NO. 90204-6

C/A No. 70396-0-I
Consol. w/69457-0-I

SUPREME COURT
OF THE STATE OF WASHINGTON

STEVE SARICH, et al.,
Petitioners

v.

CITY OF KENT, et al.,
Respondents

CITY OF KENT'S ANSWER TO APPELLANT JOHN WORTHINGTON'S (CORRECTED) MOTION TO CONSOLIDATE CASES

David A. Galazin
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Party Answering Motion

The city of Kent ("City") submits this brief in answer to the "(Corrected) Motion to Consolidate Cases" filed by John Worthington on October 6, 2014.

Relief Requested

Consolidation of a criminal case involving a motion to suppress evidence based on lack of probable cause with a civil case based on the City's proper exercise of its zoning authority pursuant to constitutionally-granted police powers is not only nonsensical, but the Appellant's Petition for Review in the matter of *State v. Reis*, 180 Wn. App. 438 (Supreme Court No. 90281-0) explicitly directs the Court away from the "collective garden" statute, RCW 69.51A.085, and never even mentions RCW 69.51A.140. Both of these statutes are central to the City's case at hand. Therefore, the city of Kent asks this Court to deny Mr. Worthington's (Corrected) Motion to Consolidate Cases.

Grounds for Relief Requested

Statement of Facts

On March 31, 2014, the Court of Appeals issued its decision upholding the ruling of the King County Superior Court that the City's

zoning ordinance prohibiting medical marijuana collective gardens was constitutionally valid and not in conflict with ESSSB 5073, the state's Medical Use of Cannabis Act ("MUCA"). While the opinion touched on the convoluted history of the MUCA and the effect of the partial veto by Governor Gregoire, the Court of Appeals specifically ruled in favor of the City, irrespective of the legality or illegality of "medical marijuana," by stating in footnote 19:

> To decide this case, we need not determine whether the Ordinance would be valid had the MUCA actually legalized medical marijuana. Therefore, we decline to further address this subject.

Cannabis Action Coalition v. Kent, 180 Wn. App. 455, 483 (No. 70396-0-I, consolidated with No. 69457-0-I, March 31, 2014).

Now, before this Court has even decided whether or not to accept review of either decision of the Court of Appeals, Mr. Worthington asks that the cases be consolidated, because *Reis* "provides additional arguments not made in Worthington et al [*sic*] v. Kent et all. [*sic*]" Worthington's (Corrected) Motion to Consolidate Cases, 2.

Argument

Pursuant to RAP 13.7(b), the Court "will review only the questions raised in the motion for discretionary review . . ." Mr. Worthington appears to be seeking a second bite at the apple by admittedly attempting to introduce arguments not raised in his Petition for Review, filed on May 5, 2014. Mr. Worthington's primary arguments are that "[t]he City of Kent, and the Appeals Court simply pulls concurrent jurisdiction and penalty setting authority out of thin air[,]" Worthington's Petition for Review, 9, and "[s]ince the laws to ban medical cannabis collective gardens do not exist in Washington State law or the Washington State administrative code, the Appeals Court had no choice by to preempt and repeal Kent's ban pursuant to RCW 69.50.608 . . ." Worthington's Petition for Review, 17. The Court of Appeals correctly noted that municipalities derive their power to enact zoning ordinances pursuant to article XI, section 11 of the Washington Constitution, rather than from "thin air." *Cannabis Action Coalition*, 180 Wn. App. 455, 480. Likewise, this Court has previously held that RCW 69.50.608 expressly grants concurrent jurisdiction to local governments, as opposed to preempting them. *City of Tacoma v. Luvene*, 118 Wn.2d 826 (1992).

Mr. Reis' Petition for Review to this Court, in contrast, focuses on personal use of medical marijuana, and in fact concerns the rights of "a

medical patient, *who is not participating in a collective garden pursuant to RCW 69.51A.085*." (Emphasis added). Reis' Petition for Review, 8. The only other place in which collective gardens are discussed in the petition is in the context of the governor's veto message, which spoke to a desire to abrogate "state law criminal prosecution" for participation in a collective garden. Reis' Petition for Review, 17. This adds nothing to the issue of whether the City has the right to determine the proper zoning districts for certain land uses, whether the use of medical marijuana is technically "legal" or "illegal" under state law.

Conclusion

Mr. Worthington's (Corrected) Motion to Consolidate Cases at this late stage is nothing more than an attempt to bootstrap new arguments into his Petition for Review and conflate the question of the constitutionality of the City's ordinance with criminal law standards related to probable cause for personal use of marijuana by a purported medical patient. He also cannot request consolidation merely because he and his fellow petitioners *might* seek leave to file amicus briefs in the event Reis' Petition for Review is granted by this Court. Worthington's (Corrected) Motion to Consolidate Cases, 3. For the reasons stated above, Mr. Worthington's (Corrected) Motion to Consolidate Cases should be denied.

DATED this 8th day of October, 2014.

Respectfully submitted,

By: _____

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CERTIFICATE OF SERVICE

I, Cheryl Rolcik-Wilcox, certify under penalty of perjury of the laws of the State of Washington that on October 8, 2014, I caused copies of the document to which this is attached, to be filed with the Supreme Court of the State of Washington via email at supreme@courts.wa.gov and to be served on the following individuals in the manner listed below:

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SIGNED this 8th day of October, 2014, at Kent, Washington

Cheryl Rolcik-Wilcox

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Civil Legal Assistant

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To the Clerk of the Court:

Please file the attached Respondent City of Kent's Answer to Appellant John Worthington's (Corrected) Motion to Consolidate Cases.

Thank you,

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