NO. 72322-7

(KING COUNTY CAUSE NO. 14-2-08551-6)

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

YES FOR EARLY SUCCESS, LAURA CHANDLER, and BARBARA FLYE, Petitioners/Plaintiffs,

v.

CITY OF SEATTLE, and KING COUNTY, Respondents/Defendants.

PETITIONERS YES FOR EARLY SUCCESS, CHANDLER, AND FLYE'S EMERGENCY MOTION FOR DISCRETIONARY REVIEW

Knoll Lowney, WSBA No. 23457
Claire Tonry, WSBA No. 44497
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A. IDENTITY OF PETITIONERS

Petitioner Yes for Early Success is the political committee that seeks the enactment of I-107. Petitioner Laura Chandler is the original sponsor of I-107 and a Lead Teacher at Small Faces Child Development Center.

Petitioner Barbara Flye is a Seattle voter who supports both I-107 and the City of Seattle's referendum on Seattle Ordinance 124509, which would fund a pilot program for a Seattle public preschool system. She is among the 42 percent of likely Seattle voters who, according to polling, wish to vote yes for both measures. A-228. [1]

B. DECISION BEING APPEALED

The Committee is appealing King County Superior Court's August 15, 2014, Order Granting Motion for Relief from Order and for Joint Ballot Title, and Denying Application for Correction of Election Errors and Writs and Motion for Final Declaratory and Injunctive Relief ("the Order"), a copy of which is attached hereto. A-17-28.

The Order disposes of every appealable matter in the three consolidated cases, reserving for the superior court only a statutory appeal of the ballot title for Ordinance 124509.

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[1] All "A-__" references refer to documents in the Appendix submitted with Petitioner's Emergency Motion for Discretionary Review.

C. ISSUES PRESENTED FOR REVIEW

1. Did the superior court commit probable error by determining that Article IV, Sections 1(D) and 1(G) of the Seattle Charter are unconstitutional to the extent they guarantee the right to a majority vote on Seattle Initiative 107, based upon the finding of a conflict with RCW 29A.36.71 and 29A.72.050(3)?

2. Did the superior court commit probable error by upholding the City of Seattle's decision that Initiative 107 and Ordinance 124509 conflict in some particular, thus requiring invalidation of one of the measures under the Seattle Charter, despite Washington law that requires determinations as to the validity of an initiative be made by courts of law, and only if the measure is enacted?

3. Did the superior court commit probable error by allowing the City to deny Petitioners' initiative and voting rights under the Seattle Charter, which are fundamental rights under the federal Constitution, without any effort to construe statutes to respect such rights and without any showing that a government interest is served by the government action?

4. Did the superior court commit probable error by ordering the affirmative relief of a joint ballot for Initiative 107 and Ordinance 124509 on the City's CR 60 motion for relief from an order that merely set the final ballot title for Initiative 107?

5. Did the superior court commit probable error by altering the ballot title for Initiative 107 months after the title was finalized and printed on the petition that was signed by 30,000 voters to qualify the initiative for the ballot?

6. Did the superior court commit probable error by dismissing Petitioners' causes of action under 42 U.S.C. § 1983 and the Open Public Meetings Act *sua sponte* and with prejudice, without any analysis of or findings on those claims?

D. STATEMENT OF THE CASE

The superior court has declared unconstitutional the initiative and voting rights contained in the City of Seattle Charter ("Charter"), which unambiguously requires Seattle Initiative 107 ("I-107") to be presented to the voters independently for their "approval or rejection." Charter, Art. IV, § 1.D.

I-107 is designed to significantly improve working standards for the approximately 4,500 early-childhood educators in Seattle and help the kids in their care. A-220-221. I-107 would raise the minimum wage for childcare workers to $15 an hour, create a central institute to provide enhanced training to early educators and set goals designed to bring down the cost of child care. *Id.*

Beginning on May 14, 2014, Petitioners Chandler and Yes for Early Success filed approximately 30,000 signatures of Seattle voters in support of I-107. A-531; A-223 ¶ 6. On June 4, 1014, King County Department of Elections issued a Certificate of Sufficiency determining that I-107 contained sufficient valid signatures to qualify for the ballot under the Seattle Charter. A-534.

Totally separate from the effort to improve childcare working conditions that led to I-107, in 2013 the City Council President began a process to create a public preschool program. A-247. On June 23, 2014, The Council passed Ordinance 124509 to place its preschool action plan and a funding package before the voters. A-299.

Pursuant to the Charter, once the City Council rejected I-107, it must be "submitted to the qualified electors for approval or rejection" and if it "receive[s] in its favor a majority of all the votes cast for and against ... [it] shall become an ordinance." Charter, Art. IV, §§ 1.D, 1.F. If the City Council passes a different measure on the same subject -- which it claims to have done in the passage of Ordinance 124509 -- the voters do not lose their right to have a vote on I-107. Rather, they gain the right to have an up or down election also on the City's ordinance. Charter, Art. IV, § 1.G.

The City of Seattle refused to follow the Charter's command to place I-107 before the voters for approval or rejection, to be decided on a majority

vote. Rather, the City decided to hold an election to determine the voters' preference *between* I-107 and Ordinance 124509, and to allow the election to be decided by a plurality. A-581; A-68.

On June 23, 2014, the City Council enacted Resolution 31530, in which it determined that the two measures are on same subject and "conflict in several particulars" A-333-334 §2. This constituted the City's determination that only one of these measure would be put into effect under Article IV, section 1.G of the Charter, and so voters would have to choose between them if their vote were to be effective.

Following the City Council's instructions in Resolution 31530, the City is refusing an up or down vote on I-107. The City issued a ballot title with two questions, in the form that the State Constitution mandates for initiatives to the legislature where the legislature has proposed an alternative, which first asks voters whether they want to enact either or neither of the two proposals, and then asks *all* voters (even those that want neither enacted) their preference as between the two proposals. A-581.

To advance this election scheme, the City has argued to invalidate the City's own Charter, and thus invalidate the initiative and voting rights belonging to Seattle voters for over 105 years. A-44; A-116. To Petitioners and much of the public, the City's actions and arguments appear to be politically motivated, given that the City's top two officials are

spokespeople for the campaign against Initiative 107, A-71-72, public resources were used to prepare a "confidential" memo attacking I-107 provided exclusively to I-107 opponents, A-226, and the City Council held all critical discussions in seemingly illegal executive sessions, A-230-232.

The City does not deny that depriving Petitioners of their rights under the Charter causes them significant harm. It denies them, and the more than 30,000 voters who signed the petition, their right to have an independent, majority election on I-107 *based upon its own merits.* A-223. It would prevent the 42 percent of Seattle voters, including Petitioner Flye from expressing their support for both I-107 and Ordinance 124509. A-177; A-228-229. And in doing so the election would discriminate against them, since it would fully account for the will of voters who favor only one measure.

On July 17, 2014, the City of Seattle filed a CR 60 motion in the dormant case that on April 4, 2014 adjudicated and set the ballot title for I-107 (King County Cause No. 14-2-08551-6). The motion asked the Court to order the use of the two-question ballot form. A-449-463. On August 2, 2014, Petitioners challenged the City's use of that ballot form and its other actions prejudicing I-107 through a Petition for Prevention of Election Error and Writs and Complaint for Declaratory and Injunctive Relief. A-415-

448.[2] Petitioners also brought claims under the Open Public Meetings Act and constitutional claims under Section 1983. *Id.*

Superior Court Judge Helen Halpert heard argument and issued a ruling on August 15, 2014. A-18-22. Judge Halpert held that the City Charter was "unconstitutional" in entitling voters to an up or down vote on I-107, and that the City was required to use the two-question form for initiatives to the legislature codified in RCW 29A.72.050(3). *Id.* The trial court altered the I-107 ballot title, and dismissed all of Petitioners' remaining claims *sua sponte*.[3] *Id.*

This emergency discretionary appeal followed. Because the Order deprives Petitioners and Seattle voters of their initiative and voting rights under the Charter, and the ballot-printing deadline is imminent, Petitioners seek an expedited emergency determination of their right to discretionary review. A-108-110; *see* RAP 17.4(b).

E. ARGUMENT

1. Standard for Discretionary Review.

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[2] Petitioner Laura Chandler also appealed the City's ballot title, which changed the ballot title for I-107 and described the City's preschool ordinance (Ordinance 124509). A-353 - 414.

[3] The Court's order finally disposed of *In Re. Ballot Title Appeal of City of Seattle Initiatives, 107-110, No 14-2-08551-6* and *Yes for Early Success, et al. v. City of Seattle and King County*, No. 14-2-21112-1. It did not fully resolve *In re. Ballot Title Appeal of City of Seattle Proposition No. 1B (Ordinance 124509)*, No. 14-2-21111-2.

Discretionary review of the superior court's order should be granted on the grounds that:

> The superior court has committed probable error and the decision of the superior court substantially alters the status quo or substantially limits the freedom of a party to act[.]

RAP 2.3(b)(2).

The trial court's ruling blithely, and without any reasonable justification denied Yes for Success and Laura Chandler their right to have I-107 placed before Seattle voters for an up or down vote, and denied voters like Barbara Flye their right to vote for both I-107 and Ordinance 124509, and to have their votes counted equally with those of other voters. In so ruling, the trial court committed probable error.

Discretionary review should be granted because the trial court has issued a final decision on all matters that are reviewable on appeal, retaining only a ballot title appeal that is not subject to review. RCW 29A.36.090.

2. The superior court committed probable error when it held that the Seattle Charter's 105-year old reservation of initiative rights is preempted by a 14-year old state statute on ballot forms.

There is no conflict between the Seattle Charter's guarantee of an independent vote on I-107 – even if the City Council enacts a different ordinance – and state statutes governing ballot forms. Rather, the City of

Seattle and the superior court merely selected the wrong ballot form, thereby improperly manufacturing a conflict.

The superior court completely ignored its duty to resolve any ambiguity in the statutes in a manner that avoids a conflict and preserves the people of Seattle's initiative power. Local laws are presumed constitutional, and the party asserting a conflict has a "heavy burden" of showing state preemption. *Brown v. Yakima*, 116 Wn. 2d 556, 563 (1991).

It is clear that the Legislature did not intend to preempt or change local initiative law when it re-codified the ballot title statutes in 2000 and streamlined them by having the local ballot title statute reference RCW 29A.72.050.[4] RCW 29A.36.071(3) specifically states that the general rules for local ballot titles – including its direction to use the state form -- does "not apply if another provision of law specifies the ballot title for a specific type of ballot question or proposition." Accordingly, there is "no room for doubt" that the "Legislature did *not* intend to preempt the entire field." *Brown v. Yakima,* 116 Wn. 2d at 560 (emphasis added).

Moreover, courts construe statutes to avoid preempting a local law wherever possible and unless the local law "directly and irreconcilably conflicts with the statute." *Id.* at 561. A state statute "should not be

[4] This housekeeping measure passed unanimously without debate. Substitute H.B. 2587 56th Leg., Reg. Sess. (Wash. 2000).

construed as restricting [a municipality's] power ...if the two enactments can be harmonized." *Id.* Here, they easily can.

a. The Charter's right to an up or down vote on I-107, to be decided by a majority, is fundamental to the initiative process and enjoyed by citizens in other cities throughout the State.

As the trial court acknowledged "[u]nder the City Charter, the initiative and the legislative alternative are presented independently to the voters." A-25. The initiative must be "submitted to the qualified electors for approval or rejection" and the "vote of the qualified electors ***also*** be taken for and against [the City Council's measure] so that "both such measures [may] be approved by a majority vote." Charter, Art. IV, §§ 1.D, 1.G (emphasis added). The word "also" in this provision clearly means that both the initiative and the ordinance receive an up or down vote.

While the Charter authorizes the Council to enact another measure on the same subject, it mandates that I-107 must still be presented independently for "approval or rejection" by "a majority of all the votes cast for and against" it. Charter, Art. IV, §§ 1.D, 1.F.

Thus, the Charter dictates that the City choose the ballot title form in RCW 29A.72.050(2), which presents I-107 to the voters for an up-or-down majority vote. Had citizens invoked a measure paralleling the State constitution's initiative to the legislature process, which mandates the two-

question form and includes specific rules to allow passage with a mere plurality vote, the City could have made a different choice. Const., Art. II, § 1(a). But that is not so.

The Charter's guarantee of a right to an independent up-or-down vote, free from interference by the City Council, is fundamental to the initiative process. The Legislature has specifically provided this right for local initiatives in virtually every other City in the state. *See* RCW 35.17.260, 35A.11.100.

b. There is no conflict between the Charter and State law because the state ballot title statutes provide a form that is consistent with the City's charter.

State statutes can easily be read to respect the Charter's guarantee that an initiative gets an independent vote, even if the Council also sends its own ordinance to the ballot.

RCW 29A.36.071 provides that ballot titles on local measures shall comprise ***one*** question and must "be displayed substantially as provided under RCW 29A.72.050." *Id.* Crucially, RCW 29A.36.071 does not specify which of the four forms in RCW 29A.72.050 that the local government must use for a given set of circumstances. It provides no guidance on which form to use.

Thus, the City must select the proper ballot title form to use. When, like here, the local government chooses the wrong form for the measure in question, the simple solution is to correct this error. For example, if citizens invoke the local initiative process, the City cannot choose the ballot title for a referendum. Likewise here, when citizens invoked the Charter's initiative process, which requires I-107 to be put before the voters independently "for approval or rejection," and decided on a majority basis, the City must choose the ballot title form that allows such a vote.

Only the ballot title form of 29A.72.050(2) allows voters to "approve or reject" I-107 on a majority basis, as the initiative process provides. It presents one question: should the measure be enacted into law? *Id.* Accordingly, the form prescribed in RCW 29A.72.050(2) comports with RCW 29A.36.071(1), which mandates that local initiatives consist of a single question.

Because the City Charter allowed the City Council to "also" put its own ordinance to a vote "for approval or rejection" "at the same election," the single question form must be used for the Ordinance as well. Charter, Art. IV, Sec. 1.G. This allows the voters to vote on the two measures independent from one another and thereby preserves the scope of the initiative right reserved by the people in the Charter 105 years ago, A-43

(Seattle 1908 Charter), and upheld by the Supreme Court almost as long ago in *Hartig v. Seattle,* 53 Wn. 432 (1909).

In other words, the single question ballot form is required in Seattle, just as it is required in every other City in the State. *See Mukilteo Citizens for Simple Government v. City of Mulkiteo,* 174 Wn. 2d 41,48-49 (2012) ("RCW 29A.72.050(2) provides a ballot title form that local initiatives are to follow").[5]

Without explanation or even an explicit finding, the superior court assumed that here the City must follow RCW 29A.72.050(3) rather than 29A.72.050(2). This assumption manufactures a conflict between state statute and the City Charter, and unnecessarily deprives voters of their constitutionally-protected rights.

RCW 29A.72.050(3) is for "an initiative to the legislature for which the legislature has proposed an alternative". That paragraph merely codifies the Constitutionally-mandated two-question ballot form for initiatives to the legislature, and the Legislature explicitly enacted it for "compliance with the constitutional provision". A-53-54 (RCW 29.79.320 (1965); Const., Art. II, § 1(a). Using that form violates both RCW 29A.36.071's single question mandate and the Seattle City Charter.

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[5] The Superior Court inexplicably cited this case to support its decision, which assumes that RCW 29A.72.050(3) must be applied here. However, *Mukilteo Citizens* does not even mention RCW 29A.72.050(3).

The City's choice of the wrong ballot form is not a proper basis for undermining the City's initiative process and invalidating the Charter.

c. Any ambiguity in the choice of ballot form must be resolved in the manner that preserves the people of Seattle's constitutionally-protected initiative power.

A construction of RCW 29A.36.071 that deprives Seattle voters of their voting and initiative rights under the Charter must also be avoided because the United States Constitution protects those local initiative rights. *Angle v. Miller*, 673 F.3d 1122, 1128 (9th Cir. 2012) *and Filo Foods LLC v. City of SeaTac*, 179 Wn. App. 401 (2014).

To deny critical initiative and voting rights secured under the Charter, the City must show at least show a "state interest of compelling importance," whether under a strict scrutiny test, or under a balancing test. *See Filo Foods LLC,* 179 Wn. App. at 406 (citing *Meyer v. Grant,* 486 U.S. 414, 420 (1988)); *Burdick v. Takushi,* 504 U.S. 428, 434 (1992).[6]

Application of RCW 29A.72.050(3) here is a "severe restriction" on the petitioning, speech, and voting rights of Petitioners. *Id.* It works an outright denial of the right of the 30,000 Seattle voters' who signed the petition to place I-107 on the ballot for a majority vote, in conformance

[6] Under the balancing test "the rigorousness of [a reviewing court's] inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights." *Burdick v. Takushi,* 504 U.S. at 434. "When those rights are subjected to 'severe' restrictions, the regulation must be 'narrowly drawn to advance a state interest of compelling importance.'" *Id.*

with the Charter. *See Buckley v. Secretary of Commonwealth*, 355 N.E. 2d 806, 809, 811 (Mass. 1976) ("To allow [the legislature's bill] to go on the ballot with the initiative petition here in question would interfere with the ability of the people to declare their position on the basic question originally proposed.")[7] The proposed process strips from Petitioner Barbara Flye and 42 percent of Seattle voters one of their two votes provided under the Charter. It thereby denies them equal protection, since "yes-no" voters enjoy their full rights. Just by passing its resolution officially declaring the two measures conflict, the City stripped support away from I-107. A-223-225. The City provided no evidence or even any argument to rebut this evidence of severe burden.

The trial court did not even address these constitutional issues. If it had, it would not find *any* state interest in applying the two-question form of ballot at the local level or in the City Council's resolution pre-judging the validity of an initiative.

Indeed, government has numerous strong interests that favor respecting the Charter to allow a majority vote on I-107. It provides consistency, since RCW 35.17.260 subjects other cities' initiative processes to a majority vote. In contrast, the two-question ballot title

[7] *Buckley v. Secretary of Commonwealth*, 355 N.E. 2d 806 (Mass. 1976) is at A-348.

precludes a majority vote, and therefore will leave the results of the election uncertain without further litigation. The ballot title of RCW 29A.72.050(3) only works with the Constitution's unique rules for interpreting the two-part ballot, which states that "[i]f a majority voting on the first issue is for either, then the measure receiving a majority of the votes on the second issue shall be law." Const. Art. II, § 1(a). No analogous provision of the charter or any statute exists to determine how to determine the election's outcome if this form were used on a local level. The Constitution's ballot form and election rule is designed to allow passage of an initiative with a mere plurality vote – something that has never been allowed in Washington on a local level, and which is not allowed by Seattle's charter. The uncertainty here is multiplied because Ordinance 124509 is a vote for a "levy lid lift" under RCW 84.55.050, which requires approval "by a majority of the voters of the taxing district voting on the proposition." Petitioners' unrebutted expert confirms that the two-question ballot cannot determine majority support. A-229.

Finally, the two-question form would undo Seattle's 105 year old initiative process, so fundamentally changing it that it would be unclear how the process would work and if it would remain viable.

Application of RCW 29A.72.050(3) to I-107 would therefore be unconstitutional. This construction must be avoided if possible. Rather

than adopting an interpretation of RCW 29A.36.071 "which may render it unconstitutional, the court, without doing violence to the legislative purpose, will adopt a construction which will sustain its constitutionality if at all possible to do." *State ex rel. Morgan v. Kinnear*, 80 Wn.2d 400, 402, (1972). *See State v. Jorgenson*, 179 Wn.2d 145, 150 (2013).

The superior court's decision that Article IV, Sections 1(D) and 1(G) of the Seattle Charter conflict with RCW 29A.36.71 and 29A.72.050 such that the Charter sections are preempted was therefore in error, as was the superior court's mandate to use the two question form of ballot in RCW 29A.72.050(3).

3. The superior court committed probable error by upholding the City's determination that I-107 and Ordinance 124509 conflict in some particular.

The City Council's formal resolution finding that I-107 and Ordinance 124509 are on the same subject and conflict in "several" "certain particulars" determined that even if both measures are approved by a majority, the one with fewer votes will be invalid. A-333. This immediately prejudiced Petitioners, changed the debate of the campaign, and discouraged I-107 endorsements. A-223-225. It must be overturned.

The City Council had no authority to decide the hypothetical conflict between the two measures or to act upon it to restrict voting rights. "[T]he determination of the validity of an initiative is 'exclusively

a judicial function.'" *Eyman v. McGee*, 173 Wn. App. 684, 692, 294 P.3d 847 (2013) (quoting *Philadelphia II v. Gregoire,* 128 Wn.2d 707, 714, 911 P.2d 389 (1996)). "[R]eviewing the substance of a proposed initiative is exclusively a judicial function, not a role for other governmental actors." *Eyman*, 173 Wn. App. at 690. *See also Filo Foods LLC,*, 179 Wn. App. 401 (City lacks power to review subject matter of initiative.) An attempt by non-judicial branch of government to make such "an adjudication violates the separation of powers doctrine and is void." *Tacoma v. O'Brien*, 85 Wn.2d 266, 272 (1975).

Washington courts have made it clear that when a government official perceives that an initiative is invalid, she must still fulfill her ministerial duties and ask a court for an injunction. *Philadelphia II v. Gregoire,* 128 Wn.2d at 716. In *Philadelphia II,* the Supreme Court held that the attorney general had no discretion to refuse to prepare a ballot title because "[t]here is simply no indication that the Legislature intended the Attorney General to review the petition for its substance." *Id.* at 713. Similarly, the Charter never authorized the City Council to determine whether there is a conflict between citizen popular initiative and an ordinance. Rather, the City must place both on the ballot for an up-or-down vote, with the question of conflict only becoming ripe "if both measures be approved by a majority vote." Charter Art. IV § 1.F; *Seattle*

Bldg. & Constr. Trades Council v. City of Seattle, 94 Wn.2d 740, 746, 620 P.2d 82 (1980).

4. The superior court committed probable error when it granted the City relief beyond the scope of its original order.

While the civil rules allowed the superior court to provide relief from its April 2, 2014 order setting the I-107 ballot title, it could not require the use of the joint ballot title. The trial court's April 2014 order did not address Ordinance Number 124509 in any way. A CR 60(b) motion for relief from an order "'is available only to set aside a prior judgment or order; courts may not use Rule 60(b) to grant affirmative relief in addition to the relief contained in the prior order or judgment.'" *Geonerco, Inc. v. Grand Ridge Properties IV, LLC,* 159 Wn. App. 536, 542-43 (2011). The superior court committed probable error when it used CR 60 to grant the City injunctive relief mandating the use of the form of joint ballot title.

5. The superior court erred in altering the I-107 title.

The ballot title for I-107 was "established" and not subject to appeal on April 4, 2014. RCW 29A.36.090. The superior court erred in altering this title, by fundamentally altering its statement of subject, after 30,000 voters signed the petition bearing this title.

6. The superior court committed probable error when it dismissed Plaintiffs' claims that were not before the superior court.

Plaintiffs' complaint raises causes of action for declaratory and injunctive relief and attorneys' fees under 42 U.S.C. § 1983, and the Open Public Meetings Act that were not the subject of any party's motion. The superior court dismissed both claims *sua sponte* with prejudice, without so much as mentioning Plaintiffs' allegations that the City violated federal law, and with an explicit acknowledgment that "[t]he court is specifically not ruling on the question of whether there was a violation of OPMA." A-27 ("plaintiffs' other claims will be denied without further discussion"). The trial court's dismissal of Petitioners' claims without any findings, due process, or rationale violated CR 52 and is probable error. *Federal Signal Corp. v. Safety Factors, Inc.*, 125 Wn.2d 413, 422, 886 P.2d 172 (1994); *Groff v. Department of Labor & Indus.*, 65 Wn.2d 35, 40, 395 P.2d 633 (1964). These claims should be remanded.

F. CONCLUSION

For the foregoing reasons, this court should accept review under RAP 2.3(b)(2) on an emergency basis under RAP 17.4, reverse the trial court's order, issue an order requiring Seattle and King County to submit Initiative 107 to the electorate for an independent, up or down vote, and present the measures independently in the voters' pamphlet, and remand Petitioners' remaining claims to the trial court.

NO. _____

(KING COUNTY CAUSE NO. 14-2-08551-6)

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

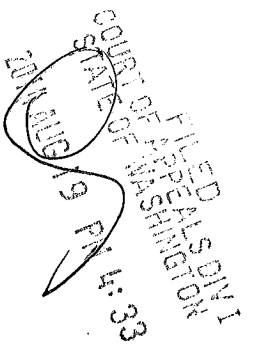
IN RE: BALLOT TITLE APPEAL OF CITY OF SEATTLE INITIATIVES 107-110,

And,

IN RE: BALLOT TITLE APPEAL OF CITY OF SEATTLE PROPOSITION NO. 1B (ORDINANCE 124509),

And,

YES FOR EARLY SUCCESS, a non-profit corporation, LAURA CHANDLER, and BARBARA FLYE
Plaintiffs,
v.
CITY OF SEATTLE and KING COUNTY,
Defendants



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RESPECTFULLY SUBMITTED this 19th day of August, 2014.

SMITH & LOWNEY, PLLC

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of August, 2014, I caused the foregoing to be delivered via legal messenger to State of Washington Court of Appeals District I, and true and correct copies of the same to be delivered via email, per agreement of counsel, to:

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DATED August 19, 2014:

Jessie Ashenwood

CERTIFICATE OF SERVICE

I, Jessie Sherwood, hereby certify under penalty of perjury of the laws of the State of Washington that on this 19th day of August, 2014, I caused the foregoing Emergency Motion for Acceleration of Hearing Date on Motion for Discretionary Review and Request for Expedited Consideration to be delivered via legal messenger to:

Clerk of the Court
Washington State Court of Appeals, Division I
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Seattle, WA 98101-1176

And a true and correct copy of the same to be delivered via electronic mail, per agreement of counsel, to:

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Seattle City Attorney's Office

NO. 72322-7-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

IN RE: BALLOT TITLE APPEAL OF CITY OF SEATTLE INITIATIVES 107-110,

And,

IN RE: BALLOT TITLE APPEAL OF CITY OF SEATTLE PROPOSITION NO. 1B (ORDINANCE 124509),

And,

YES FOR EARLY SUCCESS, a non-profit corporation, LAURA CHANDLER, and BARBARA FLYE
Plaintiffs,
v.
CITY OF SEATTLE and KING COUNTY,
Defendants

INDEX TO THE APPENDIX, VOLUME 2

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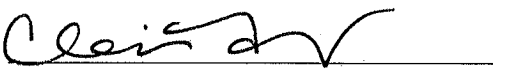
Pursuant to RAP 10.4(c), the following sets forth the verbatim text of:

RESPECTFULLY SUBMITTED this 20th day of August, 2014.

SMITH & LOWNEY, PLLC

By: 

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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of August, 2014, I caused the foregoing to be delivered via legal messenger to State of Washington Court of Appeals District I, and true and correct copies of the same to be delivered via email, per agreement of counsel, to:

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DATED August 20, 2014:

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Washington State Constitution

ARTICLE II
LEGISLATIVE DEPARTMENT

SECTION 1 LEGISLATIVE POWERS, WHERE VESTED. The legislative authority of the state of Washington shall be vested in the legislature, consisting of a senate and house of representatives, which shall be called the legislature of the state of Washington, but the people reserve to themselves the power to propose bills, laws, and to enact or reject the same at the polls, independent of the legislature, and also reserve power, at their own option, to approve or reject at the polls any act, item, section, or part of any bill, act, or law passed by the legislature.

(a) Initiative: The first power reserved by the people is the initiative. Every such petition shall include the full text of the measure so proposed. In the case of initiatives to the legislature and initiatives to the people, the number of valid signatures of legal voters required shall be equal to eight percent of the votes cast for the office of governor at the last gubernatorial election preceding the initial filing of the text of the initiative measure with the secretary of state.

Initiative petitions shall be filed with the secretary of state not less than four months before the election at which they are to be voted upon, or not less than ten days before any regular session of the legislature. If filed at least four months before the election at which they are to be voted upon, he shall submit the same to the vote of the people at the said election. If such petitions are filed not less than ten days before any regular session of the legislature, he shall certify the results within forty days of the filing. If certification is not complete by the date that the legislature convenes, he shall provisionally certify the measure pending final certification of the measure. Such initiative measures, whether certified or provisionally certified, shall take precedence over all other measures in the legislature except appropriation bills and shall be either enacted or rejected without change or amendment by the legislature before the end of such regular session. If any such initiative measures shall be enacted by the legislature it shall be subject to the referendum petition, or it may be enacted and referred by the legislature to the people for approval or rejection at the next regular election. If it is rejected or if no action is taken upon it by the legislature before the end of such regular session, the secretary of state shall submit it to the people for approval or rejection at the next ensuing regular general election. The legislature may reject any measure so

proposed by initiative petition and propose a different one dealing with the same subject, and in such event both measures shall be submitted by the secretary of state to the people for approval or rejection at the next ensuing regular general election. When conflicting measures are submitted to the people the ballots shall be so printed that a voter can express separately by making one cross (X) for each, two preferences, first, as between either measure and neither, and secondly, as between one and the other. If the majority of those voting on the first issue is for neither, both fail, but in that case the votes on the second issue shall nevertheless be carefully counted and made public. If a majority voting on the first issue is for either, then the measure receiving a majority of the votes on the second issue shall be law.

Charter of the City of Seattle

ARTICLE IV. Legislative Department.
Section 1. A. LEGISLATIVE POWER, WHERE VESTED:

The 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, and there is further reserved by and provision made for the exercise by the people of the power, at their option, to require submission to the vote of the qualified electors and thereby to approve or reject at the polls any ordinance, or any section, item or part of any ordinance dealing with any matter within the realm of local affairs or municipal business, which may have passed the City Council and Mayor, acting in the usual prescribed manner as the ordinary legislative authority.

ARTICLE IV. Legislative Department.
Section 1. B. INITIATIVE AND REFERENDUM; HOW EXERCISED; PETITIONS; VERIFICATION OF SIGNATURES; COMPLETION OF PETITION, CONSIDERATION IN COUNCIL:

The first power reserved by the people is the initiative.[1] It may be exercised on petition of a number of registered voters equal to not less than ten (10) percent of the total number of votes cast for the office of Mayor at the last preceding municipal election, proposing and asking for the enactment as an ordinance of a bill or measure, the full text of which shall be included in the petition. Prior to circulation for signatures, such petition shall be filed with the City Clerk in the form prescribed by ordinance, and by such officer assigned a serial number, dated, and approved or rejected as to form, and the petitioner so notified within five (5) days after such filing. Signed petitions shall be filed with the City Clerk within one hundred eighty (180) days after the date of approval of the form of such petitions. Upon such filing, the City Clerk shall convey the signed petition to the officer responsible for the verification of the sufficiency of the signatures to the petition under state law for such verification, and transmit it, together with his or her report thereon to the

City Council at a regular meeting not more than twenty (20) days after the City Clerk has received verification of the sufficiency of such petition signatures from the officer responsible for verification of the sufficiency of signatures under state law, and such transmission shall be the introduction of the initiative bill or measure in the City Council. If the officer responsible for verification of the sufficiency of signatures under state law notifies the City Clerk that any petition, which, upon filing had a sufficient number of signatures, has insufficient verified signatures, the City Clerk shall notify the principal petitioners, and an additional twenty (20) days shall be allowed them in which to complete such petition to the required percentage. Consideration of such initiative petition shall take precedence over all other business before the City Council, except appropriation bills and emergency measures. (As amended at November 5, 2002 election.)

ARTICLE IV. Legislative Department.
Section 1. C. COUNCIL MAY ENACT OR REJECT BUT NOT MODIFY; COUNCIL MAY PASS SUBSTITUTE:

The City Council may enact, or reject, any initiative bill or measure, but shall not amend or modify the same. It may, however, after rejection of any initiative bill or measure, propose and pass a different one dealing with the same subject.

ARTICLE IV. Legislative Department.
Section 1. D. WHEN REJECTED MEASURE AND SUBSTITUTE SUBMITTED TO PEOPLE; GENERAL AND SPECIAL ELECTIONS:

If the City Council rejects any initiative measure, or shall during forty-five (45) days after receipt thereof have failed to take final action thereon, or shall have passed a different measure dealing with the same subject, the said rejected initiative measure and such different measure dealing with the same subject, if any has been passed, shall be taken in charge by the City Clerk and the City Council shall order the measure submitted to the qualified electors for approval or rejection at the next regularly scheduled election, irrespective of whether it is a state or municipal election or a

primary or general election; but the City Council may in its discretion designate submission be at a general election rather than a primary or call an earlier special election. (As amended at the November 7, 2006 election)

ARTICLE IV. Legislative Department.
Section 1. E. WHEN A SPECIAL ELECTION REQUIRED:

If an initiative petition shall be signed by a number of qualified voters of not less than twenty (20) percent of the total number of votes cast for the office of Mayor at the last preceding municipal election, or shall at any time be strengthened in qualified signatures up to said percentage, then the City Council shall provide for a special election upon said subject, to be held within (60) days from the proof of sufficiency of the percentage of signatures.

ARTICLE IV. Legislative Department.
Section 1. F. MEASURES ADOPTED TO BECOME ORDINANCES, WHEN:

Any measure thus submitted to the vote of the people, which shall receive in its favor a majority of all the votes cast for and against the same, shall become an ordinance, and be in full force and effect from and after proclamation by the Mayor, which shall be made, and published in the City official newspaper, within five (5) days after certification of the results of the election. Provided that if such adopted ordinance contemplates any expenditure which is not included in the current budget, or which is not to be paid from an existing bond issue or which eliminates or reduces an existing revenue; such expenditure or elimination shall not be lawful until after the next succeeding budget shall take effect; Provided, further, that the above restriction shall not be operative when less than Twenty Thousand ($20,000.00) Dollars is involved. (As amended at November 7, 2006 election.)

ARTICLE IV. Legislative Department.
Section 1. G. SUBMISSION OF SUBSTITUTE AND INITIATIVE MEASURES; IF BOTH APPROVED, THAT HAVING HIGHEST VOTE ADOPTED:

In case the City Council shall, after rejection of the initiative measure, have passed a different measure, dealing with the same subject, it shall be submitted at the same election with the initiative measure and the vote of

the qualified electors also taken for and against the same, and if both such measures be approved by a majority vote, if they be conflicting in any particular, then the one receiving the highest number of affirmative votes shall thereby be adopted, and the other shall be considered rejected.

RCW 29A.36.071

Local measures — Ballot title — Formulation — Advertising.

(1) Except as provided to the contrary in RCW 82.14.036, 82.46.021, or 82.80.090, the ballot title of any referendum filed on an enactment or portion of an enactment of a local government and any other question submitted to the voters of a local government consists of three elements: (a) An identification of the enacting legislative body and a statement of the subject matter; (b) a concise description of the measure; and (c) a question. The ballot title must conform with the requirements and be displayed substantially as provided under RCW29A.72.050, except that the concise description must not exceed seventy-five words; however, a concise description submitted on behalf of a proposed or existing regional transportation investment district may exceed seventy-five words. If the local governmental unit is a city or a town, the concise statement shall be prepared by the city or town attorney. If the local governmental unit is a county, the concise statement shall be prepared by the prosecuting attorney of the county. If the unit is a unit of local government other than a city, town, or county, the concise statement shall be prepared by the prosecuting attorney of the county within which the majority area of the unit is located.

(2) A referendum measure on the enactment of a unit of local government shall be advertised in the manner provided for nominees for elective office.

(3) Subsection (1) of this section does not apply if another provision of law specifies the ballot title for a specific type of ballot question or proposition.

RCW 29A.72.050

Ballot title — Formulation, ballot display.

(1) The ballot title for an initiative to the people, an initiative to the legislature, a referendum bill, or a referendum measure consists of: (a) A statement of the subject of the measure; (b) a concise description of the measure; and (c) a question in the form prescribed in this section for the ballot measure in question. The statement of the subject of a measure must be sufficiently broad to reflect the subject of the measure, sufficiently precise to give notice of the measure's subject matter, and not exceed ten words. The concise description must contain no more than thirty words, be a true and impartial description of the measure's essential contents, clearly identify the proposition to be voted on, and not, to the extent reasonably possible, create prejudice either for or against the measure.

(2) For an initiative to the people, or for an initiative to the legislature for which the legislature has not proposed an alternative, the ballot title must be displayed on the ballot substantially as follows:

"Initiative Measure No. . . . concerns (statement of subject). This measure would (concise description). Should this measure be enacted into law?

Yes . . . . . ☐

No . . . . . ☐ "

(3) For an initiative to the legislature for which the legislature has proposed an alternative, the ballot title must be displayed on the ballot substantially as follows:

"Initiative Measure Nos. . . . and . . .B concern (statement of subject).

Initiative Measure No. . . . would (concise description).

As an alternative, the legislature has proposed Initiative Measure No. . . .B, which would (concise description).

1. Should either of these measures be enacted into law?

Yes ..... ☐

No ..... ☐

2. Regardless of whether you voted yes or no above, if one of these measures is enacted, which one should it be?

Measure No. ..... ☐

or

Measure No. ..... ☐ "

(4) For a referendum bill submitted to the people by the legislature, the ballot issue must be displayed on the ballot substantially as follows:

"The legislature has passed . . . . Bill No. . . . concerning (statement of subject). This bill would (concise description). Should this bill be:

Approved ..... ☐

Rejected ..... ☐ "

(5) For a referendum measure by state voters on a bill the legislature has passed, the ballot issue must be displayed on the ballot substantially as follows:

"The legislature passed . . . Bill No. . . . concerning (statement of subject) and voters have filed a sufficient referendum petition on this bill. This bill would (concise description). Should this bill be:

Approved . . . . . ☐

Rejected . . . . . ☐ "

(6) The legislature may specify the statement of subject or concise description, or both, in a referendum bill that it refers to the people. The legislature may specify the concise description for an alternative it submits for an initiative to the legislature. If the legislature fails to specify these matters, the attorney general shall prepare the material that was not specified. The statement of subject and concise description as so provided must be included as part of the ballot title unless changed on appeal.

The attorney general shall specify the statement of subject and concise description for an initiative to the people, an initiative to the legislature, and a referendum measure. The statement of subject and concise description as so provided must be included as part of the ballot title unless changed on appeal.