appears in the Washington Code's chapter on "Elections by Mail," RCW 29A.40, separate from the chapter governing "Voters and Registration," *id.* at 29A.08. Respondents also invoke the federal Elections Clause, which states that "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof," U.S. Const. art. I, § 4. Hobbs Cross-Reply Br. of Resp't at 19. This provision, however, does not exempt legislative enactments regarding elections from state constitutional requirements. *Moore v. Harper*, 600 U.S. 1, 22-34 (2023) ("[S]tate legislatures remain bound by state constitutional restraints when exercising authority under the Elections Clause.").

"safeguard [the] new constitutional order by limiting the power of [] state legislatures"). Put another way, the legislature's role is to ensure that elections are "free and equal," that "the right of suffrage" can be "free[ly] exercised," and that all eligible Washingtonians are able "to vote at all elections." Wash. Const. art. I, § 19, art. VI, § 1. While the legislature certainly has leeway to decide how best to carry out this democracy-facilitating charge, the Constitution does not provide a permission slip to put up needless barriers. Instead, full participation and inclusion must always remain the legislature's touchstone. The Montana Supreme Court recently expressed this point well:

> [A]lthough the Legislature is given power regarding elections, it may not exercise that authority in a way that violates the freedom and openness of our elections or interferes with the free exercise of the right of suffrage. … The Legislature's duty is first to secure to the voter a free, untrammeled vote, and, second, to secure a correct record and return of that vote. It is our solemn duty to review the Legislature's work to ensure that the right of suffrage guaranteed to the people by our Constitution is preserved and to ensure rules which were

> intended to prevent fraud and injustice do not become instruments of injustice.

Mont. Democratic Party v. Jacobsen, 545 P.3d 1074, 1089 (Mont. 2024) (cleaned up, internal quotation marks and citations omitted); *see also* Joshua A. Douglas, *The Power of the Electorate Under State Constitutions*, 76 Fla. L. Rev. __ , 44 (forthcoming 2024), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4743485 ("The legislature oversteps its bounds when the laws it passes, even if purportedly to promote election integrity, have the effect of taking away power from voters to participate in the process of giving the government its legitimacy.").

Thus, when a law results in the exclusion of qualified voters, it is entirely appropriate to require the law's defenders to show that the law is indeed necessary to advance compelling governmental interests. Such a requirement not only helps to root out needless obstacles to participation, but it also creates the proper incentives for the legislature to fulfill its

constitutional obligations in the first place. It sends the message that lawmakers must work to ensure that the state's voting laws enable every elector to cast a ballot and have it count.

C. The federal *Anderson-Burdick* standard is a poor fit for Washington.

This Court should reject Respondents' call to adopt the deferential *Anderson-Burdick* framework that federal courts use to evaluate state laws that impact federal voting rights. The parameters of that framework are somewhat murky and contested, but federal courts have increasingly taken it to require only minimal judicial scrutiny even when laws make it palpably more difficult for some voters to participate. *Cf.* Joshua A. Douglas, *Undue Deference to States in the 2020 Election Litigation*, 30 Wm. & Mary Bill of Rights J. 59, 62-63 (2021) (discussing recent federal rulings that applied this weakened, overly deferential form of *Anderson-Burdick*).

Embracing *Anderson-Burdick* (particularly in its weakened form) would be inappropriate for multiple reasons. First, the U.S. and Washington constitutions differ significantly

when it comes to voting and democratic governance. Unlike the Washington Constitution, the U.S. Constitution does not expressly confer the right to vote. *Anderson-Burdick* is instead rooted in the First and Fourteenth Amendments, provisions not specific to voting. More broadly, the U.S. Constitution does not parallel the Washington Constitution's comprehensive democratic structure discussed above in Section I.A. *Cf. Gunwall*, 106 Wn.2d at 61, 720 P.2d at 812 (identifying textual and structural differences as reasons why the Court might conclude that the Washington Constitution is more protective of rights than the U.S. Constitution).

Adopting *Anderson-Burdick* would effectively erase the Washington Constitution's distinct text and structural commitments. The guarantees in Article I, § 19 and Article VI, § 1 of "free and equal" elections, "the free exercise of the right to suffrage," and the entitlement of qualified electors "to vote at all elections" would be rendered mere surplusage. This Court's precedents already clearly reject such a result. The Court "has

recognized that the Washington Constitution goes further to safeguard the right to vote than does the federal constitution." *Madison*, 161 Wn.2d at 96, 163 P.3d at 765 (2007). And significantly, this recognition goes back decades to a time when federal courts protected voting rights more vigorously than they have in recent years. *See Foster*, 402 Wn.2d at 404, 687 P.2d at 846 (1984). The Court viewed the Washington Constitution as more protective than the U.S. Constitution even as it understood federal precedent to require "[i]n most instances [that] any legislative act which qualifies th[e] right [to vote]" withstand strict scrutiny. *Id*. at 407. Surely, then, modern *Anderson-Burdick* review cannot be the constitutional test for Washington.

Put differently, the U.S. Constitution and the *Anderson-Burdick* framework simply set a federal floor. State constitutions, including Washington's, build atop it, with additional voting rights and democratic safeguards. *See, e.g.*, Jessica Bulman-Pozen & Miriam Seifter, *The Democracy Principle in State Constitutions*, 119 Mich. L. Rev. 859, 879-81

(2021) (discussing state constitutions' strong commitments to popular sovereignty, majority rule, and political equality); Douglas, *The Power of the Electorate*, *supra*, at 2 ("[S]tate constitutions confer a *multilayered* right to vote that is focused on the entire electorate's participation in democracy."); Joshua A. Douglas, *The Right to Vote Under State Constitutions*, 67 Vand. L. Rev. 89, 129 (2014) ("[S]tate constitutions go well beyond the U.S. Constitution in granting voting rights. Judicial interpretation should follow suit.").

Second, and relatedly, the U.S. Supreme Court has stressed that federal institutions have a limited role when it comes to voting and elections because those are matters left, in large part, to the states. *See, e.g., Brnovich v. Democratic Nat'l Committee*, 594 U.S. 647, 673-74 (2021) (expressing concern that an expansive construction of the federal Voting Rights Act would "transfer much of the authority to regulate election procedures from the States to the federal courts."); *Shelby Cnty. v. Holder*, 570 U.S. 529, 543 (2013) (discussing the "broad

autonomy" of states over matters of democratic structure). As the Ninth Circuit recently put it, "[t]he [U.S.] Constitution permits, and even encourages, States to experiment by making it easier for some to vote." *Ariz. Democratic Party v. Hobbs*, 18 F.4th 1179, 1196 (9th Cir. 2021).

Federal doctrines like *Anderson-Burdick* take a relatively hands-off approach in part because they contemplate an independent—and greater—role for state-level actors relative to federal courts. Simply importing these federal doctrines thus makes little sense. Instead, this Court best serves our nation's system of federalism by giving effect to the Washington Constitution's own strong set of democratic safeguards and adopting a more rigorous standard of review. *See, e.g.,* Douglas, *The Right to Vote Under State Constitutions*, *supra*, at 121-29 (detailing reasons to reject a lockstep approach for voting rights).

II. COURTS IN OTHER STATES COMMONLY APPLY CLOSE SCRUTINY TO LAWS THAT BURDEN VOTING

Subjecting Washington's signature verification law to a level of scrutiny that meaningfully exceeds federal *Anderson-Burdick* review would be very much in the national mainstream. Consistent with the distinctive nature of their constitutions, state courts frequently protect voting rights more vigorously than do their federal counterparts. Meanwhile, very few state courts have lockstepped with the anemic version of *Anderson-Burdick* review that has taken hold in the federal courts.

State courts offer a variety of linguistic formulations to describe their standards of review in voting rights cases, but their approaches reflect a shared recognition that, compared to their federal counterparts, they should be more skeptical of measures that encumber the franchise. While Respondents maintain that most states "have adopted a test other than automatic strict scrutiny to laws implicating the right to vote," Resp. Br. at 44, a

careful review of the case law reveals that state courts do commonly apply strict scrutiny in right-to-vote cases and even more frequently apply heightened scrutiny variants that go well beyond what one would likely see in a similar federal case.

For starters, courts in several states have explicitly disavowed *Anderson-Burdick* and embraced at least a presumptive rule of strict scrutiny.[2] In many other states, courts have written in categorical terms that strict scrutiny applies to laws that burden fundamental rights, have recognized voting as a fundamental right, and have not suggested that voting rights would receive a lower level of judicial protection.[3]

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[2] *See, e.g.*, *Tully v. Edgar*, 664 N.E.2d 43, 47 (Ill. 1996) ("Where challenged legislation implicates a fundamental constitutional right, . . . such as the right to vote, . . . the court will examine the statute under the strict scrutiny standard."); *Shumway v. Worthey*, 37 P.3d 361, 366 (Wyo. 2001) ("The right to vote is fundamental, and we construe statutes that confer or extend the elective franchise liberally (as opposed to those limiting the right to vote in some way, which then invokes strict scrutiny).").

[3] *See, e.g.*, *Baehr v. Lewin*, 852 P.2d 44, 63 (Haw. 1993) ("This court has applied "strict scrutiny" analysis to laws . . . impinging upon fundamental rights expressly or impliedly

In still other states, courts have applied a level of scrutiny palpably more stringent than *Anderson-Burdick* review even if not always "strict." Were courts in these states to review a law akin to the one at issue here, they would very likely conclude that it meets the threshold for strict scrutiny or, at a minimum, for another form of meaningfully heightened review.

The Montana Supreme Court's recent decision in *Montana Democratic Party v. Jacobsen*, 545 P.3d 1074 (Mont. 2024), is particularly notable and instructive. The court there expressly rejected the state's call to adopt federal *Anderson-Burdick* review, explaining that its "minimal protections" found "no

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granted by the constitution[.]") (alterations and internal quotation marks omitted); *Akizaki v. Fong*, 461 P.2d 221, 222-23 (Haw. 1969) ("The right to vote is perhaps the most basic and fundamental of all the rights guaranteed by our democratic form of government."); *Wells by Wells v. Panola Cnty. Bd. of Educ.*, 645 So. 2d 883, 893 (Miss. 1994) ("A statute . . . interfering with the exercise of a fundamental right, such as voting, is subject to strict scrutiny."); *Wrigley v. Romanick*, 988 N.W.2d 231, 242 (N.D. 2023) ("A statute which restricts a fundamental right is subject to strict scrutiny[.]"); *Poochigian v. City of Grand Forks*, 912 N.W.2d 344, 349 (N.D. 2018) ("The right to vote is a fundamental constitutional right.").

textual or historical support in the Montana Constitution." *Id*. at 1084-89. In the court's words, "We have long held that the right to vote freely and unimpaired preserves—and is a bulwark for—other basic civil and political rights. We have also long carefully scrutinized laws which interfered on the right." *Id*. at 1087; *see id*. at 1090 ("Given the textual strength and history of Montana's explicit constitutional protection, and its independent analysis from the equal protection clause, we should not put its independent force at risk of dilution by later federal precedents. We thus decline to adopt the federal *Anderson-Burdick* standard, which now provides less protection than that clearly intended by the plain language and history of the Montana Constitution's right to vote.").

Articulating its more protective standard, the Montana Supreme Court distinguished between laws that "impermissibly interfere[] with the right to vote" and those that "only minimally burden[] it." *Id*. at 1090. It held that strict scrutiny applies to the former but not the latter. Notably, however, it concluded that

even when a law's burdens are minimal, "middle-tier analysis" (rather than rational-basis review) is appropriate. *Id*. at 1091. And it explained that such middle-tier analysis has real bite. The government (not the plaintiff) bears the burden of establishing both that "the law is reasonable" and that the state's "asserted interest is more important than the burden on the right to vote." *Id*. at 1093. The court proceeded to apply its middle-tier analysis to invalidate a law that barred voters who would turn 18 by election day from receiving an absentee ballot before their birthday, and another law that eliminated student IDs as a valid form of voter identification. *See id*. at 1093-95, 1104-07. The court also held that a law eliminating election-day voter registration was subject to and failed strict scrutiny. *Id*. at 1095-1100. If the risk of disenfranchisement associated with rollback of election-day registration in Montana sufficed to trigger strict scrutiny, the case for such scrutiny seems even stronger here given that Washington's signature verification law has

undeniably resulted in the rejection of ballots from tens of thousands of qualified voters.

Tellingly, even in rulings Respondents cite to show that strict scrutiny is not automatic in every voting case, *see* Resp. Br. 43-44 & n.4, state courts conducted a voter-protective inquiry more akin to the Montana Supreme Court's robust inquiry in *Jacobsen* than to deferential federal *Anderson-Burdick* analysis. The Alaska Supreme Court, for example, recently explained that, while voting laws that impose "substantial burdens" are subject to strict scrutiny, even laws that impose "modest or minimal burdens" are constitutional only if they are "reasonable, non-discriminatory, and advance[] important regulatory interests." *State v. Arctic Vill. Council*, 495 P.3d 313, 321-22 (Alaska 2022) (internal quotation marks omitted). The court went on to hold that the state's absentee ballot witness requirement created substantial rather than minimal burdens on voters during the pandemic and failed strict scrutiny. *Id*. at 326. The court stressed

that the Alaska Constitution is "more protective" of voting rights than the U.S. Constitution. *Id*. at 321.[4]

Most of the other out-of-state precedents Respondents cite are significantly different from this case. In some, the legal challenges did not involve voting restrictions but instead laws that expanded the franchise or addressed other election matters.[5]

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[4] Similarly, the Missouri Supreme Court applied strict scrutiny to that state's voter ID law, even though a federal court would almost certainly subject such a claim to more deferential review. *Compare Weinschenck v. Missouri*, 203 S.W.3d 201 (Mo. 2006), *with Crawford v. Marion Cnty. Election Bd*., 553 U.S. 181 (2008) (upholding Indiana's voter ID law); *see also Chelsea Collaborative, Inc. v. Sec'y of Commonwealth*, 100 N.E.3d 326, 333 (Mass. 2018) (applying sliding scale analysis but noting that the state constitution may require it to be applied "in a manner that guard[s] more jealously against the exercise of the state's police power than the application of the framework under the Federal Constitution") (internal quotation marks omitted); *Rutgers Univ. Student Assembly v. Middlesex Cnty. Bd. of Elections*, 141 A.3d 335, 347 (N.J. Super. Ct. App. Div. 2016) (concluding that the state's advance registration law was minimally burdensome but nevertheless requiring the law's defenders to "prove[] that the State's important interests" adequately justified it).

[5] *See Lacy v. City & Cnty. of San Francisco*, 94 Cal. App. 5th 238 (Cal. Ct. App. 2023) (challenging expansion of suffrage rather than burden on right to vote); *League of Women Voters of Del., Inc. v. Del. Dep't of Elections*, 250 A.3d 922 (Del. Ch. 2020) (challenging expansion of voting by mail); *Puffer-Hefty*

In others, the plaintiffs pursued claims under equal protection provisions rather than right-to-vote provisions or simply seem not to have requested an independent or more protective state constitutional standard.[6]

The bottom line is that few courts addressing state constitutional right-to-vote challenges to restrictive voting laws have chosen to mirror the deferential federal constitutional standard. Instead, state courts commonly scrutinize restrictive voting laws far more rigorously than their federal counterparts, recognizing that such review naturally follows from their constitutions' strong textual and structural commitments to

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Sch. Dist. No. 69 v. Du Page Reg'l Bd. of Sch. Trus. of Du Page Cnty., 789 N.E.2d 800 (Ill. Ct. App. 2003) (challenging dissolution and annexation of school district); *Herr v. Indiana*, 212 N.E.3d 1261 (Ind. Ct. App. 2023) (challenging closed primary law).

[6] *See Democratic Party of Ga., Inc. v. Perdue*, 707 S.E.2d 67 (Ga. 2011) (addressing state equal protection challenge); *All. for Retired Ams. v. Sec'y of State*, 240 A.3d 45 (Me. 2020) (focusing primarily on federal claims and applying federal-style balancing analysis at plaintiffs' request); *DSCC v. Simon*, 950 N.W.2d 280 (Minn. 2020) (applying federal-style balancing analysis at plaintiffs' request).

voting and democracy. This Court should likewise apply exacting scrutiny to laws, like the state's signature matching requirement, that operate to exclude qualified voters.

CONCLUSION

For the foregoing reasons, *Amici* respectfully urge this Court to reverse the Superior Court and apply heightened scrutiny to the signature verification requirement found in RCW 29A.40.110(3).

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RAP 18.17 CERTIFICATE OF COMPLIANCE

This document contains 4,673 words, excluding parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 16th day of September, 2024.

LAW OFFICE OF AMANDA BEANE, P.C.

By: /s/ *Amanda Beane*
Amanda Beane, WSBA 33070
LAW OFFICE OF AMANDA BEANE, P.C.
7724 35th Ave NE, P.O. Box 15526
Seattle, WA 98115
(206) 206-531-0224
amanda@amandabeanelaw.com
Counsel for Amici Curiae

DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington, that on September 16, 2024, the foregoing document was electronically filed with the Washington State's Appellate Court Portal, which will send notification of such filing to all attorneys of record.

Signed in Seattle, Washington, this 16th day of September, 2024.

/s/ Amanda Beane
Amanda Beane