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NO. 91551-2

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

SPOKANE ENTREPRENEURIAL CENTER, et al.,

Petitioners,

v.

SPOKANE MOVES TO AMEND THE CONSTITUTION, et al.,

Respondents.

PETITIONERS' RESPONSE TO MEMORANDA OF AMICI CURIAE

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I. PETITIONERS JOIN THE ARGUMENTS OF AMICI

Petitioners agree with the Washington State Association of Municipal Attorneys (“WSAMA”), Washington State Association of Counties (“WSAC”), Association of Washington Business (“AWB”), the Building Industry Association of Washington (“BIAW”), Inland Northwest AGC, and the Washington Realtors (“Realtors”) that Division Three’s Opinion creates conflicts with published precedents of this Court and the Court of Appeals on matters of substantial public interest, and thus merits review. RAP 13.4(b)(1), (2), & (4).

More specifically, Petitioners join the arguments of WSAC and the private amici that Washington’s counties have a substantial interest in protecting the integrity of the ballot and ensuring that limited public funds are not wasted on irrelevant elections that serve only to discredit the local initiative process by using it to champion quixotic schemes that cannot possibly become law. Brief of Amici Curiae WSAC, AWB, BIAW, Inland Northwest AGC, and Realtors In Support of Petition for Discretionary Review (“Group Amici Brief”) at 4-6; *see also* Answer of the City of Spokane Supporting Discretionary Review (“City Answer”) at 14-15.

Petitioners also join the Group Amici Brief’s argument that the rule adopted by Division Three would lead to abuses of the local initiative

process by encouraging improperly broad proposed initiatives and impose substantially enhanced costs on voters and interested parties as those proposals are raised across the state. Group Amici Brief at 7-9.

Petitioners further agree that the Opinion incorrectly dismisses the public importance standing doctrine, and join the argument of both the Group Amici and WSAMA that pre-election challenges to local initiatives are of substantial enough public importance to merit standing under this alternative test, even absent strict compliance with the Uniform Declaratory Judgment Act's standing rules. Group Amici Brief at 9-10; WSAMA Memorandum of Amicus Curiae in Support of Petitioners ("WSAMA Amicus Memorandum") at 8-10; *see also* City Answer at 10-16.

Petitioners also join WSAMA's argument that Division Three's Opinion improperly conflates this Court's holdings on the constitutionally-protected statewide initiative process with the more restrictive limits on statutorily-created local initiatives. WSAMA Amicus Memorandum at 2-8; *see also* City Answer at 4-10.¹

¹ Petitioners also note that many of these arguments could have and likely would have been raised to the Court of Appeals but for Envision Spokane's concession in both its appellate brief and at oral argument that Petitioners had standing to pursue a declaratory judgment action. Opinion at 6; *see also* Opinion at 7 n. 12 (noting that the Court of Appeals did not request supplemental briefing on this issue before issuing its ruling despite the parties' lack of evidence and argument on the question of standing). Envision's arguments in favor of its reversal of position at this stage are an unpersuasive post-hoc justification for the Court of Appeals' faulty analysis.

II. THE INITIATIVE RAISES KEY QUESTIONS OF DUAL LOCAL SOVEREIGNTY

In addition, Petitioners – on behalf of coalition member Spokane County – wish to expand upon a particular argument brought forth by the Group Amici concerning the dual sovereign balance between county and city governments. That balance is upset when counties are denied, as happened here, standing to challenge invalid local initiatives burdening county governmental functions and operations. The Group Amici argued that the Opinion erred by “failing to recognize the unique needs of counties” and their need to operate concurrently with cities and other forms of local governments and municipal corporations. *See* Group Amici Brief at 6-7 (“Whether (and how) one local government may infringe on the rights and responsibilities of another is an important matter of public interest . . .”). This is an important argument, overlooked by the Court of Appeals, which creates a wholly independent reason for recognizing Petitioners’ standing to challenge an invalid local initiative.

In the trial court, Spokane County argued – and the trial court agreed – that the County’s wastewater treatment plant would be affected by the provisions of the Envision Spokane initiative which involve the Spokane River. *See* Petition for Review, App. B at 4; CP 166-171. This

interest is the same whether Spokane County or a private entity managed the wastewater facility.

However, in addition to that interest, Spokane County also holds an interest in defending its exclusive regulatory and administrative jurisdiction over certain areas. In Washington, most cities and counties – including the City of Spokane and Spokane County – hold power only to the extent granted to them by the Washington legislature and Constitution. *See generally* Const. art. XI, §§ 10-11; RCW Title 35 (Cities and Towns); Const. art. XI, § 4; RCW Title 36 (Counties); Hugh Spitzer, “*Home Rule*” vs. “*Dillon’s Rule*” for Washington Cities, 38 Seattle U. L. Rev. 809 (2015). In addition to Spokane County’s interest in protecting its ability to operate facilities, it also has an interest as a governmental entity in protecting and maintaining that exclusive delegation of governmental powers from the state to the County, and in preventing other entities – such as the City, through a proposed local initiative – from intruding upon those. *See, e.g.*, Spokane County Code 1.17.010 *et seq.* (creating a public defender district “embracing all of Spokane County”); 7.40.025 (authorizing a Spokane County Cable Advisory Board); 8.06.010 *et seq.* (creating the Spokane Regional Health District). Whether or not any particular proposed City initiative conflicts with the specific regulations the County has adopted in these areas, the County has an interest in

maintaining its control over them without unauthorized City (or other local government) interference. However, the Court of Appeals entirely disregarded this separate and sufficient reason to find that Petitioners had standing to bring their declaratory judgment action in this case. *See* Opinion at 17 (“we conclude that, in order for a *private* party to bring a *pre-election* challenge to a local initiative . . .”).

The clearest example of Spokane County’s governmental interest in this case is not a substantive area of law granted exclusively to counties for administrative and regulatory purposes, but a geographic one. The Envision initiative’s river and aquifer provisions seek to regulate the rights and conduct of people outside the City of Spokane, by purportedly creating a private right of action enforceable throughout the Spokane River and Spokane Valley-Rathdrum Prairie Aquifer basin. Spokane County has a substantial interest in protecting its exclusive ability to exercise its governmental authority in the unincorporated areas within its borders. As the trial court found, the proposed regulation was thus outside of the jurisdictional scope of the City’s authority, and thus an invalid exercise of the local initiative power. *See* Petition for Review Appendix B at 7, 13; Const. art. XI, § 11 (“Any county, city, town or township may make and enforce *within its limits* all such local police, sanitary and other regulations as are not in conflict with general laws.”).


This interest is of heightened importance in the context of a pre-election challenge to an initiative, where the merits of the claim turn not on the specific content of a proposed initiative, but on the broader question of whether the proposed initiative is within the city’s initiative power at all. Where a proposed initiative reaches into the regulatory purview of other governments, the initiative is improper, and should not reach the ballot. RCW 35.22.200 (“The charter may 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.”) (emphasis added). In the same way that, “[i]t is simply not within Washington’s power to enact federal law,” *Philadelphia II v. Gregoire*, 128 Wn.2d 707, 720 (1996), local governments cannot act in areas designated by the legislature and Constitution for a different local government.² It makes little sense to deny Spokane County standing to challenge the abrogation of that principle, particularly when the proposed initiative will also burden the County’s ability to perform those duties.

For this and all of the reasons previously stated – by the Petition for Review, by the City Answer, by the Group Amici Brief, and by the WSAMA Amicus Memorandum – the Court should grant review of this case.

² This is an underdeveloped area of law involving great public importance, which emphasizes the need for this Court’s review.

RESPECTFULLY SUBMITTED this 22nd day of July, 2015.

Davis Wright Tremaine LLP
Attorneys for Petitioners

By 
Robert J. Maguire, WSBA #29909

CERTIFICATE OF SERVICE

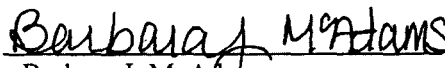
The undersigned hereby declares that on July 22, 2015, pursuant to the parties' agreement regarding electronic service under CR 5(b)(7), I sent an e-mail attaching PETITIONERS' RESPONSE TO MEMORANDA OF AMICI CURIAE to counsel of record whose names and addresses are listed below:

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I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Executed this 22nd day of July, 2015, in Seattle, Washington.


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Subject: Envision Spokane v. Spokane Entrepreneurial Center, et al. - Supreme Court Case Number 91551-2

Dear Clerk:

Please find attached for filing in the above-referenced matter, an electronic copy of the PETITIONERS' RESPONSE TO MEMORANDA OF AMICI CURIAE.

By copy of this e-mail, electronic service to counsel of record is made. Please let me know if there is any difficulty opening the .pdf files.

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