

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
Jan 09, 2015, 1:15 pm
BY RONALD R. CARPENTER
CLERK

NO. 90996-2

SUPREME COURT
OF THE STATE OF WASHINGTON

RECEIVED BY E-MAIL

YES FOR EARLY SUCCESS, a non-profit corporation,
LAURA CHANDLER, and BARBARA FLYE,

Petitioners,

vs.

CITY OF SEATTLE and KING COUNTY,

Respondents.

Filed
Washington State Supreme Court

JAN 26 2015

Ronald R. Carpenter
Clerk

MEMORANDUM OF *AMICI CURIAE*
ALLIANCE FOR A JUST SOCIETY, SEIU LOCAL 925,
SEIU 775, UFCW LOCAL 21, WASHINGTON
COMMUNITY ACTION NETWORK, ECONOMIC
OPPORTUNITY INSTITUTE, FUSE WASHINGTON, AND
SEATTLE CITY COUNCIL MEMBER KSHAMA SAWANT

Eleanor Hamburger (WSBA #26478)
SIRIANNI YOUTZ
SPOONEMORE HAMBURGER
999 Third Avenue, Suite 3650
Seattle, Washington 98104
Tel. 206.223.0303; Fax 206.223.0246
Email: ehamburger@syllaw.com

Michael C. Subit (WSBA #29189)
FRANK FREED
SUBIT & THOMAS LLP
705 Second Ave., Suite 1200
Seattle, WA 98104
Tel. 206.682.6711; Fax 206.682.0401
Email: msubit@frankfreed.com

Attorneys for *Amici Curiae*

 ORIGINAL

I. INTRODUCTION

In a case of first impression, the Court of Appeals held that RCW 29A.36.071(1) mandates state-wide uniform titles for all local ballot measures in Washington because of the provision's single reference to RCW 29A.72.050. *In re Ballot Title Appeal of City of Seattle Initiatives 107-110*, -- Wn. App. --, 334 P.3d 59 (2014). The Court of Appeals held these two statutes invalidated provisions of the Seattle City Charter that required separate voter consideration of Initiative 107 and a competing City Council measure. The Court of Appeals concluded these sections of the Seattle Charter contradicted the ballot title requirements of RCW 29A.36.071(1) and RCW 29A.72.050. In doing so, the Court of Appeals found that the Seattle Charter provisions were not "another provision of law [that] specifies the ballot title for a specific type of ballot question or proposition," which are expressly saved by RCW 29A.36.071(3).

The Court of Appeals erred by failing to try to harmonize the Seattle Charter provision and RCW 29A.36.071 and RCW 29A.72.050. As this Court recently held, courts must attempt to harmonize laws that stand *in pari materia* before concluding that they conflict. *O.S.T. v. Regence BlueShield*, 181 Wn.2d 692, 701, 335 P.3d 416 (2014). The Seattle Charter and state statutes are easily harmonized in a manner that is respectful of the

rights of Washington citizens to determine their own local self-governance. The Court of Appeals should have held that RCW 29A.36.071(1) establishes merely a default format for local ballot measure titles that applies *only* in the absence of “another provision of law” – including a local charter – that “specifies the ballot title for a specific type of ballot question or proposition.” Under this interpretation of the statute, the very fact that the initiative provisions of Seattle Charter required the ballot title for Initiative 107 to be in a form different from that mandated by RCW 29A.72.050(3) rendered RCW 29A.36.071(1) inapplicable by the plain terms of RCW 29A.36.071(3).

The Court of Appeals’ opinion in this matter stands as the sole appellate decision interpreting the language and purposes of RCW 29A.36.071. Given the fundamental importance of the initiative process at all levels of government in this State, Amici submit that the petition for review presents “an issue of substantial public interest that should be determined by the Supreme Court” within the meaning of RAP 13.4(b)(4). Accordingly, the Court should grant the petition for review.

II. ARGUMENT

A. Overview of Seattle City Charter Initiative Provisions

State law authorizes the municipal charters of “first class cities” such as Seattle, *Margola Associates v. City of Seattle*, 121 Wn.2d 625, 641, 854 P.2d 23 (1993), to provide for “direct legislation by the people through the initiative and referendum upon any matter within the scope of the powers, functions, or duties of the city.” RCW 35.22.200. In 1898 the voters of Seattle adopted a City Charter amendment establishing both the local initiative and the local referendum. *See Hartig v. Seattle*, 53 Wash. 432, 434, 102 P. 408 (1909). For over 100 years the Seattle Charter has provided that:

[t]he legislative powers of The City of Seattle shall be vested in a Mayor and City Council, who shall have such powers as are provided for by this Charter; but the power to propose for themselves any ordinance dealing with any matter within the realm of local affairs or municipal business, and to enact or reject the same at the polls, independent of the Mayor and the City Council, is also reserved by the people of The City of Seattle, and provision made for the exercise of such reserved power.

Chart. Art. IV, § 1.A. “The first power reserved by the people is the initiative.” *Id.* at § 1.B. Seattle citizens exercise the right of initiative through a petition to the City Council. *Id.* “Consideration of such initiative petitions shall take precedence over all other business before the City Council except appropriation bills and emergency measures.” *Id.*

The City Council may enact or reject the initiative petition but may not modify it. Chart. Art. IV, § 1.C. The Council “may however, after rejection of any initiative bill or measure, propose and pass a different one dealing with the same subject.” *Id.* If the Council rejects an initiative measure and proposes a substitute, both the rejected measure and the substitute must be submitted to the voters. *Id.* at § 1.D. “Any measure thus submitted to the vote of the people, which shall receive in its favor a majority of the votes cast for and against the same, shall become an ordinance. . . .” *Id.* at § 1.F. When both the rejected initiative measure and the different measure on the same subject are approved by a majority vote, “if they be conflicting in any particular, then the one receiving the highest number of affirmative votes shall be adopted, and the other shall be rejected.” *Id.* at § 1.G.

B. RCW 29A.36.071 and the Seattle Charter stand *in pari materia* and should be harmonized.

The Court of Appeals held that because RCW 29A.26.071(1) refers to RCW 29A.72.050, the ballot title format requirements set forth in RCW 29A.72.050(3) for “an initiative to the legislature for which the legislature has proposed an alternative” nullified the provisions of the Seattle Charter providing for separate voter consideration of Initiative 107 and the Council’s different measure. *In re Initiatives 107-110*, 334 P.3d at

61-62. It rejected Petitioners' argument that the Seattle Charter provisions were "another provision of law [that] specifies the ballot title" when Seattle voters face competing initiatives. *Id.* at 62. It read the phrase "another provision of law" in RCW 29A.26.071(3) to refer only to "*statutes* that designate the specific ballot format in a specific context, such as those referred to in subsection(1)." *Id.* (emphasis supplied). The Court of Appeals reasoned that "[c]onstruing RCW 29A.36.071(3) to excuse compliance with the ballot title requirements merely because a charter contains general provisions governing initiatives would effectively render RCW 29A.36.071(1) meaningless." *Id.*

The Court of Appeals' conclusions raise many serious questions of significant public interest. Foremost among these is its construction of the term "another provision of law" in RCW 29A.36.071(3) as limited to the types of state statutes the Legislature already listed in RCW 29A.36.071(1). This construction contradicts the plain language of the statute. Had the Legislature intended the meaning the Court of Appeals attributed to it, it would have included the word "state" in between "another" and "provision" in RCW 29A.36.017(3). *Cf.* RCW 9.94A.772 ("Notwithstanding any other provision of *state* law. . ."); RCW 11.108.025(4) (under similar provisions of applicable *state* law"); RCW 35A.21.161 ("provision of *state* law").

The Court of Appeals' narrow construction of RCW 29A.36.071(3) also renders superfluous the opening "except as provided" clause of RCW 29A.36.071(1). There would have been no reason for the Legislature to list three specific provisions of state law in subsection (1) if the phrase "another other provision of law" in subsection (3) were limited to the very types of laws listed in subsection (1). This represents a significant flaw in the Court of Appeals' construction of RCW 29A.36.071. *See State v. Roggenkamp*, 153 Wn.2d 614, 624, 106 P.2d 196 (2005) (Courts should not construe a statute in a manner that renders any part of it superfluous).

Furthermore, the Court of Appeals' interpretation of RCW 29A.36.071(3) is inherently contradictory. By finding that RCW 29A.36.071(1) nullified the provisions of the Seattle Charter requiring separate voter consideration of Initiative 107 and the competing City Council measure, it *necessarily* found those Charter provisions were another provision of law that specified a particular type of ballot title for Initiative 107, and one that was in conflict with the ballot title requirements of RCW 29A.72.050(3). The Court of Appeals recognized that a state statute supersedes a city charter only "to the extent they are in conflict." *In re Initiatives 107-110*, 334 P.3d at 61 (internal quotation omitted). Indeed, the state enactment and the charter must be "contradictory in the sense that they cannot coexist" for there to be a conflict between the two. *Town of*

Republic v. Brown, 97 Wn.2d 915, 919, 652 P.2d 955 (1982) (internal quotation omitted). In short, the Court of Appeals found that the Seattle Charter initiative sections were provisions of law that specified the ballot title of Initiative 107 in finding a conflict with RCW 29A.36.071(1), but then refused to consider those same charter provisions to be “another provision of law specify[ing] the ballot title for a specific type of ballot question or proposition” within the meaning of RCW 29A.36.071(3).

Before concluding that the Seattle Charter provisions irreconcilably conflicted with state law, the Court of Appeals should have attempted to read them all in harmony. *O.S.T. v. Regence BlueShield*, 181 Wn.2d 692, 701, 335 P.3d 416, 421 (2014) (Rules resolving conflicts between provisions of law only apply “if, after attempting to read statutes governing the same subject matter *in pari materia*, we conclude that the statutes conflict to the extent they cannot be harmonized.”); *see also Walker v. Wenatchee Valley Truck and Auto Outlet, Inc.*, 155 Wn. App. 199, 208, 229 P.3d 871 (2010) (“[E]ffect will be given to both to the extent possible” and “efforts will be made to harmonize statutes.”).

Both the state law and the Seattle City Charter are easily harmonized by giving the savings clause in RCW 29A.36.071(3) a more expansive interpretation than the one the Court of Appeals adopted. If “another provision of law” is interpreted broadly to include local initiative laws such

as city charters, then RCW 29A.36.071(1) and RCW 29A.72.050 would apply to local ballot titles *only* when there is no local law specifying an alternative form for the ballot title. This interpretation of RCW 29A.36.071 also avoids the logical conundrum of the Court of Appeals' holding that the Seattle Charter provisions that specified a different form of the ballot title for Initiative 107 were not "another provision of law [that] specifies the ballot title for a specific type of ballot question or proposition."

The Court of Appeals took the position treating that the Seattle Charter provisions at issue as "another provision of law" would "effectively render RCW 29A.36.071(1) meaningless." *In Re Initiatives 107-110*, 334 P.3d at 62. This is not so. The Court of Appeals incorrectly presumed that the purpose of RCW 29A.36.071(1) was to establish mandatory, uniform state-wide formatting requirements for local ballot initiative titles, leaving no room for local ordinances. But that interpretation of the statute is hardly self-evident. Read in combination, RCW 29A.36.071(1) and RCW 29A.36.071(3) strongly suggest the Legislature intended the formatting requirements set forth in RCW 29A.72.050 to be the *default* for local ballot measures where no provision of local law specifies the format of the ballot title for the specific type of ballot question the Legislature did not intend to supplant all local laws regarding ballot titles for local initiative measures.

C. RCW 29A.36.071 should be interpreted in the manner most protective of the local right of initiative

The right of initiative is deeply ingrained in our state's history and widely revered as a powerful check and balance on the other branches of government. *Coppernoll v. Reed*, 155 Wn.2d 290, 296-97, 119 P.3d 318 (2005). Courts must vigilantly protect "this potent vestige of our progressive era past." *Id.* at 297. A court must give a "liberal interpretation to the initiative power reserved to the people," regardless of whether that power is exercised at the state or local level. *Maleng v. King County Corrections Guild*, 150 Wn.2d 325, 336-37, 77 P.3d 727 (2003).

Through the City Charter, the voters of Seattle have adopted a specific and detailed local initiative process which has been in place for more than a century. The Charter provides a specific ballot procedure to be employed where the City Council has rejected an initiative petition and proposed a different measure on the same subject. This Court should hold that these long-standing charter provisions are "provisions of law" that should not be nullified by the Court of Appeals' decision.

The Court of Appeals' decision in this case rests on the debatable premise that the Legislature enacted RCW 29A.36.071 to mandate a uniform, state-dictated format for the titles of all local ballot measures. Whether the Legislature intended to abrogate any and all local ballot title

legislation is “an issue of substantial public interest that should be determined by the Supreme Court.”

III. CONCLUSION

The Petition for Review should be GRANTED.

Respectfully submitted this 9th day of January, 2015.

SIRIANNI YOUTZ
SPOONEMORE HAMBURGER

FRANK FREED
SUBIT & THOMAS LLP

By: /s/ Eleanor Hamburger
Eleanor Hamburger (WSBA #26478)
999 Third Avenue, Suite 3650
Seattle, Washington 98104
Tel. 206.223.0303; Fax 206.223.0246
Email: ehamburger@sylaw.com

By: /s/ Michael C. Subit
Michael C. Subit (WSBA #29189)
705 Second Avenue, Suite 1200
Seattle, WA 98104
Tel. 206.682.6711; Fax 206.682.0401
Email: msubit@frankfreed.com

Attorneys for *Amici Curiae* Alliance for a Just Society, SEIU Local 925,
SEIU 775, UFCW Local 21, Washington Community Action Network,
Economic Opportunity Institute, Fuse Washington, and Seattle City
Council Member Kshama Sawant

Certificate of Service

I certify, under penalty of perjury pursuant to the laws of the United States and the State of Washington, that on January 9, 2015, a true copy of the foregoing MEMORANDUM OF *AMICI CURIAE* ALLIANCE FOR A JUST SOCIETY, SEIU LOCAL 925, SEIU HEALTHCARE NW 775, UFCW LOCAL 21, WASHINGTON COMMUNITY ACTION NETWORK, ECONOMIC OPPORTUNITY INSTITUTE, FUSE WASHINGTON, AND SEATTLE CITY COUNCIL MEMBER KSHAMA SAWANT was served upon counsel of record as follows:

By Email to Counsel for Petitioners

Laura Chandler and Barbara Flye

Knoll D. Lowney
Claire Tonry
SMITH & LOWNEY, P.L.L.C.
2317 E. John Street
Seattle, WA 98112
seattleknoll@gmail.com
knoll@igc.org
clairet@igc.org
jessie.c.sherwood@gmail.com

By Email to Co-counsel for Respondent City of Seattle

John B. Schochet
Gary T. Smith
SEATTLE CITY ATTORNEY'S OFFICE
600 Fourth Avenue, 4th Floor
Seattle, WA 98124-4769
John.Schochet@seattle.gov
Jeff.Slayton@seattle.gov
Carlton.Seu@seattle.gov
Gary.Smith@seattle.gov
Marisa.Johnson@seattle.gov

By Email to Co-counsel for Respondent City of Seattle

Paul J. Lawrence
Gregory J. Wong
PACIFICA LAW GROUP
1191 Second Avenue, Suite 2100
Seattle, WA 98101
Paul.Lawrence@pacificalawgroup.com
Greg.Wong@pacificalawgroup.com

By Email to Counsel for Respondent King County

Janine Joly
KING COUNTY PROSECUTING ATTORNEY'S OFFICE
516 Third Avenue, Room W400
Seattle, WA 98104
Janine.Joly@kingcounty.gov

DATED: January 9, 2015, at Seattle, Washington.

/s/ Eleanor Hamburger
Eleanor Hamburger

OFFICE RECEPTIONIST, CLERK

To: Theresa Redfern
Cc: Knoll Lowney (knoll@igc.org); seattleknoll@gmail.com; Claire Tonry (clairret@igc.org); jessie.c.sherwood@gmail.com; John B. Schochet (John.Schochet@seattle.gov); Gary T. Smith (Gary.Smith@seattle.gov); Paul J. Lawrence (Paul.Lawrence@pacificallawgroup.com); Gregory J. Wong (Greg.Wong@pacificallawgroup.com); Janine Joly (Janine.Joly@kingcounty.gov); jeff.slayton@seattle.gov; carlton.seu@seattle.gov; marisa.johnson@seattle.gov; Michael C. Subit (msubit@frankfreed.com); Ele Hamburger; Matt Terry
Subject: RE: Case No. 90996-2 -- Yes For Early Success, et al. v. City of Seattle, et al. -- Mem. of Amici Curiae and Motion for Filing Same

Received 1/9/15

From: Theresa Redfern [mailto:Theresa@sylaw.com]

Sent: Friday, January 09, 2015 1:15 PM

To: OFFICE RECEPTIONIST, CLERK

Cc: Knoll Lowney (knoll@igc.org); seattleknoll@gmail.com; Claire Tonry (clairret@igc.org); jessie.c.sherwood@gmail.com; John B. Schochet (John.Schochet@seattle.gov); Gary T. Smith (Gary.Smith@seattle.gov); Paul J. Lawrence (Paul.Lawrence@pacificallawgroup.com); Gregory J. Wong (Greg.Wong@pacificallawgroup.com); Janine Joly (Janine.Joly@kingcounty.gov); jeff.slayton@seattle.gov; carlton.seu@seattle.gov; marisa.johnson@seattle.gov; Michael C. Subit (msubit@frankfreed.com); Ele Hamburger; Matt Terry

Subject: Case No. 90996-2 -- Yes For Early Success, et al. v. City of Seattle, et al. -- Mem. of Amici Curiae and Motion for Filing Same

To: Clerk of the Supreme Court, State of Washington

Case Name: *Yes for Early Success, et al. v. City of Seattle, et al.*

Case Number: 90996-2

Dear Clerk of the Supreme Court,

Attached please find the following pleadings in PDF format for filing in the above-referenced case:

1. Motion for Leave to File Memorandum of *Amici Curiae* Alliance For A Just Society, SEIU Local 925, SEIU 775, UFCW Local 21, Washington Community Action Network, Economic Opportunity Institute, Fuse Washington, and Seattle City Council Member Kshama Sawant; and
2. Memorandum of *Amici Curiae* Alliance For A Just Society, SEIU Local 925, SEIU 775, UFCW Local 21, Washington Community Action Network, Economic Opportunity Institute, Fuse Washington, and Seattle City Council Member Kshama Sawant.

Thank you.

Eleanor Hamburger

Tel. (206) 223-0303 • Fax (206) 223-0246

WSBA #26478 • ehamburger@sylaw.com

SIRIANNI YOUTZ SPOONEMORE HAMBURGER

999 Third Avenue, Suite 3650, Seattle, WA 98104

Attorneys for Amici Curiae Alliance For A Just Society, et al.

Sent by Theresa Redfern, Legal Secretary, theresa@syllaw.com