

FILED
Court of Appeals
Division III
State of Washington
3/16/2018 10:59 AM
No. 355284

**COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON**

GLOBAL NEIGHBORHOOD; REFUGEE CONNECTIONS OF
SPOKANE; SPOKANE CHINESE ASSOCIATION; ASIAN PACIFIC
ISLANDER COALITION – SPOKANE; SPOKANE CHINESE
AMERICAN PROGRESSIVES; and the SPOKANE AREA
CHAPTER OF THE NATIONAL ORGANIZATION OF WOMEN,

Respondents,

v.

RESPECT WASHINGTON,

Appellant,

VICKY DALTON, SPOKANE COUNTY AUDITOR, in her official
capacity; and the CITY OF SPOKANE,

Defendants.

CORRECTED RESPONSE BRIEF OF THE CITY OF SPOKANE

Michael C. Ormsby, WSBA #12118
City Attorney

Nathaniel J. Odle, WSBA #39602
Assistant City Attorney
Attorney for Defendant City of Spokane

Office of the City Attorney
808 W. Spokane Falls Blvd.
Spokane, WA 99201
Telephone: (509) 625-6225

TABLE OF CONTENTS

	Page
I. INTRODUCTION AND BACKGROUND	1
II. RESTATEMENT OF FACTS.	1
A. The City of Spokane and Its Charter-Created Initiative	1
B. Enactment and repeal of Spokane Municipal Code Sections 3.10.040 and 3.10.050.....	2
C. The History of Proposition 1.....	4
III. ARGUMENT.	6
IV. CONCLUSION.....	11

TABLE OF AUTHORITIES

Page

Washington State Cases

<i>City of Longview v. Wallin</i> , 174 Wash. App. 763 (Div. 2, 2013)	7
<i>City of Port Angeles v. Our Water – Our Choice!</i> 170 Wn.2d 1 (2010)	9
<i>City of Sequim v. Malkasian</i> , 157 Wn.2d 257 (2006)	9
<i>City of Yakima v. Huza</i> , 67 Wn.2d 351 (1965)	7
<i>Philadelphia II v. Gregoire</i> , 128 Wn.2d 707 (1996)	7
<i>Save Our State Park v. Hordyk</i> , 71 Wash. App. 84 (1993)	7
<i>Seattle Bldg. & Constr. Trades Council v. City of Seattle</i> , 94 Wn.2d 740 (1980)	9
<i>Spokane Entrepreneurial Ctr. v. Spokane Moves to Amend the Constitution</i> , 185 Wn.2d 97 (2016)	9
<i>Walker v. City of Spokane</i> , 62 Wash. 312 (1911)	1, 2

Other State Cases

<i>AFL-CIO v. Eu</i> , 686 P.2d 609 (Cal. 1984)	8
----------------------------------------------------------	---

Washington Constitutional Provisions & State Statutes

Revised Codes of Washington 35.22.200	2
Washington Constitution, art. XI, § 10	2

Local Provisions

Spokane City Charter, art. IX, § 81	2
Spokane City Charter, art. IX, § 82	2, 5
Spokane City Charter, art. XIV, § 125	2

Spokane Municipal Code 2.02.0304, 5
Spokane Municipal Code 2.02.0604, 5
Spokane Municipal Code 2.02.1005
Spokane Municipal Code 3.10.040 (former)2, 3, 4
Spokane Municipal Code 3.10.050 (former)2, 3, 4
Spokane Municipal Code 18.01.0303
Spokane Municipal Code 18.07.0203, 4

I. INTRODUCTION AND BACKGROUND

This case involves the City of Spokane's local initiative process. Spokane's local initiative process is important to the City and to its citizens, and the City submits this brief to inform the Court of its views on issues raised by Appellant Respect Washington.

Although the City takes no position on the underlying merits of this appeal; *i.e.*, whether the Respect Washington Initiative ("Proposition 1") is outside the scope of the City's initiative power or moot; the City respectfully requests that *if* this Court determines any portion of Proposition 1 is invalid that it affirm the trial court's decision that Proposition 1 should not be placed on the ballot. Doing so protects the City, its initiative process, and avoids confusing and frustrating voters.

II. RESTATEMENT OF FACTS

While the City generally agrees with the facts presented by Respect Washington, it adds the following to illuminate the issues presented on appeal.

A. The City of Spokane and Its Charter-Created Initiative.

The City is a municipal corporation of the first class. Walker v. City of Spokane, 62 Wash. 312, 315 (1911). As such, the City

has the constitutional authority to frame its own charter. *Id.* (citing Wash. Const. art. XI, § 10). The City exercised that power and adopted the Spokane City Charter, which has been in effect for over one hundred years.

While the City's legislative authority is "vested in a mayor and a city council," the City "may provide for direct legislation by the people through the initiative...upon any matter within the scope of the powers, functions, or duties of the city." RCW 35.22.200. The City has exercised that discretionary right, and Sections 81, 82, and 125 of its Charter provides for an initiative process. Chapter 2.02 of the Spokane Municipal Code ("SMC") governs how Spokane residents may exercise their charter-granted right of initiative. Thus, while Spokane has chosen to provide its citizens with the ability to directly legislate, it controls the methods and means of how such legislation may be presented to the people.

B. Enactment and repeal of Spokane Municipal Code Sections 3.10.040 and 3.10.050.

The Spokane City Council adopted Ordinances C-35164 and C-35167 in December of 2014. Ordinance C-35164 added SMC section 3.10.040 which, in relevant part, provided "Spokane Police Department Officers and all officers commissioned under the

Spokane Police Department shall be prohibited from engaging in bias-based profiling.” The term biased-based profiling was in turn defined as an

[A]ct of a member of the Spokane Police Department or law enforcement officer commissioned by the Spokane Police Department that relies on...national origin...as the determining factor initiating law enforcement against an individual, rather than an individual's behavior or other information or circumstances that link a person or persons to suspected unlawful activity.¹

Ordinance C-35167 added SMC section 3.10.050 entitled “Immigrant Status Information.” Section 3.10.050 provided “unless required by law or court order, no Spokane City officer or employee shall inquire into the immigration status of any person, or engage in activities designed to ascertain the immigration status of any person.”² Under the legislation, Spokane Police Department officers

¹ Now defined simply as “profiling,” as opposed to “bias based profiling,” SMC 18.01.030 prohibits “actions of the Spokane Police Department, its members, or officers commissioned by the Spokane Police Department to rely on actual or perceived race, religion, national origin, color, creed, age, citizenship status, immigration status, refugee status, gender, sexual orientation, gender identity, disability, socio-economic status, housing status, or membership in any protected class under federal, state or local law as the determinative factor in initiating law enforcement action against an individual, rather than an individual’s behavior or other information or circumstances that links a person or persons to suspected unlawful activity.”

² This legislation is now found in SMC 18.07.020(A).

were directed that they “shall not investigate, arrest, or detain an individual solely on immigration status.”³

In March of 2017, Spokane City Council adopted Ordinance No. C-35485 which repealed SMC sections 3.10.040 and 3.10.050. The bias-based profiling and immigrant status language was moved from Title 3 to Title 18 of the SMC.

C. The History of Proposition 1.

On November 26, 2014, a document entitled “Initiative Petition to Spokane City Council for REPEAL of Illegal Alien Sanctuary and Harboring,” was submitted by Jackie Murray to the Spokane City Clerk’s Office. CP 172-179. On December 10, 2014, the City Attorney’s Office, following email communication with Ms. Murray and pursuant to standard procedure,⁴ forwarded the City Clerk a version of Ms. Murray’s initiative petition with edited ballot title, a summary of the measure, and revised formatting.⁵ At some time thereafter, Ms. Murray (and/or others) revised the form of the

³ This legislation is now found in SMC 18.07.020(C).

⁴ See SMC 2.02.030(E) (“In addition to preparing the ballot title and summary of the measure, the city attorney shall review the proposed measure for matters such as form and style...[and] edit the measure as necessary to correct obvious typographical errors, conform the language to the Spokane Municipal Code format and style, or eliminate ambiguity.”)

⁵ The form of an initiative petition is outlined in SMC 2.02.060.

initiative petition which had been reviewed by the City Attorney's Office and previously submitted to the City Clerk.⁶

On or about December 8, 2015, Ms. Murray emailed City Council President Ben Stuckart and, in relevant part, stated "I, Jackie Murray, as sponsor of the repeal of sanctuary city petition wish to withdraw the petition. I do not want to go forward with the petition." CP 70.

On February 22, 2016, pursuant to SMC 2.02.100⁷ and § 82 of the City Charter, the City Council adopted Resolution 2016-0008 which requested the Spokane County Auditor hold a special election on November 7, 2017 as to Proposition 1.

⁶ See correspondence between City Clerk T. Pfister and J. Murray discussing changes to the subject initiative petition at CP 62 & 64. Substantive modification of an initiative petition after assignment of an initiative number was subsequently prohibited by City Ordinance C-35380, adopted on May 9, 2016. SMC 2.02.060(G) now reads, in relevant part, "[a]n initiative petition shall only include language and provision set forth in Chapter 2.02 SMC and may not be altered after being assigned an initiative number by the city clerk pursuant to SMC 2.02.030. The sponsor may only modify the format of the petition sheet to accommodate the size of the petition sheet and the font of the print consistent with SMC 2.02.060 and may not alter the substance of the text or include additional information."

⁷ SMC 2.02.100(B) reads "[u]nless a motion is made and passed to grant the petition and pass the measure as requested in the initiative petition, the city council adopts a resolution to place the measure on the ballot at the next available election, pursuant to section 82 of the City Charter."

On August 29, 2017, Spokane County Superior Court Judge McKay ruled Proposition 1 exceeded the local initiative power and was moot and granted Plaintiffs/Respondents' Motion for Declaratory Relief. During the initial appellate proceedings where Respect Washington requested a stay, the City filed a brief noting that Proposition 1 should not be placed on the ballot unless and until a court declared it valid.⁸ On September 1, 2017, Commissioner Wasson denied Respect Washington's Motion for Stay of the trial court's Order.

III. ARGUMENT

Consistent with its stance before the trial court, the City takes no position as to the merits of Plaintiffs/Respondents' Motion for Declaratory Relief granted by the trial court or the legality of Proposition 1. The City writes separately, however, to express its disagreement with Respect Washington's apparent position that the freedom of speech and right to petition government guaranteed under the Washington and United States Constitutions should permit *all* initiatives to go to the voters.⁹

⁸ The City's Brief on that Motion was filed with this Court on August 31, 2017.

⁹ See Respect Washington Brief at 9 ("There is no compelling state interest that justifies prohibiting the citizens of Spokane from voting

As the City explained when responding to Respect Washington’s Emergency Motion for Stay,¹⁰ placing invalid initiatives on the ballot harms both the City and the local initiative process. First, elections cost money. There are costs to City taxpayers to place initiatives on the ballot. If an initiative of questionable merit is placed on the ballot and subsequently determined to be outside the scope of the initiative power, the City will have unnecessarily spent taxpayers’ dollars on an election that is without any legal force or effect.¹¹ The City is concerned with having to expend finite resources on an election that may ultimately

on Proposition 1.”); p. 10 (“Even though the Court ultimately concluded that the initiative was invalid, it protected the citizens’ right to express their views at the polls.”); p. 11 (“Respondents have not proven that a mere vote of the people is damaging...”).

¹⁰ See Respect Washington Election-Related Emergency Motion for Stay of Trial Court Decision at 10. (“The justification for a stay is especially strong given the fact that no one is injured simply by the vote of the people.”).

¹¹ See, e.g., Philadelphia II v. Gregoire, 128 Wn.2d 707, 718 (1996) (noting pre-election review of statewide initiative was proper “to prevent public expense on measures that are not authorized by the constitution”); City of Longview v. Wallin, 174 Wash. App. 763, 782 (Div. 2, 2013) (*citing* Save Our State Park v. Hordyk, 71 Wash. App. 84, 92 (1993) (“We have recognized that requiring a city to place an invalid initiative on the ballot would result in an undue financial burden to local government.”)); City of Yakima v. Huza, 67 Wn.2d 351, 360 (1965) (the “city cannot be ordered to hold an election in this instance because it would be requiring the city to perform a useless act, and to expend public funds uselessly.”).

amount to nothing more than a nonbinding expression of public opinion.

Second, the City has significant concerns regarding the integrity of its initiative process and the prospect of voter confusion. The California Supreme Court noted that placement of invalid initiatives on the ballot harms the initiative process, stating:

Although real party in interest recites the principles of popular sovereignty which led to the establishment of the initiative and referendum in California, those principles do not disclose any value in putting before the people a measure which they have no power to enact. The presence of an invalid measure on the ballot steals attention, time and money from numerous valid propositions on the same ballot. It will confuse some voters and frustrate others, and an ultimate decision that the measure is invalid, coming after the voters have voted in favor of the measure, tends to denigrate the legitimate use of the initiative procedure.

AFL-CIO v. Eu, 686 P.2d 609, 615 (Cal. 1984). Placing an invalid initiative on the ballot and having the voters vote on such an initiative undermines the integrity of the local initiative process.

In another lawsuit involving a Spokane initiative, the Washington Supreme Court stated “[g]enerally, judicial preelection review of initiatives and referendums is disfavored” but reaffirmed that “courts will review local initiatives and referendums to determine, notably, whether ‘the proposed law is beyond the scope

of the initiative power.” Spokane Entrepreneurial Ctr. v. Spokane Moves to Amend Constitution, 185 Wn.2d 97, 104–05 (2016) (*citing* City of Port Angeles v. Our Water–Our Choice!, 170 Wn.2d 1, 7 (2010) (*quoting* Seattle Bldg. & Constr. Trades Council v. City of Seattle, 94 Wn.2d 740, 746 (1980)). In Spokane Entrepreneurial Ctr, the Court stated that “[t]here are multiple limits on the local initiative power,” and identified three specific examples of legislation that would be outside the scope of the local initiative power: 1) administrative matters, particularly local administrative matters;¹² 2) powers granted by the legislature to the governing body of a city, rather than the city itself;¹³ and 3) legislation which conflicts with state law.¹⁴

Here, Plaintiffs/Respondents’ Motion for Declaratory Relief was granted when the trial court determined that Proposition 1 was: 1) moot because the ordinance numbers had changed from those referenced in Proposition 1; and 2) was administrative in nature, and therefore beyond the scope of the initiative power. CP 313-314. If correct, such findings are valid bases for Proposition 1 not to

¹² *Id.* at 107 (*citing* Our Water - Our Choice!, *supra*, 170 Wn.2d at 8).

¹³ *Id.* (*citing* City of Sequim v. Malkasian, 157 Wn.2d 251, 261 (2006)).

¹⁴ *Id.* (*citing* Seattle Bldg, *supra*, 94 Wn.2d at 747).

appear on the ballot. Refusing to place an invalid initiative on the ballot does not conflict with the free speech rights of Respect Washington, or others; it instead aligns with Supreme Court precedent. The City respectfully requests that if the Court determines that Proposition 1 is outside the scope of the local initiative power, or moot, that this Court affirm the trial court's declaratory judgment that Proposition 1 should not appear on the ballot.

The local initiative power belongs to every citizen in Spokane; not just those groups or individuals seeking placement of initiatives on the ballot. The integrity of the local initiative process is therefore important to the public as a whole. Despite Respect Washington's argument that a "mere vote of the people" harms no one, holding an election on an invalid initiative wastes resources and undermines the City's initiative process. Using the local initiative process to have citizens vote on something that may not have any legal effect hurts the initiative process and creates the very real possibility of confusing the voters of Spokane. Consequently, the local initiative power is enhanced, not hurt, by protecting the initiative process from futile elections.

IV. CONCLUSION

For the reasons stated above, the City respectfully requests that if the Court determines that Proposition 1 is outside the scope of the local initiative power, or moot, that this Court affirm the trial court's declaratory judgment that Proposition 1 should not appear on the ballot.

Respectfully submitted this 16th day of March, 2018.

s/Nathaniel J. Odle

Nathaniel J. Odle, WSBA #39602

Assistant City Attorney

Office of the City Attorney

808 W. Spokane Falls Blvd.

Spokane, WA 99201

Telephone: (509) 625-6288

Fax: (509) 625-6277

Email: nodle@spokanecity.org

Attorney for Defendant

City of Spokane

DECLARATION OF SERVICE

I declare, under penalty of perjury, that on the 16th day of March, 2018, I caused a true and correct copy of the foregoing “Corrected Response Brief of the City of Spokane,” to be electronically filed with the Washington State Court of Appeals, Division III, which will send notification of such filing to the following:

Richard M. Stephens
Stephens & Klinge LLP
10900 NE 8th St, Suite 1325
Bellevue, WA 98004
E-mail: stephens@sklegal.pro
Attorney for Respect Washington

Rich Eichstaedt
Center for Justice
35 West Main, Suite 300
Spokane, WA 99201
E-mail: ricke@cforjustice.org
Attorney for Respondents

Dan L. Catt
Spokane County Prosecuting Attorney’s Office
W. 1115 Broadway Avenue
Spokane, WA 99260
E-mail: DCatt@spokanecounty.org
Attorney for Defendant Vicky Dalton

s/Nathaniel J. Odle
Nathaniel J. Odle, WSBA #39602
Assistant City Attorney
Office of the City Attorney
808 W. Spokane Falls Blvd.
Spokane, WA 99201
Telephone: (509) 625-6288
Fax: (509) 625-6277
Email: nodle@spokanecity.org

OFFICE OF THE CITY ATTORNEY

March 16, 2018 - 10:59 AM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 35528-4
Appellate Court Case Title: Global Neighborhood, et al v. Respect Washington, et al
Superior Court Case Number: 17-2-01621-1

The following documents have been uploaded:

- 355284_Briefs_20180316105416D3936982_5175.pdf
This File Contains:
Briefs - Errata
The Original File Name was Corrected Response Brief.pdf

A copy of the uploaded files will be sent to:

- dcatt@spokanecounty.org
- dlanet@cforjustice.org
- ricke@cforjustice.org
- scpaappeals@spokanecounty.org
- stephens@sklegal.pro

Comments:

Corrected Signature

Sender Name: Doris Stragier - Email: dstragier@spokanecity.org

Filing on Behalf of: Nathaniel Odle - Email: nodle@spokanecity.org (Alternate Email: jasampson@spokanecity.org)

Address:
808 W. Spokane Falls Blvd
Spokane, WA, 99201-3326
Phone: (509) 625-6234

Note: The Filing Id is 20180316105416D3936982