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Supreme Court No. 91551-2

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SUPREME COURT
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Spokane Entrepreneurial Center, Spokane County, Downtown Spokane Partnership, Greater Spokane Incorporated, The Spokane Building Owners and Managers Association, Spokane Association of Realtors, The Spokane Home Builders Association, The Inland Pacific Chapter of Associated Builders and Contractors, Avista Corporation, Pearson Packaging Systems, William Butler, Neil Muller, Steve Salvatori, Nancy McLaughlin, Michael Allen, and Tom Power,

Respondents,

v.

Envision Spokane,

Appellant,

and

Spokane Moves to Amend the Constitution, Vicky Dalton in her official capacity as Spokane County Auditor, City of Spokane,

Defendants.

ANSWER TO BOTH *AMICI* MEMORANDA

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July 22, 2015

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Statement of the Case

Envision Spokane adopts its statement of the case in its Answer filed May 11, 2015.

Argument

The *Amici* Memoranda fail to provide any considerations by which this Court may accept review. *See* RAP 13.4(b). The Memorandum of Washington State Association of Counties, Association of Washington Business, Building Industry Association of Washington, Inland Northwest Association of General Contractors, and Washington Association of Realtors (hereinafter "Counties Memorandum") attempts to leverage the "substantial public interest" review consideration (RAP 13.4(b)(4)) by attempting to differentiate Spokane County's interests from its private co-challengers', essentially shoehorning Spokane County into the shoes (and thus the standing) of the sponsoring local government (in this case, the City of Spokane). The Memorandum of Washington State Association of Municipal Attorneys (hereinafter "Attorneys Memorandum") asserts that the Unpublished Opinion improperly relied on Washington Constitution Article II, Section 1. Both Memoranda also take issue with the Unpublished Opinion's application of the public interest standing test.

I. Asserting a county's inherent standing to intervene in a city's initiative process is a novel legal theory and does not support the petition for review criteria.

The Counties Memorandum, at 6-7, argues that "the Court of Appeals focused only on private party standing" and did not adequately consider Spokane County's interests. In fact, the Unpublished Opinion, at 11-12, addressed the interests Spokane County asserted and concluded that Spokane County's interests were hypothetical and not sufficiently direct.

The Counties Memorandum, at 4-5, also advances a new theory that the ministerial duties of the County Auditor in administering an election necessarily give a county standing to bring a pre-election challenge against any initiative that passes through the County Auditor's office. This is merely an eleventh-hour attempt to reframe this case as somehow concerning juicy issues of "dual sovereignty." (Counties Memo. at 4.)

Simply because *Amicus* Washington State Association of Counties may have argued the case differently does not make an issue of substantial public interest. RAP 13.4(b)(4).

II. The Unpublished Opinion did not rely on Washington Constitution Article II, Section 1, and thus analysis of case law concerning that constitutional provision does not demonstrate a conflict with the Unpublished Opinion.

The Attorneys Memorandum sets up a false basis for the Unpublished Opinion's standing and justiciability ruling, and then refutes that basis. The false basis is that the Unpublished Opinion's standing and justiciability concerns stem from Washington Constitution Article II, Section 1. (Attorneys Memo. at 7.) Yet the Attorneys Memorandum acknowledges that the Unpublished Opinion does not rely on Article II, Section 1, but then dismisses that observation as a "failure [in the Unpublished Opinion] to note that local initiatives are not constitutionally protected." (Attorneys Memo. at 5.) As the Attorneys Memorandum found – but then ignored – the Unpublished Opinion never relies on Article II, Section 1, as a reason for strictly applying standing and justiciability rules in the local pre-election challenge context. (Unpublished Opinion at, *e.g.*, 6 (observing that separation of powers issues arise at both state and local levels, and therefore "the constitutionally *or statutorily* protected rights of citizens to initiate legislation [require] courts . . . to step gingerly." (emphasis added)).) The Unpublished Opinion recognizes that the people's initiative power must be guarded regardless of whether it is derived from constitution or statute.

The cases the Attorneys Memorandum cites as purporting to conflict with the Unpublished Opinion have already been addressed by the Unpublished Opinion and are compatible with its holding: these are all cases where the sponsoring local government brought the pre-election challenge, where private party challengers met the standing and justiciability tests, or where the court opinion did not address standing or justiciability issues. (Attorneys Memo. at 4-7; Unpublished Opinion at 18 (expressly stating that "[t]he City of Spokane had standing to challenge the Envision initiative if it had desired to do so," which addresses *City of Sequim v. Malkasian*, 157 Wn.2d 251, 138 P.3d 943 (2006), and *City of Port Angeles v. Our Water Our Choice!*, 170 Wn.2d 1, 239 P.3d 589 (2010)), 12-13 (addressing *Am. Traffic Solutions, Inc. v. City of Bellingham*, 163 Wn. App. 427, 260 P.3d 245 (2011)), 15 (addressing *Coppernoll v. Reed*, 155 Wn.2d 290, 119 P.3d 318 (2005), *Seattle Bldg. & Const. Trades Council v. City of Seattle*, 94 Wn.2d 740, 620 P.2d 82 (1980), and *Ford v. Logan*, 79 Wn.2d 147, 483 P.2d 1247 (1971)).[1]) None of these cases are in conflict with the Unpublished Opinion. RAP 13.4(b)

1 The Attorneys Memorandum, at 7, also proposes a conflict between the Unpublished Opinion and *Citizens for Financially Responsible Government v. City of Spokane*, 99 Wn.2d 339, 662 P.3d 845 (1983). In that case "[a] group of Spokane citizens sought a writ of mandamus to compel the City of Spokane to accept for filing certain referendum petitions." *Id.* at 340, 662 P.3d at 847. That case is not relevant to pre-election challenge standing or justiciability.

(1), (2).

III. The Unpublished Opinion's Public Interest Standing holding is not in conflict with other court decisions nor does it raise an issue of substantial public interest.

Attorneys Memorandum quotes the full three-part rule for public interest standing: "[1] a controversy is of substantial public importance, [2] immediately affects significant segments of the population, and [3] has a direct bearing on commerce, finance, labor, industry, or agriculture." *Grant Cnty. Fire Prot. Dist. No. 5 v. City of Moses Lake*, 150 Wn.2d 791, 803, 83 P.3d 419 (2004) (citing *Wash. Natural Gas Co. v. Pub. Util. Dist. No. 1 of Snohomish Cnty.*, 77 Wn.2d 94, 96, 459 P.2d 633 (1969) (quoted in Attorneys Memo. at 8-9).

Certainly an initiative proposal – a proposed new law – is "of substantial public importance," but that is only the first of three elements for the public interest standing test. Until it *also* "immediately affects significant segments of the population" *and* "has a direct bearing" on the economy, a controversy does not meet the requirements for public interest standing. Otherwise, public interest standing would be satisfied automatically by any challenger in any local initiative case, reducing the three-part test to a single prong. In the case here, immediate affect and direct bearing did not apply, and the Unpublished Opinion properly held the Challengers did not have public interest standing. (Unpublished

Opinion at 13, 15-17.)

The arguments presented by *Amici* concerning the public interest standing test fail to reveal conflicts with existing cases, nor raise the Unpublished Opinion's ruling on this issue to a matter of substantial public interest. RAP 13.4(b)(1), (2), (4).

Conclusion

The *Amici* Memoranda fail to show that the Unpublished Opinion is in conflict with any decision of this Court or the Court of Appeals, or that the issues for consideration from the Unpublished Opinion are of substantial public interest. There is no reason for this Court to accept review. Let the democratic process proceed undisturbed.

Respectfully submitted on July 22, 2015,

Lindsey Schromen-Wawrin, WSBA No. 46352
Community Environmental Legal Defense Fund

Attorney for Appellant Envision Spokane

Declaration of Service

I declare under penalty of perjury and the laws of the State of Washington that on the date signed below I sent a true and correct copy of the foregoing document by email to the following:

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Supreme Court Clerk,

Please find attached Envision Spokane's Answer to both Amici Memoranda, for:

Spokane Entrepreneurial Center, et al. v. Spokane Moves to Amend the Constitution, et al.

Case Number 91551-2

Thank you,

Lindsey
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