IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

Supreme Court No. _____

(Court of Appeals No. 70758-2-I)

BF FOODS, LLC, FILO FOODS, LLC, ALASKA AIRLINES, INC., and WASHINGTON RESTAURANT ASSOCIATION,

Petitioners/Plaintiffs,

v.

CITY OF SEATAC,

Respondents/Defendants,

v.

SEATAC COMMITTEE FOR GOOD JOBS,

Respondent/Intervenor.

EMERGENCY MOTION AND BRIEF IN SUPPORT OF PETITION FOR EXPEDITED DISCRETIONARY REVIEW

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I. IDENTITY OF PETITIONERS AND RELIEF SOUGHT

Petitioners/Plaintiffs BF Foods, LLC, Filo Foods, LLC, Alaska Airlines, Inc., and the Washington Restaurant Association ("Plaintiffs") file this Emergency Motion and Brief in Support of Petition for Expedited Discretionary Review. Plaintiffs prevailed in the King County Superior Court, which issued an order and writs prohibiting the City of SeaTac from placing an initiative measure on the November ballot because it lacks sufficient valid signatures. On just a few days' notice, expedited briefing, and abbreviated argument, the Court of Appeals reversed, apparently holding the controlling state statute and municipal ordinance unconstitutional, without as yet providing any explanation of its decision. Plaintiffs request expedited review because otherwise an invalid initiative will be placed on the ballot, and it will be impossible to correct that error.

II. DECISIONS BELOW

On August 26, 2013, in a thorough written opinion and order, the King County Superior Court (Judge Darvas) granted Plaintiffs application for writs of review, prohibition, and mandate, ordering the City of SeaTac not to place an ordinance proposed by initiative petition on the November ballot because it was not supported by enough valid signatures. Appx. 5-

15.[1] Nearly 1,000 of the 2,506 signatures submitted were invalid. The proponent of the measure, SeaTac Committee for Good Jobs ("Intervenor") appealed. On September 6, 2013, the Court of Appeals, Division I reversed and quashed the writs. Appx. 1-4.

III. MOTION FOR EMERGENCY HEARING

Pursuant to RAP 13.5 and 17.4(b), Plaintiffs seek this Court's emergency review of their Petition. As a result of the Court of Appeals decision (apparently declaring invalid the controlling state law and municipal ordinance), an invalid initiative will be placed on the November ballot. Because ballots must be printed this week and mailed by September 20, it will be impossible to correct that error absent emergency review. Plaintiffs' request is supported by the attached Affidavit of Harry Korrell in Support of Emergency Hearing (and exhibits). Appx. 176-209.

Plaintiffs request that this Court order responsive briefing be filed and served electronically by 9:00 a.m. on September 11; that any reply briefing be filed and served electronically by September 11 at 4:30 p.m.; and that oral argument be held as early as possible on September 12.

IV. ISSUES PRESENTED

Did the Court of Appeals err in reversing the trial court because:

[1] The Appendix includes a copy of the orders below. Documents presented by Petitioner/Plaintiffs are referenced as "Appx-__."

1) There is no state constitutional right to initiative at the municipal level and the holding in *Sudduth v. Chapman* applies only to state initiatives?

2) RCW 35A.01.010 grants SeaTac broad powers of self-government, including the authority to enact those chapters of 1.10 SMC that provide for the clerk to issue certificates of sufficiency?

3) The legitimate government interests of preventing fraud, efficiently administering initiatives, and deterring misconduct justify the minimal burdens imposed on voters under RCW 35A.01.040(7) and SMC 1.10.140(C)?

V. STATEMENT OF THE CASE

The City of SeaTac has chosen to allow initiative petitions and has adopted procedures governing this process in its Municipal Code. *See* Title 35A.11 RCW; SMC 1.10 *et seq*. At issue are RCW 35A.01.040(7) and SMC 1.10.140(C), both of which expressly require that "[s]ignatures, including the original, of any person who has signed a petition two or more times shall be stricken," and RCW 35A.01.040(2), which requires that all signatures "shall be followed by the name and address of the signer and the date of signing."

A. Intervenor submitted an initiative petition but a large portion of the signatures were invalid.

Intervenor submitted an initiative petition and proposed SeaTac ordinance entitled "Ordinance Setting Minimum Employment Standards

For Hospitality and Transportation Industry Employers."[2] Appx. 79-89. SMC 1.10.110 requires that, to qualify for placement on a ballot, the petition be signed by 1,536 registered voters (*i.e.,* "equal to at least fifteen percent (15%) of the total number of names of persons listed as registered voters within the City on the day of the last preceding City general election"). Intervenor submitted 2,506 signatures.

The City delivered the signatures to the King County Elections Department, which serves as *ex officio* Supervisor of City elections (the "Supervisor"), to determine the sufficiency of signatures. The Supervisor validated 1,780 signatures and rejected 726 signatures. Appx. 98.

Plaintiffs acted immediately. They believed that many of the signatures initially counted were invalid under the SMC and applicable RCW provisions and notified the City. The City did not respond, and on June 28, 2013, it issued a Certificate of Sufficiency pursuant to SMC 1.10.140(H). On July 2, 2013, Plaintiffs again complained to the City and requested that it convene the Petition Review Board ("Board") authorized by the SMC to review whether the petition was supported by enough valid signatures.

[2] The Ordinance seeks to regulate some employers in the hospitality and transportation industries and addresses numerous and diverse topics, including minimum wage, sick leave, restrictions on employers' right to hire part-time workers, tip pooling, employee notice and restrictions on employers' ability to hire or transfer workers (in the event an employer loses a contract or sells its business), recordkeeping, city enforcement, and prohibiting retaliation for certain protected activity. Appx. 79-89.

B. Plaintiffs filed their first application for writs, and the City agreed to convene a Petition Review Board.

Because the City would not commit to convene the Board, Plaintiffs filed in Superior Court an application for writs pursuant to SMC 1.10.210 challenging the Certificate of Sufficiency and objecting to five categories of invalid signatures. Plaintiffs noted their motion to be heard on July 19, 2013. Subsequent to that filing, the City confirmed it would convene the Board on the same day, July 19, 2013. At the writ hearing, the City argued that the motion was premature because the Board had not yet met. Intervenor filed no brief but made the same argument at the hearing. The court agreed, denied the motion, and invited the parties to return to court if not satisfied with the City's actions after the Board met.

C. After the Board hearing, the City determined that an additional 201 signatures were invalid.

At the Board, Plaintiffs challenged five categories of signatures that were improperly counted. On July 22, the Board concluded that signatures in three of the five categories – another 201 signatures – were invalid and should not be counted. The Board rejected Plaintiffs' challenge to the counting of 61 signatures by people who signed the petition multiple times, despite the plain language of SMC 1.10.140(C) and RCW 35A.01.040(7). On July 23, 2013, the City issued a Final

Certificate of Sufficiency stating that the initiative petition was supported by 1,579 signatures, enough to qualify.

D. Plaintiffs again challenged the signatures of 61 people who signed the petition multiple times; the Superior Court agreed and held that the petition was not supported by enough valid signatures.

Plaintiffs filed a timely appeal of the City's Final Certificate because, under SMC 1.10.140(C) and RCW 35A.01.040(7), 61 signatures should have been stricken as they were from people who signed the petition multiple times. The Superior Court agreed and determined that, when those 61 signatures were stricken as required by the RCW and SMC, the petition was not supported by enough valid signatures. It granted the requested writs, prohibiting the City from taking further action to place the measure on the ballot and ordering it to instruct the Supervisor of City elections, King County, not to place the measure on the ballot. The City complied with the order, and King County honored the instruction.

E. Intervenor and its allies attempted to circumvent Judge Darvas' decision.

Intervenor and its allies took several actions in response to Judge Darvas' decision. Intervenor sought discretionary review by the Court of Appeals, raising a host of new issues not previously briefed or argued. Intervenor also filed before Judge Darvas a motion for reconsideration, making the same new arguments raised for the first time in the motion for

discretionary review. In addition, two alleged signers of the petition filed a separate action in the Seattle Division of King County Superior Court (Judge Prochnau), seeking an order under RCW 29A.68.011 requiring King County to place the measure on the ballot because, in their view, Judge Darvas was wrong. Appx. 185-207 (Korrell Aff. Ex. B).

Judge Darvas denied the motion for reconsideration and this decision was never appealed. Appx. 16-17. Judge Prochnau denied the motion for an order under 29A.68.011. Appx. 208-09 (Korrell Aff. Ex. C). The Court of Appeals, however, reversed Judge Darvas' and quashed the writs. No party sought a stay of Judge Darvas' order, and the writs are thus still in effect.

VI. ARGUMENT

The motion for emergency discretionary review should be granted to correct substantial error and because matters of substantial public importance and concern are at issue in this case regarding the validity of signatures on an initiative petition. The Court of Appeals reversed and vacated the trial court decision prohibiting the invalid initiative from reaching the ballot and appears to have declared a state statute and identical municipal ordinance unconstitutional. Because the writs issued by Judge Darvas are still binding (they were never stayed), the City and county face conflicting decisions, and if the City is allowed to include the

initiative when ballots are printed and mailed, it will be impossible to correct that error before the election. *See* RAP 13.5(b)(2)-(3); RAP 13.4 (b)(4) (permitting review of matters involving an issue of substantial public interest); *see also Pederson v. Moser*, 99 Wn.2d 456, 458, 662 P.2d 866 (1983) (accepting accelerated review so appeal could be heard before election).

Legislating by initiative is an important part of state and municipal governance in Washington, but the signature gathering process is a fertile ground for temptation and misconduct.[3] The safeguards enacted by the Legislature and municipalities that choose to allow initiatives are crucial to maintaining the integrity of that process. If the people are to continue to have confidence in this sometimes messy system, it is vitally important that the rules established in advance be followed do not change in the middle of the canvass of signatures.

A. The Trial Court Properly Applied the Plain Language of RCW 35A.01.040(7) and SMC 1.10.140(C).

In granting the requested writs, the trial court merely required the City to follow the law. In light of the clear language of RCW

[3] *See* Erik Smith, A Guilty Plea in SEIU Initiative Signature-Forging Case- But the Left Turns Embarrassment to its Advantage in the Legislature, Washington State Wire, (Feb. 26, 2011) http://washingtonstatewire.com/blog/a-guilty-plea-in-seiu-initiative-signature-forging-case-but-the-left-turns-embarrassment-to-its-advantage-in-the-legislature/, (last visited Sept. 4, 2013); Erik Smith, Oh, No! Not Again! – Another SEIU Initiative is Tarnished by Signature Fraud, Washington State Wire (July 23, 2011) http://washingtonstatewire.com/blog/oh-no-not-again-another-seiu-initiative-is-tarnished-by-signature-fraud/, (last visited Sept. 4, 2013).

35A.01.040(7) and SMC 1.10.140(C), the trial court's decision was right. Intervenor argues that these provisions improperly restricted the people's right of initiative, relying on *Sudduth v. Chapman*, 88 Wn.2d 247, 251, 558 P.2d 806 (1977), but that reliance is misplaced. The holding in *Sudduth* is narrow, and its reasoning is limited to initiatives proposing state, not local, legislation because the right to do so is created by the state constitution. *Id*. at 250. In contrast, there is no state constitutional right to initiative at the municipal level, *City of Port Angeles v. Our Water-Our Choice!*, 170 Wn.2d 1, 7-8, 239 P.3d 589 (2010), so the State Legislature and the SeaTac City Council had the power to adopt the safeguards in RCW 35A.01.040(7) and SMC 1.10.140(C). In addition, unlike here, the *Sudduth* Court noted that there was no argument in the case that the regulation was reasonably related to the administration of elections or the prevention of misconduct. 88 Wn.2d at 251.

B. RCW 35A.01.040(4) Does *Not* Prevent SeaTac From Adopting Procedures to Protect the Right to Initiative.

On appeal, Intervenor raised several new arguments. One of them was that the trial court erred when it issued the writs because RCW 35A.01.040(4) "clearly delegates" responsibility for verifying signatures exclusively to the King County Auditor—leaving no room for subsequent municipal proceedings. According to Intervenor, provisions of the SMC

authorizing the City Clerk and the Board to review and investigate the sufficiency of signatures are "preempted" by supposedly conflicting state law. This is wrong.

First, that argument was not properly before the Court of Appeals because it was first raised in the motion for discretionary review (it was later raised in a motion for reconsideration, the denial of which was never appealed). RAP 2.5(a). Until the appeal, Intervenor never argued that only the County could decide the validity of signatures or that Board review contravened state law. In fact, Intervenor argued the opposite, asserting that "[t]he [Superior] Court should not issue a Writ of Review ***because the actions taken by the [Board] were not illegal and did not exceed the Board's jurisdiction***." Appx. 57. (emphasis added). Only after appealing did Intervenor raise these new arguments in its motion for reconsideration. Judge Darvas denied that motion. Appx. 16-17. Washington appellate courts do not entertain arguments that are patently inconsistent with the positions advanced at trial. *Postema v. Postema Enterprises, Inc.*, 118 Wn. App. 185, 72 P.3d 1122 (2003); *In re Dependency of K.R.*, 128 Wn. 2d 129, 147, 904 P.2d 1132 (1995) ("[C]ounsel cannot set up an error at trial and then complain of it on appeal.").

More importantly, Intervenor's "preemption" argument fails on its merits. Title 35A RCW sets forth the "Optional Municipal Code." The

purpose of this code is to confer upon cities like SeaTac ***"the broadest powers of local self-government consistent with the Constitution of this state."*** It continues:

> ***Any specific enumeration of municipal powers contained in this title or in any other general law shall not be construed in any way to limit the general description of power contained in this title***, and any such specifically enumerated powers shall be construed as in addition and supplementary to the powers conferred in general terms by this title. ***All grants of municipal power to municipalities electing to be governed under the provisions of this title, whether the grant is in specific terms or in general terms, shall be liberally construed in favor of the municipality***.

RCW 35A.01.010 (emphasis added).

The objective in interpreting a statute is to give effect to the Legislature's intent by looking to the text of the provision and the context of the statutory scheme as a whole. *Anfinson v. FedEx Ground Package Sys., Inc*. 159 Wn. App. 35, 48, 244 P.3d 32 (2010) (quoting *In re Pers. Restrain of Cruze*, 169 Wn.2d 422, 427, 237 P.3d 274 (2010)). Construing statutes, a court is required to harmonize them if at all possible and read them to avoid unlikely, absurd, or strained consequences. *King County v. Central Puget Sound Growth Mgmt Hearings Bd*., 142 Wn.2d 543, 560, 14 P.3d 133 (2000); *Glaubach v. Regence BlueShield*, 149 Wn.2d 827, 833, 74 P.3d 115 (2003).

Intervenor relies on a reference to the "county auditor" in RCW 35A.01.040(4) and argues that this means the City cannot adopt its own procedures. Nothing in the statute says this. To the contrary, one of the powers of self-government conferred by this title is the power to adopt procedures for the initiative process. RCW 35A.01.040. When RCW 35A.01.040(4) is read in context, any reading that unduly deprives the City of power to establish review and verification procedures for petition signatures must give way to the general, broad power of self-government conferred by RCW 35A.01.010.

The citizens of SeaTac exercised the broader powers of local self-government granted to them by the Optional Municipal Code when they enacted SMC 1.10. These provisions set out protections to safeguard the initiative process and were necessary to harmonize conflicting provisions of the RCW. *See* Ord. No. 90-1042.[4]

One of those safeguards is that the City Clerk "shall refer the petition to the Superintendent of Elections of the King County Records and Elections Division, as *ex officio* supervisor of City elections." SMC

[4] The City Council enacting Ord. No. 90-1042 in part because "the various statutes within the Optional Municipal Code which affect the powers of initiative and referendum are, to one degree or another, in conflict, and that, in order to harmonize these statutes and to give effect to the apparent intent of the legislature to provide for clear procedures and a uniform, understandable form of petition, RCW 35A.11.090 and .100 shall be followed except that, pursuant to RCW 35A.29.170, reference to RCW 35.17.240 through 35.17.360 shall be subject to the requirements of form, content and sufficiency set forth in RCW 35A.01.040, and the duties of the City Clerk and suspension of legislative action upon filing of a referendum petition shall be governed by RCW 35A.29.170."

1.10.140.[5] This county administrator thus plays a role in the sufficiency determination, but as argued more fully below, the administrator acts as a city officer—not a county officer—when doing so.

Other safeguards include the insertion of the City Clerk as a final authority for determining which signatures should be counted in accordance with local law. SMC 1.10.140. Other provisions create a Petition Review Board, SMC 1.10.170, the right of final review by the City Council, SMC 1.10.220, and the right of appeal by writ. SMC 1.10.210.

By Intervenor's logic, RCW 35A.01.040(4) nullifies all of these safeguards and allows King County to send an initiative directly to the ballot, disregarding the process adopted by the citizens of SeaTac for their own initiatives and elections. This is an unwarranted encroachment into the "broadest powers of local self-government" conferred by Title 35A. Even if Intervenor's interpretation is supported by a literal reading of the RCW 35A.01.040(4) in isolation (it is not) courts do not give statutes a

[5] SMC 1.10.140(4) states in full, "The City Clerk shall then refer the petition to the Superintendent of Elections of the King County Records and Elections Division, as ex officio supervisor of City elections, pursuant to RCW 35A.29.040, whereupon the sufficiency of signatures shall be determined by the Superintendent and City Clerk in accordance with general law and with the following criteria." This provision of the City Code was enacted in 1990 by Ordinance 90-1042. In 1994, RCW 35A.29.040 was repealed as part of a large legislative effort to reform state election law. The legislature, however, subsequently enacted numerous provisions clearly contemplating that the county auditor serves in an *ex officio* role in local elections. *See, e.g.*, RCW 29A.04.216; 29A.04.330.

literal reading that results in unlikely, absurd, or strained results. *Whatcom Cnty v. City of Bellingham*, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996). Moreover, "'[t]he purpose of an enactment should prevail over express but inept wording,'" *Thompson v. Hanson*, 142 Wn. App. 53, 69, 174 P.3d 120 (2007) (quoting *Whatcom*, 128 Wn.2d at 546). Thus, the "county auditor" reference in RCW 35A.01.040(4) should not be read to invalidate SeaTac's initiative procedures and safeguards as Intervenor contends. [6]

C. The Trial Court Did Not Commit Error in Not Requiring the City to Count Signatures Deemed Invalid by the Petition Review Board.

The Board, relying on the threshold requirements of RCW 35.A.01.040(2) rejected 159 signatures because they lacked a date of signing or a resident address. The Board rejected an additional 42 signatures because they did not have a copy of the ordinance attached as required by law. Intervenor argued that the court should have reversed the Board regarding the 159 signatures.

The Board's decision to exclude those signatures was correct. RCW 35.A.01.040(2) expressly requires that "[e]ach signature . . . ***shall*** be

[6] Even if Intervenors were right that the county should have the final say on validity of signatures for City initiatives, we wind up in the same place, with the Superior Court applying the same validity rules to the same categories of signatures at issue and reaching the same conclusions because there is no dispute the signatures at issue do not meet the statutory requirements.

followed by the name and ***address of the signer*** and ***the date of signing***." (emphasis added). Signatures that do not meet the threshold requirements of RCW 35.A.01.040 are not valid and, obviously, only valid signatures may be counted. *See State ex rel. Uhlman v. Melton*, 66 Wn.2d 157, 161 (1965) (strict compliance with statutory requirements governing municipal referendum process "is mandatory and jurisdictional" and "failure to so comply is fatal"); *Paxton v. City of Bellingham*, 129 Wn. App. 439, 447 (2005) (applying the rule to signatures collected in the municipal initiative process).

D. SMC 1.10.140(C) Does Not Impair Voter's Rights Under The Federal Constitution.

Intervenor claims that the Superior Court's decision to strike all signatures of the 61 people who signed more than once violates the U.S. Constitution. According to Intervenor, by requiring the city to follow SMC 1.10.140(C) and RCW 35A.01.040(7), the court impaired the right to vote in a way that does not satisfy "strict scrutiny" review. The Intervenor gets the Constitutional analysis wrong.

1. "Strict Scrutiny" Does Not Apply.

State statutes and municipal ordinances are presumed constitutional, and the challenging party bears a heavy burden of proving unconstitutionality beyond a reasonable doubt. *School Dist.s' Alliance for*

Adequate Funding of Special Educ. v. State, 170 Wn.2d 599, 605-06, 244 P.3d 1 (2010) (this "demanding standard is justified because 'we assume the Legislature considered the constitutionality of its enactments and afford great deference to its judgment.'") (quoting *Tunstall v. Bergeson*, 141 Wn.2d 201, 220, 5 P.3d 691 (2000)); *Ace Fireworks Co. v. City of Tacoma*, 76 Wn.2d 207, 210, 455 P.2d 935 (1969) (ordinance presumed constitutional).

There is no question that the Superior Court's decision to strike the signatures of the 61 people who signed the petition more than once was based on the express, neutral, and generally applicable commands of SMC 1.10.140(C) and RCW 35A.01.040(7). The argument that this decision violated constitutional rights proceeds from the erroneous assumption that any burden on the right to vote is subject to strict scrutiny.[7] The U.S. Supreme Court has definitively ruled otherwise:

> [To] subject every voting regulation to strict scrutiny and to require that the regulation be narrowly tailored to advance a compelling state interest, as petitioner suggests, would tie the hands of States seeking to assure the elections are operated equitably and efficiently. Accordingly, the mere fact that a State's system "creates barriers … tending to limit the field of candidates from which voters might choose … does not of itself compel close scrutiny."

[7] Intervenor's discussion of the Equal Protection Clause is a red herring. The clause applies to ***all*** government activity and programs, including public contracting, operation of city busses, admission to public schools, provision of benefits, etc. and prohibits discrimination in the operation of those programs. There is no allegation of any discrimination of any kind in this case.

Burdick v. Takushi, 504 U.S. 428, 433, 112 S. Ct. 2059, 119 L. Ed. 2d 245 (1992) (quoting *Bullock v. Carter*, 405 U.S. 134, 143 31 L. Ed. 2d 92, 92 S. Ct. 849 (1972)).[8]

While the right to vote is of "fundamental significance," the right to vote ***in any manner*** is not absolute. *Burdick*, 504 U.S. at 433 (citing *Illinois Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184, 99 S. Ct. 983, 59 L. Ed. 2d 230 (1979)). States, and by extension local governments, "retain the power to regulate their own elections," and elections laws "invariably impose some burden upon individual voters." *Id.* When an election regulation imposes only "'reasonable non-discriminatory restrictions' upon the *First* and *Fourteenth Amendment* rights of voters, 'the State's important regulatory interests are generally sufficient to justify' the restrictions." *Id.* (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 788, 75 L. Ed. 2d 547, 103 S. Ct. 1564 (1983)). "[S]trict

[8] Intervenor has relied on *John Doe No. 1 v. Reed*, 130 S.Ct. 2811, 177 L.Ed.2d 493 (2010) for the proposition that regulations affecting initiative petitions are subject to strict scrutiny review. At oral argument, Division I also quoted extensively from Judge Roberts' opinion in that case. *John Doe* does not support the proposition asserted by Intervenor or the Court of Appeals. ***Five Justices wrote separately to oppose a strict scrutiny analysis***. *See id*. at 2828 ("It is by no means necessary for a State to prove that such 'reasonable, nondiscriminatory restrictions' are narrowly tailored to its interests) (J. Sotomayor, concurring; joined by J. Stevens and J. Ginsburg); *id*. at 2830 (signing a petition "does not involve any 'interactive communication and is not principally a method of individual expression of political sentiment;" thus, the "state need not produce concrete evidence that [the regulation] is the best way to prevent fraud") (J. Stevens, concurring; J. Breyer joining) (citations and quotation marks omitted); *id*. at 2832 (doubting "whether signing a petition . . . fits within 'the freedom of speech' at all") (J. Scalia, concurring).

scrutiny is appropriate only if the burden is severe." *Clingman v. Beaver*, 544 U.S. 581, 592, 125 S. Ct. 2029, 161 L. Ed. 2d 920 (2005).

Ordinary and widespread burdens, such as those requiring "nominal effort" of everyone, are not severe. *Clingman*, 544 U.S. at 591, 593-597. SMC 1.10.140(C) is a generally applicable, nondiscriminatory voting regulation. It does not severely burden the rights of voters; it requires merely that voters not sign initiatives twice and creates a deterrent to doing so. The law does not restrict the ability of voters to endorse, support, or vote for any measure; nor does it limit access to the ballot. *See Crawford v. Marion Cnty Election Bd.*, 553 U.S. 181, 198, 128 S. Ct. 1610, 170 L. Ed. 2d 574 (2008) (photo identification requirement not a substantial burden); *Jenness v. Fortson*, 403 U.S. 431, 91 S. Ct. 1970, 29 L. Ed. 2d 554 (1971) (requirement that candidate show a minimum degree of support before being placed on ballot not burdensome).

Intervenor argues that the burden imposed by the SMC is severe because it disenfranchises those 61 voters who signed the petition twice.[9] But the impact of a regulation on individual voters is irrelevant to

[9] Intervenor also argues that the burden imposed by the SMC is severe because it indirectly disenfranchises the remaining voters who signed the petition. This is the tail wagging the dog. There is always the possibility when a voter signs a petition that the petition will not qualify for the ballot; this does not mean that every other voter who signed an ultimately invalid initiative is disenfranchised. Intervenor's argument, if correct, would impose a de facto strict scrutiny review on any voting regulation and, in so doing, invalidate nearly all regulation of the initiative process.

determining the severity of the burden it imposes. *Crawford*, 553 U.S. at 200 ("And even assuming that the burden may not be justified as to a few voters, that conclusion is by no means sufficient to establish petitioners' right to the relief they seek in this litigation.").

2. The City's Interest In Efficient Administration of Elections and Preventing Misconduct Outweighs The Limited Burdens Imposed By The SMC

Because SMC 1.10.140(C) does not impose a severe burden on rights of voters, the ordinance is constitutional if the City's interests are sufficient to justify the minor restriction of alleged voters' rights. *Burdick*, 504 U.S. at 433-34. Several important interests that justify the minor burdens that SMC 1.10.140(C) imposes on voters and potential voters: facilitating election administration, preventing fraud, and deterring misconduct (if a voter signs multiple times, none of his signatures gets counted).[10]

> There is no question about the legitimacy or importance of the State's interest in counting only the votes of eligible voters. Moreover, the interest in orderly administration and accurate recordkeeping provides a sufficient justification for carefully identifying all voters participating in the election process. While the most effective method of preventing election may well be debatable, the propriety of doing so is perfectly clear.

[10] Both the state and SeaTac were sufficiently concerned with preventing signature misconduct that it criminalized it certain actions. RCW 29A.84; SMC 8.05.210. Intervenor here is certainly familiar with the need to protect against submission of improper signatures (especially given that SEIU is the union behind this measure). *See supra*, note 3.

Crawford, 553 U.S. at 196; *see John Doe #1 v. Reed*, 130 S.Ct. 2811, 2819, 2828-29; 2830 (2010).

3. Intervenor's Theory Would Invalidate Common Laws and Regulations Protecting the Integrity of Elections.

Intervenor's contention that the minor burdens imposed by the validity requirements of the RCW and SMC are unconstitutional would have sweeping consequences. If it is unconstitutional to require a date and address or to deter misconduct by refusing to count multiple signatures, what of the many state and municipal laws that ***criminalize*** a wide range of misconduct? *See* RCW 29A.84; SMC 8.05.210. What of the many technical requirements for the timing of submission of signatures and for the format of petitions? This Court and others have rightly held that these requirements are valid and must be strictly adhered to. *See Melton*, 66 Wn.2d at 161; *Paxton*, 129 Wn. App. 439, 447 (2005).

VII. CONCLUSION

For the foregoing reasons, the Court should grant the Emergency Motion for Expedited Discretionary Review, reverse the Court of Appeals, and affirm the decision of the King County Superior Court.

RESPECTFULLY SUBMITTED this 3rd day of September, 2013.

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CERTIFICATE OF SERVICE

The undersigned declares under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned a citizen of the United States, a resident of the state of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On this date I caused to be served in the manner noted below a copy of:

1) Plaintiff's Emergency Motion for Expedited Discretionary Review

2) Appendix

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Dated this 9th day of September, 2013.

s/Anita A. Miller
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