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**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 FOR WOMEN,

Respondents,

v.

RESPECT WASHINGTON,

Appellant,

and

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

Defendants.

BRIEF OF RESPONDENTS, GLOBAL NEIGHBORHOOD, ET AL.

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A. INTRODUCTION

Must an invalid initiative be placed on the ballot? That is the fundamental question that this case addresses. Appellant Respect Washington urges this Court to ignore long-standing precedent and the initiative's substantive shortcomings and to order that its initiative, Proposition 1, should be on the ballot. Proposition 1 would throw out established Spokane Police Department policies and would strip the Mayor, City Council, the Police Chief, and any other city officials from regulating police and city employee conduct toward immigrants.

First, Appellant Respect Washington urges this Court to rule that day-to-day functions of law enforcement, including who and how police stop people, should be subject to local initiative power. Courts have consistently held that these types of administrative duties are legislative in nature and outside the scope of the initiative power.

Second, Respect Washington urges this Court to ignore and invalidate legislative actions by the Spokane City Council that repealed, recodified, amended, and otherwise significantly changed the language that Proposition 1 purports to address. Simply put, the Council action rendered the Proposition 1 moot and, absent a substantial rewrite of the initiative by the Court, its adoption would create an absurd and unworkable result.

Third, Respect Washington urges the Court to put the invalid initiative on the ballot regardless of its shortcomings because it has a constitutional right to have an invalid initiative on the ballot, that Respondents' initial suit was untimely, and that Respondents lacked standing. All these arguments fail and ignore the fundamental issue that there is no legal right to have an invalid initiative on the ballot.

B. RESPONDENTS' ASSIGNMENT OF ERROR

Respondents adopt the Assignment of Error presented by the Appellant.

C. RESTATEMENT OF ISSUES

Respondents provide the following clarification and restatement of the Appellant's first, fourth, and fifth Issues Pertaining to Assignment of Error:

1. Whether there is a constitutional right for the placement of an otherwise invalid proposition on the ballot for consideration by voters.
4. Whether the repeal and recodification of similar, but substantially expanded, provisions of the municipal code render an initiative moot.
5. Whether Appellant met its burden of demonstrating that the doctrine of laches applied to this matter.

D. STATEMENT OF THE CASE

This case is an appeal of a decision of the Spokane County Superior Court granting declaratory judgment, invalidating City of Spokane Proposition 1. CP 312-15. Respondents are Spokane-based organizations that advocate on behalf of and provide services, including employment, to the immigrant or refugee community in the Spokane area. CP 119-120, 125-26, 259-260, 262-64, 265-66, 268-69.

In October 2014, the Spokane City Council enacted Spokane Municipal Code (“SMC”) section 3.40.040 and 3.40.050¹, which codified Spokane Police Department Policy 428 and Policy 402 into City law that addresses issues of how the police interact with immigrants in our community.² Policy 428, titled “Immigration Violations,” provides that “immigration status of individuals alone is generally not a matter for police action.” Policy 402, titled “Bias-Based Policing” includes “national origin” in the definition of “racial – or bias-based profiling.”

The 2014 actions of the Spokane City Council codified these police policies. SMC 3.40.040 adopted the requirements of these policies by prohibiting the Spokane Police from considering citizenship status in police activities. Section 3.40.050 prohibited police from inquiring into

¹ As explained below, both of these sections have been repealed and amended in a similar, but not identical form in a new chapter of the Spokane Municipal Code.

² Copies of these policies are attached as Appendix B.

immigration status or detaining someone solely on the basis of immigration status.

On November 26, 2014, Jackie Murray, the original local sponsor on behalf of Respect Washington, submitted a petition with the City Clerk's office. The petition advocated the adoption via local initiative power of this Proposition 1 that would amend the Spokane Municipal Code by removing prohibitions against law enforcement and other city employees inquiring into an individual's citizen status, amending SMC 3.40.040 and 3.40.050 by: (1) removing the words "citizenship status" from the definition of "bias-based policing" in the Municipal Code; (2) repealing in its entirety a prohibition on Spokane Police officers and other city employees from inquiring into the immigration status of any person; and (3) adding a new Municipal Code section that would prohibit the City from limiting the ability of any city employee from collecting and sharing law enforcement information unless approved by a majority of the city council and a majority vote of the people at the next general election. CP 59-60.

More than two years later, on March 27, 2017, the Spokane City Council passed Ordinance No. C35485, which repealed the two sections of the Spokane Municipal Code that Proposition 1 sought to amend or repeal. CP 77. Ordinance No. C35485 also recodified similar (but not identical)

provisions from the repealed sections into the new Title 18 of the Municipal Code. CP 88-89, *see also* Appendix A (comparison of Proposition 1 and Title 18). This action of the City Council mooted Proposition 1's proposed changes to the Spokane Municipal Code, and the amended and added language of Title 18 would make the application of Proposition 1 impossible.

On May 1, 2017, Respondents filed their initial lawsuit to address the validity of the Proposition 1, to avoid an unnecessary and expensive election, and to prevent an invalid initiative from interfering with the administrative authority of the Spokane Police and City Council.

On August 29, 2017, the Spokane County Superior Court granted Respondents' Motion for Declaratory Judgment, stating:

The Court DECLARES that Proposition 1 is invalid. The Court further DECLARES that the initiative shall not appear on the November 7, 2017 ballot, and directs the Auditor not to include it on that ballot.

CP 314.

E. STANDARD OF REVIEW

Declaratory judgment is subject to appellate review like any other final judgment. Karl B. Tegland, 15 Washington Practice: Civil Procedure sec. 42.27, at 170 (1st ed.2003). RCW 7.24.070, of the Uniform Declaratory Judgments Act, states, "All orders, judgments and decrees

under this chapter may be reviewed as other orders, judgments and decrees.”

No special procedures or standards of review apply. *City of Spokane v. Spokane Civil Serv. Comm'n*, 98 Wn.App. 574, 578, 989 P.2d 1245 (1999), review denied, 141 Wn.2d 1013 (2000). Appellate courts will not disturb findings of fact supported by substantial evidence. *See Nollette v. Christianson*, 115 Wn.2d 594, 800 P.2d 359 (1990). In reviewing the superior court’s findings and conclusions, an appellate court must determine whether substantial evidence supports its findings of fact and, in turn, whether the findings support the conclusions of law. *Pilcher v. Dep't of Revenue*, 112 Wn.App. 428, 435, 49 P.3d 947 (2002), review denied, 149 Wn.2d 1004 (2003).

Here, Appellant has failed to meet this standard; a decision affirming the Superior Court’s order is warranted.

F. ARGUMENT IN RESPONSE

1. THERE IS NO CONSTITUTIONAL RIGHT FOR THE PLACEMENT OF AN OTHERWISE INVALID PROPOSITION ON THE BALLOT FOR CONSIDERATION BY VOTERS.

Respect Washington argues that it possesses a constitutional right to place Proposition 1 on the ballot, regardless of the initiative’s validity. However, the Supreme Court has repeatedly recognized that the

constitutional interests at play are significantly diminished in the context of local initiatives, which are purely creatures of statute and have no constitutional basis. *See, e.g., Spokane Entrepreneurial Ctr. v. Spokane Moves to Amend Constitution*, 185 Wn.2d 97, 103-04, 369 P.3d 140 (2016) (“As a preliminary issue, it is important to distinguish statewide and local initiatives. The right of the people to file a statewide initiative is laid out in the Washington Constitution.... However, the right to file a local initiative is not granted in the constitution. Instead, state statutes governing the establishment of cities allow the cities to establish a local initiative process.”); *see also City of Port Angeles v. Our Water-Our Choice!*, 145 Wn. App. 869, 879, 188 P.3d 533 (2008) (“Though the right to state-wide initiative is protected by our state constitution, there is no similar constitutional protection or right of local initiative.”).

Even more fundamentally, there is no constitutional right to bring an invalid initiative; no one has a “First Amendment right to have any initiative, regardless of whether it is outside the scope of the initiative power, placed on the ballot.” *City of Longview v. Wallin*, 174 Wn. App. 763, 792, 301 P.3d 45 (2013).

Washington courts have routinely invalidated petition-based measures that exceed the scope of initiative and referendum power. *See, e.g., Our Water-Our Choice!*, 145 Wn. App. at 883; *City of Seattle v. Yes*

for Seattle, 122 Wn. App. 382, 388-91, 93 P.3d 176 (2004); *Philadelphia II v. Gregoire*, 128 Wn.2d 707, 709, 911 P.2d 389 (1996); *City of Sequim v. Malkasian*, 157 Wn.2d 251, 261, 138 P.3d 943 (2006); *1000 Friends of Wash. v. McFarland*, 159 Wn.2d 165, 173, 149 P.3d 616 (2006); *Snohomish County v. Anderson*, 123 Wn.2d 151, 152-53, 868 P.2d 116 (1994).

Placing an invalid initiative (i.e., one that is outside the scope of the initiative authority) undermines the integrity of the local initiative process and presents voters with a false choice. As the California Supreme Court said, “The presence of an invalid measure on the ballot steals attention, time and money from the 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).

Courts have repeatedly stated that the initiative process is not a forum in which every individual or group has a constitutional or legal right to place before the voters any initiative that meets procedural requirements. *See, e.g., Wallin*, 174 Wn. App. at 786-87 (holding advisory vote was beyond the scope of the local initiative power); *see also Angle v. Miller*, 673 F.3d 1122, 1133 (9th Cir. 2012) (“There is no First

Amendment right to place an initiative on the ballot.”); *Protect Marriage Ill. v. Orr*, 463 F.3d 604, 606 (7th Cir. 2006) (“A state no more has a federal constitutional obligation to permit advisory questions on its ballot than it has to permit them to be painted on the walls of the state capitol.”); *Proulx v. Salt Lake City Recorder*, 297 P.3d 573, 576 (Utah 2013) (“the initiative power is limited, and its limitations do not encompass resolutions that are purely advisory.”); *In re Initiative Petition No. 364*, 930 P.2d 186, 193 (Okla. 1996) (“The people have no reserved authority to propose nonbinding resolutions by the initiative process.”). Put simply, no one’s rights will be implicated, let alone harmed, by not placing an invalid initiative on the ballot.

Respect Washington relies on *Coppernoll* for the proposition that “substantive preelection review may ... unduly infringe on free speech values.” *Coppernoll v. Reed*, 155 Wash.2d 290, 298, 119 P.3d 318 (2005). However, Respect Washington’s reliance on *Coppernoll* is misplaced because the Court of Appeals rejected the notion that *Coppernoll’s* concerns applied with equal force to pre-election challenges to local initiatives:

But Wallin’s reliance on *Coppernoll* is unpersuasive: The initiative power here does not derive from our state constitution; rather it has been authorized by statute. Thus, the constitutional preeminence of the right of initiative discussed in *Coppernoll* is not a concern in the present case,

and the local powers of initiative do not receive the same vigilant protection as the constitutional powers addressed in *Coppernoll*.

Wallin, 174 Wn. App. at 790.

The *Wallin* court went on to reject the First Amendment arguments advanced by Respect Washington here:

The First Amendment concern articulated by the *Coppernoll* court specifically referred to a substantive preelection challenge to a statute, not a challenge to whether the statute exceeded the scope of initiative power. ... Accordingly, *Wallin's* reliance on *Coppernoll* is misplaced, and we hold that his claims that the preelection challenge here violated his right to petition the government and right to free speech fail.

Wallin is correct that the initiative process can involve protected political speech. ... **But here, the petition sponsors were permitted to circulate their petition for signatures and to submit that petition to the county auditor to have the signatures counted. It appears, then, that *Wallin* asserts a First Amendment right to have any initiative, regardless of whether it is outside the scope of the initiative power, placed on the ballot. But he has failed to articulate a basis in law for this right when the protected political speech, obtaining signatures for the petition, was not impaired here. Accordingly, *Wallin's* First Amendment claims fail.**

Wallin, 174 Wn. App. at 791-92 (emphasis added).

No constitutional rights are infringed by the Superior Court's declaration that Proposition 1 is invalid.

2. RESPONDENTS DEMONSTRATED SUFFICIENT INJURY TO ESTABLISH STANDING.

The Superior Court correctly found that all Respondents demonstrated sufficient injury to establish standing – in fact, Respect Washington conceded as much. CP 313 (“Respect Washington concedes that Plaintiffs have submitted evidence ... which is sufficient to show standing.”) The Court went on to state that “Global Neighborhood and Refugee Connections Spokane have employees that will suffer sufficient injury and therefore have standing to bring this action” and that “[a]ll Plaintiffs³ will suffer organizational harm by being required to divert limited resources to address the impacts associated with Proposition 1.” *Id.*

Here, Respect Washington argues that Respondents failed to demonstrate standing to warrant declaratory judgment. This is hardly the case.

The Supreme Court has stated that in a pre-election declaratory judgment action, “petitioners must show injury in fact, economic or

³ However, a court needs only to find standing for any one party for the matter to proceed. *League of Education Voters v. State*, 176 Wn.2d 808, 817 n. 3 (2013); *see also Rumsfeld v. Forum for Academic & Institutional Rights, Inc.*, 547 U.S. 47, 52 n. 2, 126 S.Ct. 1297, 164 L.Ed.2d 156 (2006) (declining to address standing of additional plaintiffs “because the presence of one party with standing is sufficient to satisfy Article III’s case-or-controversy requirement”); *Massachusetts v. Environmental Prot. Agency*, 549 U.S. 497, 127 S.Ct. 1438, 1453, 167 L.Ed.2d 248 (2007) (“Only one of the petitioners needs to have standing to permit us to consider the petition for review”).

otherwise.” *Spokane Entrepreneurial Ctr.*, 185 Wash. 2d at 103. For example, in *Spokane Entrepreneurial Ctr.*, the injury that plaintiff would suffer was “by having to go through an additional zoning approval process.” *Id*; see also *Grant County Fire Prot. Dist. No. 5 v. City of Moses Lake*, 150 Wash.2d 791, 802-05, 83 P.3d 419 (2004) (Supreme Court held that property owners “clearly” met the “actual injury” standing requirement because they “face different tax rates following annexation.”). Here, Respondents demonstrated an injury that is economic or otherwise if Proposition 1 passed.

Respondents provided extensive evidence and declarations that, if passed, Proposition 1 would cause injury to the organizations, their members, those they serve, and to their employees. *See, e.g.*, CP 118-120, 124-129, 259-270, 274-307. Post-election injuries will be immediate and irreparable. Proposition 1 will subject immigrants, people of color, and those perceived to be immigrants to additional stops by Spokane Police officers solely on the basis of the person’s appearance, accent, or mannerism. *See, e.g.*, CP 120, 125, 128, 260, 263, 266, 269, 277, 280, 286-87.

Proposition 1 will increase fear and reluctance on the part of immigrant domestic violence survivors to seek assistance from law enforcement or the courts, and uncertainty on the part of Respondents, on

how to advise immigrant survivors. *See, e.g.*, CP 120, 125, 128-29, 260, 263, 266, 269, 281, 286-87. As a result, immigrants will be more likely to be victims of crime and will have a much greater challenge integrating into the community. *Id.*

While it may be argued that increasing the enforcement of immigration laws has a benefit, courts have recognized that injury to a plaintiff may exist “[r]egardless of whether these harms might be justified or offset by other societal benefits.” *Spokane Entrepreneurial Ctr.*, 185 Wash. 2d at 107.

Respondents’ harm is immediate – Proposition 1 would go into effect as soon as the Auditor certified the election, which occurs after ballots are received and counted over a three-week period. The injuries identified by Plaintiffs in this case are far more substantial than the pecuniary interests identified in *Spokane Entrepreneurial Ctr.* and *Grant County Fire Prot. Dist. No. 5* and, therefore, more than satisfy the injury requirement for standing. Respect Washington’s argument is without merit.

Rather than addressing the entirety of the Superior Court’s findings in regards to standing, Respect Washington questions only one portion of the Court’s order that found that all Respondent organizations would suffer “organizational harm.” CP 33. First, Respect Washington conceded

that Respondents have standing, as noted in the Superior Court's order. *Id.*

Second, courts have found that organizations can have standing for harm resulting from the diversion of resources and impacts to mission for a challenged action. *Fair Housing of Marin v. Combs*, 285 F.3d 899, 904–05 (9th Cir.2002) (Court upholds “organizational standing” for nonprofit fair housing organization suing an apartment owner for discriminatory conduct; direct standing to sue is appropriate because the agency showed a drain on its resources from both a diversion of its resources and frustration of its mission). As both the Supreme Court and Ninth Circuit have made clear, the frustration of an organization's mission is the personalized injury that “forces” the organization to spend money to alleviate the frustration. *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378–79, 102 S.Ct. 1114, 71 L.Ed.2d 214 (1982) (organization whose purpose was to ensure equal housing opportunity had standing to sue the owner of an apartment complex for racial steering, because the steering practices “frustrated [the organization's] efforts to [provide] counseling and referral services” to prospective tenants and required it to “devote significant resources to identify and counteract the defendant's racially discriminatory steering practices”); *Fair Hous. Council of San Fernando Valley v. Roommate.com, LLC*, 666 F.3d 1216, 1219 (9th Cir. 2012) (organization whose purpose was to combat illegal housing discrimination had standing

to sue for housing discrimination, because discrimination frustrated the organization's goal and thus forced it to spend resources on an education and outreach campaign to counteract the defendant's discriminatory conduct).

Here, Respondents presented evidence that harm to the organization will occur if Proposition 1 passed. Global Neighborhood will be required to “defer limited resources toward educating our employees and people we serve on the role of law enforcement and legal protections that exists when someone is unlawfully profiled” and it will “impact the willingness of refugees to participate in our programs because of greater fear of being visible in the community.” CP 269. Refugee Connections Spokane will similarly be required to divert limited resources toward educating the people it serves. CP 267.

As Appellant conceded, the Superior Court was correct in finding that Respondents had standing.

3. THE SUPERIOR COURT WAS CORRECT IN CONCLUDING THAT PROPOSITION 1 IS ADMINISTRATIVE AND NOT LEGISLATIVE IN NATURE.

“[A]dministrative matters, particularly local administrative matters, are not subject to initiative or referendum.” *Spokane Entrepreneurial Center*, 185 Wn.2d at 107 (quoting *Our Water-Our Choice!*, 170 Wn.2d at 8). Generally, a local government action is

administrative if it hinders a plan the local government has previously adopted. *Id.* Local initiatives that deal with administrative matters, including those like Proposition 1 that modify or restrict laws or policies already put in place by the legislative body, are outside the scope of the local initiative power and are invalid. *Id.* (local measure that would require any proposed zoning changes involving large developments to be approved by voters and was contrary to established water rights system was administrative); *Our Water-Our Choice*, 170 Wn.2d at 13-15 (initiatives concerned administrative matters because they attempted to interfere with or reverse the implementation of city water fluoridation program); *Ruano v. Spellman*, 81 Wn.2d 820, 823, 505 P.2d 447 (1973) (selection of a contractor and other conditions incident to a building contract for stadium); *Heider v. City of Seattle*, 100 Wn.2d 874, 876, 675 P.2d 597 (1984) (amending a comprehensive street name ordinance).

Spokane Municipal Code (“SMC”) section 3.40.040 and 3.40.050, which Proposition 1 purports to repeal and modify, codified existing administrative police procedures – Spokane Police Department Policy 402 and Policy 428. These Policies were adopted to reflect that the Police are “committed to providing law enforcement services to the community with due regard for the racial, cultural or other differences of those served. It is the policy of this department to provide law enforcement services and to

enforce the law equally, fairly and without discrimination toward any individual or group.” Police 402, Appendix B at 1. These rules clearly govern how City personnel conduct their jobs and do not otherwise create or limit substantive rights or benefits. Proposition 1, which undoes these rules and conditions future rules on a public vote, would thus change existing administrative policy, making the measure administrative in nature and outside the scope of the initiative power.

In order for an initiative to be considered valid, an initiative must be legislative in nature. Initiatives that are administrative in nature are beyond the scope of the initiative power. “Generally speaking, a local government action is administrative if it furthers (or hinders) a plan the local government or some power superior to it has previously adopted.” *Our Water, Our Choice*, 170 Wn.2d at 10. The Supreme Court described the question of whether an initiative is legislative or administrative as “whether the proposition is one to make new law or declare a new policy, or merely to carry out and execute law or policy already in existence.” *Ruano v.*, 81 Wash.2d at 823.

Courts have determined that decisions that require specialized training and experience or intimate knowledge of the fiscal or other affairs of government to make a rational choice may be properly characterized as administrative. See *McAlister v. City of Fairway*, 212 P.3d 184, 194

(2009); *see also* *Town of Whitehall v. Preece*, 956 P.2d 743, 749-50 (1998); *In re Initiative Petition No. 27 of City of Oklahoma City*, 2003 OK 104, ¶ 10 (2003) (“[W]ages, benefits, working conditions, and hiring and firing decisions require a comprehensive knowledge of a municipality's fiscal affairs, decisions regarding personnel matters are usually administrative.”). Administrative decisions often concern matters involving “specific data, facts and information necessary to arrive at a fair and accurate judgment upon the subject.” *City of Aurora v. Zwerdinger*, 571 P.2d 1074, 1077 (1977). Thus, decisions that require careful study and specialized expertise, as well as discretionary judgment.

Here, the issue of how we police requires specialized training and information. It is not a broad policy or program. The Court noted that Proposition 1 would alter administrative policies of the Spokane Police Department. Spokane Police Department Policy 428 and Policy 402 create strict prohibitions against racial or bias-based profiling.

Moreover, the authority to adopt administrative policies was conferred to the Police Department by the Spokane City Council via provisions of the Municipal Code. SMC 3.10.010 (A) provides, “The chief of police heads the police division.” SMC 3.10.010 (B)(1) provides, “The chief of police administers the Spokane police department and police reserve force and has the authority to make rules and issue orders for the

proper functioning of the division, consistent with the law, council policy, and the rules of civil service commission”.

Proposition 1 seeks to repeal these administrative policies. By definition, this is administrative – altering existing policies already directing our police and city staff – not legislative. Proposition 1 would regulate the minutia of how city police and staff implement their duties. It does not create new departments or broad programs.

The Superior Court correctly noted this – that Proposition 1 would alter police policies and that it would delete select words from the Municipal Code, eliminating solely the words “citizenship status” from the section addressing biased policing. This not a broad policy or program; it is the minutia of how police do their very difficult job -- a job that needs to be entrusted to both their leaders and to the Council, not to the people. Accordingly, the Superior Court was correct in finding Proposition 1 to be administrative.

Allowing police activities to be considered legislative and subject to the initiative power would add significant burden by allowing the general public a say in the minutia of how the police do their job. Would it be acceptable for an initiative to state that we will not enforce traffic laws or increased patrols in wealthy neighborhoods? No. Those are administrative decisions, as is whether we profile immigrants.

4. THE REPEAL AND RECODIFICATION OF SIMILAR, BUT SUBSTANTIALLY EXPANDED, PROVISIONS OF THE SPOKANE MUNICIPAL CODE RENDERED PROPOSITION 1 MOOT.

The Superior Court correctly concluded that Proposition 1 was outside the local initiative authority and was procedurally flawed because it was moot, given that the sections of the Municipal Code, which it sought to amend and to delete, SMC 3.01.040 and 3.01.050 no longer exist. CP 77, 88-89. These sections were repealed in their entirety over a year after signatures for Proposition 1 were verified and recodified with amendments to Title 18 of the Spokane Municipal Code. *Id.* This action by the City Council has made Proposition 1 moot because even if the initiative were to pass, there would be no extant sections to actually amend. *Id.*, see also Appendix A (detailed comparison of Proposition 1 and SMC Title 18).

Essentially, Respect Washington is requesting that this Court ignore the Council's action and that the Court rewrite Proposition 1 to reconcile it with a substantially altered city code.

City Council's action added additional terms and provisions to the newly codified Title 18, such as expanding the definition of biased-free policing to include immigration and refugee status and including national status in the section prohibiting collection of immigration information. CP 77, 88-89, *see also* Appendix A. Proposition 1 proposes to delete

“citizenship status” from the definition of “bias-based profiling” contained in former SMC 3.10.040. The new section retains “citizenship status” and adds “immigration status” and “refugee status.” If Proposition 1 proceeds and passes, the addition of the term “immigration status” will directly conflict with the proposed new section that would be enacted by Proposition 1 – section 3.10.060 – which prohibits the City from limiting “the ability of any city employee from collecting immigration information, communicating immigration status information and cooperating with federal law enforcement.” How would these be reconciled? This creates the type of absurd result that courts seek to avoid. *Fraternal Order of Eagles, Tenino Aerie No. 564 v. Grand Aerie of Fraternal Order of Eagles*, 148 Wash.2d 224, 239, 59 P.3d 655 (2002) (“We ‘avoid [a] literal reading of a statute’ only when doing so ‘would result in unlikely, absurd, or strained consequences.’”).

Citing *Amalgamated Transit Union Local 587 v. State*, 142 Wash. 2d 183, 11 P.3d 762 (2000), *Respect Washington* argues that the Court should look to voter intent to reconcile the impact of the subsequent repeal and amendment by the City Council. However, the Court used voter intent to resolve questions about ambiguous language in an adopted ordinance, not to decide conflicts that occurred as the result of subsequent action of the local legislative body. *Id.*

Respect Washington cites no authority to this Court that a local legislative body is prohibited from acting during the pendency (here — over two years) of an initiative process. Rather, there is precedent in finding an initiative moot because of subsequent changes. In *Yakima v. Huza*, 67 Wn.2d 351, 407 P.2d 815 (1965), the Yakima city council enacted two ordinances (Ordinances 300 and 308) establishing and increasing certain taxes. Huza filed an initiative seeking, in part, to repeal these two ordinances. Yakima sought a declaratory judgment that the initiative was constitutionally defective, but before this litigation could be decided, the city enacted a new ordinance (Ordinance 390), which extended the same taxes. Yakima then contended that the initiative was largely moot because the repeal of Ordinances 300 and 308 would have no real result, since the same taxes would continue because of Ordinance 390. The Court agreed with Yakima and held that the initiative was moot because the initiative targeted sections of the code that were no longer valid and the passing would therefore accomplish nothing — “In other words, the initiative would repeal no present taxes. Hence, the question whether the initiative should be submitted to the vote of the people is therefore moot.” *Huza*, 37 Wn.2d at 358.

Respect Washington asserts that the decision of the Court in *Citizens for Financially Responsible Government v. Spokane* limits the

application of the *Huza* decision. 99 Wn.2d 339, 662 P.2d 845 (1983). However, the Court recognized that the subsequent action repealed “the ordinances under attack. Thus, the amendment eradicated the subject of the referendum.” *Id.* at 350. The Court went on to state that they considered *Huza* only on the facts and did not reconsider its holding. *Id.* at 351. In dicta, the Court suggested that “a repealing and reenacting procedure by a legislative body should not be allowed to frustrate the initiative/referendum process.” *Id.* at 350-51.

Proposition 1 is similar to the *Huza* case. The Spokane City Council passed Ordinance No. 35485, which removed SMC 3.01.040 and 3.010.050 in their entirety and re-codified and amended those sections with substantial changes in a different, and expanded, section of the Spokane Code. Moreover, there is no evidence that the repeal and recodification and amendment amounted to any deliberate effort. In fact, contemporaneous statements of City Council members indicate that the Council was interested in “continued support of justice for all citizens.” CP 117. The ordinance itself illustrates the purpose of “reaffirm[ing] [Spokane’s] commitment to the protection of the human rights of all those living in Spokane” and “recognize[ing] the utility of grouping all provisions which contain and describe the human rights protections of the

Spokane Municipal Code in the same title.” CP 72. There is no evidence of any intent to circumvent any initiative rights.

Appellant’s argument that Proposition 1 should proceed regardless of the action of the City Council would force this Court to determine which provisions of the newly enacted Title 18 would be impacted by the enactment of Proposition 1 – for example, would Proposition 1 strike the words “citizenship status” from the definition of bias-profiling, but leave the recently enacted terms “immigration status” and “refugee status”? Or would the Court substitute ballot language with its own?

Certainly, Respect Washington is not without a remedy – it could file a new initiative, it could challenge the enactment of the Title 18, or it could have filed a referendum to halt the adoption of Title 18. The remedy is not to allow a moot initiative to go to the voters.

The Superior Court was correct in finding it was not in a position to guess the intent of the petition signatories and in finding that Proposition 1 was moot.

5. APPELLANT FAILED TO MEET ITS BURDEN THAT THE DOCTRINE OF LACHES APPLIES TO THIS MATTER.

A defendant who relies upon a laches defense bears the burden to prove: (1) knowledge or reasonable opportunity to discover on the part of a potential plaintiff that he has a cause of

action against a defendant; (2) an unreasonable delay by the plaintiff in commencing that cause of action; and (3) damage to the defendant resulting from the unreasonable delay. *King Cty. v. Taxpayers of King Cty.*, 133 Wash. 2d 584, 642, 949 P.2d 1260 (1997). “None of these elements alone raises the defense of laches. Laches is an implied waiver arising from knowledge of existing conditions and acquiescence in them.” *Buell v. City of Bremerton*, 80 Wash.2d 518, 522, 495 P.2d 1358 (1972). “Absent unusual circumstances, the doctrine of laches should not be invoked to bar an action short of the applicable statute of limitation.” *In re Marriage of Capetillo*, 85 Wash. App. 311, 317, 932 P.2d 691 (1997).

Respect Washington has failed to show that it has met any of these burdens. First, there is no proof presented that there was knowledge or opportunity to proceed with an action or that an unreasonable delay occurred by Respondents in bringing this action. Respondents brought this action about a year after the matter was approved for the ballot and about one month after City Council repealed the provisions identified in the plain language of Proposition 1 (one of the substantive bases for Respondents’ challenge). Indeed, Respondents proceeded expeditiously toward

filing for its declaratory judgment order after the case was filed and preliminary matters were resolved (including the failure of Appellant to file an answer).

In finding that laches applies, courts find a delay is unreasonable when the delay in litigation is a matter of years (or decades), not months. *See, e.g., Davidson v. State*, 116 Wash.2d 13, 27, 802 P.2d 1374 (1991) (claim barred by laches after it had been delayed for more than 60 years); *In re Marriage of Dicus*, 110 Wash. App. 347, 357, 40 P.3d 1185 (2002) (13 year delay).

Second, the only harm to itself that Respect Washington has identified is that it would have to wait one election cycle to place their initiative on the ballot. However, even with an order from this Court, Appellants would have to wait until the next election cycle.

At the Superior Court, the “injury” that Respect Washington claimed to suffer was “additional time spent and money on informing voters of an election at a later time.” CP 163-63. However, evidence indicated that Respect Washington had not spent any money or expended any effort to run any campaign to try to seek passage of this measure. CP 246-47.

Appellant has not demonstrated “unusual circumstances”

justifying application of laches. In fact, there is the risk of substantial harm to the public if this matter is not afforded the time for judicial review. Elections cost money. There will be costs to City taxpayers to place the Proposition on the ballot and to hold an election. Certainly, a challenge would only be delayed until after the time and expense of an election.

Courts have held that jurisdictions should not be required to spend taxpayer dollars on elections for invalid propositions. *See, e.g., Philadelphia II v. Gregoire*, 128 Wn.2d 707, 718, 911 P.2d 389 (1996) (noting pre-election review of statewide initiative was proper “to prevent public expense on measures that are not authorized by the constitution”); *Huza*, 67 Wn.2d at 360 (“We are holding only that 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 funds uselessly.”); *Wallin*, 174 Wn. App. at 782 (“We have recognized that requiring a city to place an invalid initiative on the ballot would result in an undue financial burden on local government.”); *Save Our Park v. Hordyk*, 71 Wn. App. 84, 92, 856 P.2d 734 (1993) (recognizing “public funds should not be expended needlessly to place an initiative that violates the county code on the ballot.”)

G. CONCLUSION.

For the reasons set forth above, Respondents request that this Court affirm the findings of the Superior Court.

Respectfully submitted this 11th day of April, 2018.

A handwritten signature in black ink, appearing to read 'RIS', with a long horizontal stroke extending to the right.

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Appendix A

Changes Proposed by Proposition 1

3.10.040 C. Bias-based profiling is defined as an “act of a member of the Spokane Police Department or a law enforcement officer commissioned by the Spokane Police Department that relies on actual or perceived race, national origin, color, creed, age, (~~citizenship status~~) gender, sexual orientation, gender identity, disability, socio-economic status, or housing status or any characteristic of protected classes under federal, state or local laws as the determinative factor 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.

~~(3.10.050 Immigrant Status Information~~

~~A. 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.~~

~~B. Spokane Police Department officers shall have reasonable suspicion to believe a person has been previously deported from the United States, is again present in the United States, and is committed or has committed a felony criminal law violation before inquiring into the immigration status of an individual.~~

~~C. The Spokane Police Department shall not investigate, arrest, or detain an individual based solely on immigration status.~~

~~D. The Spokane Police Department shall maintain policies consistent with this section.)~~

3.10.060 Respect for Law: The City of Spokane shall not limit the ability of any city employee from collecting immigration status information, communicating immigration status information and cooperating with federal law enforcement authorities unless such regulation is approved by a majority of the city council and a majority vote of the people at the next general election.

March 27, 2017 Action of City Council

18.01.030 U. “Profiling” means 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.

18.07.020 Immigration Status Information

A. Unless required by law or court order, no officer, agent, or employee of the City of Spokane shall inquire into the immigration or citizenship status of any person, or engage in activities designed to ascertain the immigration status of any person.

B. Spokane Police officers may not inquire into the immigration or citizenship status of an individual unless they have reasonable suspicion to believe a person: (i) has been previously deported from the United States, (ii) is again present in the United States, and (iii) is committing or has committed a felony criminal law violation.

C. The Spokane Police Department shall not investigate, arrest, or detain an individual based solely on immigration or citizenship status.

D. The Spokane Police Department shall maintain policies consistent with this section.

18.07.010 Bias-Free Policing

A. The City of Spokane is committed to providing services and enforcing laws in a professional, nondiscriminatory, fair and equitable manner.

B. The Spokane Police Department, its officers, employees, and all officers commissioned under the Spokane Police Department are prohibited from engaging in profiling as the term is defined in this SMC 18.01.030(U).

C. The Spokane Police Department shall maintain policies consistent with this section.

Appendix B

Bias-Based Policing

402.1 PURPOSE AND SCOPE

This policy provides guidance to department members and establishes appropriate controls to ensure that employees of the Spokane Police Department do not engage in racial- or bias-based profiling or violate any related laws while serving the community.

402.1.1 DEFINITION

Definitions related to this policy include:

Racial- or bias-based profiling - An inappropriate reliance on factors such as race, ethnicity, national origin, religion, sex, sexual orientation, economic status, age, cultural group, disability or affiliation with any other similar identifiable group as a factor in deciding whether to take law enforcement action or to provide service.

402.2 POLICY

The Spokane Police Department is committed to providing law enforcement services to the community with due regard for the racial, cultural or other differences of those served. It is the policy of this department to provide law enforcement services and to enforce the law equally, fairly and without discrimination toward any individual or group.

Race, ethnicity or nationality, religion, sex, sexual orientation, economic status, age, cultural group, disability or affiliation with any other similar identifiable group shall not be used as the basis for providing differing levels of law enforcement service or the enforcement of the law.

402.3 RACIAL- OR BIAS-BASED PROFILING PROHIBITED

Racial- or bias-based profiling is strictly prohibited. However, nothing in this policy is intended to prohibit an officer from considering factors such as race or ethnicity in combination with other legitimate factors to establish reasonable suspicion or probable cause (e.g., suspect description is limited to a specific race or group).

402.3.1 OTHER PROFILING PROHIBITED

The Spokane Police Department also condemns the illegal use of an individual or group's attire, appearance or mode of transportation, including the fact that an individual rides a motorcycle or wears motorcycle-related paraphernalia, as a factor in deciding to stop and question, take enforcement action, arrest or search a person or vehicle, with or without a legal basis under the United States Constitution or Washington State Constitution (RCW 43.101.410).

402.4 MEMBER RESPONSIBILITY

Every member of this department shall perform his/her duties in a fair and objective manner and is responsible for promptly reporting any known instances of racial- or bias-based profiling to a supervisor.

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Bias-Based Policing

to the Chief of Police. This report should not contain any identifying information regarding any specific complaint, citizen or officers. It should be reviewed by the Chief of Police to identify any changes in training or operations that should be made to improve service.

Supervisors shall review the annual report submitted to the Washington Association of Chiefs of Police and discuss the results with those they are assigned to supervise.

402.8 TRAINING

Each member of this department will be required to complete an approved refresher training course every five years, or sooner if deemed necessary, in order to keep current with changing community trends (RCW 43.101.410(c)).

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Bias-Based Policing

402.4.1 REASON FOR DETENTION

Officers detaining a person shall be prepared to articulate sufficient reasonable suspicion to justify the detention, independent of the individual's membership in a protected class.

To the extent that written documentation would otherwise be completed (e.g., arrest report, Field Interview card), the involved officer should include those facts giving rise to the officer's reasonable suspicion or probable cause for the detention, as applicable.

Nothing in this policy shall require any officer to document a contact that would not otherwise require reporting.

402.4.2 REPORTING TRAFFIC STOPS

Each time an officer makes a traffic stop, the officer shall report any demographic information required by the Department (RCW 43.101.410).

402.5 SUPERVISOR RESPONSIBILITY

Supervisors shall monitor those individuals under their command for any behavior that may conflict with the purpose of this policy and shall handle any alleged or observed violation of this policy in accordance with the Personnel Complaints Policy.

- (a) Supervisors should discuss any issues with the involved officer and his/her supervisor in a timely manner.
- (b) Supervisors should periodically review MAV recordings, MDD data and any other available resource used to document contact between officers and the public to ensure compliance with this policy.
 - 1. Supervisors should document these periodic reviews.
 - 2. Recordings that capture a potential instance of racial- or bias-based profiling should be appropriately retained for administrative investigation purposes.
- (c) Supervisors shall initiate investigations of any actual or alleged violations of this policy.
- (d) Supervisors should ensure that no retaliatory action is taken against any member of this department who discloses information concerning racial- or bias-based profiling.

402.6 STATE REPORTING

Subject to any fiscal constraints, the Patrol Bureau Commander should review available data related to traffic stops, including demographic data, existing procedures, practices and training, as well as complaints. The data should be analyzed for any patterns or other possible indicators of racial- or bias-based profiling and included in an annual report for the Washington Association of Sheriffs and Chiefs of Police (RCW 43.101.410(3)).

402.7 ADMINISTRATION

Each year, the Patrol Bureau Commander shall review the efforts of the Department to prevent racial- or bias-based profiling and submit an overview, including public concerns and complaints,

Immigration Violations

428.1 PURPOSE AND SCOPE

The immigration status of individuals alone is generally not a matter for police action. It is incumbent upon all employees of this department to make a personal commitment to equal enforcement of the law and equal service to the public regardless of immigration status. Confidence in this commitment will increase the effectiveness of the Department in protecting and serving the entire community.

428.2 DEPARTMENT POLICY

The U.S. Immigration and Customs Enforcement (ICE) has primary jurisdiction for enforcement of the provisions of Title 8, United States Code (U.S.C.) dealing with illegal entry. When assisting ICE at its specific request, or when suspected criminal violations are discovered as a result of inquiry or investigation based on probable cause originating from activities other than the isolated violations of Title 8, U.S.C., §§ 1304, 1324, 1325 and 1326, this department may assist in the enforcement of federal immigration laws.

428.3 PROCEDURES FOR IMMIGRATION COMPLAINTS

Persons wishing to report immigration violations should be referred to the local office of the U.S. Immigration and Customs Enforcement (ICE). The Employer Sanction Unit of ICE has primary jurisdiction for enforcement of Title 8, U.S.C.

428.3.1 BASIS FOR CONTACT

Unless immigration status is relevant to another criminal offense or investigation (e.g., harboring, smuggling, terrorism), the fact that an individual is suspected of being an undocumented alien shall not be the sole basis for contact, detention or arrest.

428.3.2 SWEEPS

The Spokane Police Department does not independently conduct sweeps or other concentrated efforts to detain suspected undocumented aliens.

When enforcement efforts are increased in a particular area, equal consideration should be given to all suspected violations and not just those affecting a particular race, ethnicity, age, gender, sexual orientation, religion, socioeconomic status or other group.

The disposition of each contact (e.g., warning, citation, arrest), while discretionary in each case, should not be affected by such factors as race, ethnicity, age, gender, sexual orientation, religion or socioeconomic status.

428.3.3 ICE REQUEST FOR ASSISTANCE

If a specific request is made by ICE or any other federal agency, this department will provide available support services, such as traffic control or peacekeeping efforts, during the federal operation.

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Immigration Violations

Members of this department should not participate in such federal operations as part of any detention team unless it is in direct response to a request for assistance on a temporary basis or for officer safety. Any detention by a member of this department should be based upon the reasonable belief that an individual is involved in criminal activity.

428.3.4 IDENTIFICATION

Whenever any individual is reasonably suspected of a criminal violation (infraction, misdemeanor, or felony), the investigating officer should take reasonable steps to determine the person's identity through valid identification or other reliable sources.

If an individual would have otherwise been released for an infraction or misdemeanor on a citation, the person should be taken to the station and given a reasonable opportunity to verify his/her true identity (e.g., telephone calls). If the person's identity is thereafter reasonably established, the original citation release should be completed without consideration of immigration status.

428.3.5 ARREST

If the officer intends to take enforcement action and the individual is unable to reasonably establish his/her true identity, the officer may take the person into custody on the suspected criminal violation (RCW 10.31.100). A field supervisor shall approve all such arrests.

428.3.6 BOOKING

If the officer is unable to reasonably establish an arrestee's identity, the individual may, upon approval of a supervisor, be booked into jail for the suspected criminal violation and held for bail.

Any person detained for an infraction pursuant to the authority of RCW 46.61.021, may be detained, upon approval of a supervisor, for a reasonable period for the purpose of determining the person's true identity.

428.3.7 NOTIFICATION OF IMMIGRATION AND CUSTOMS ENFORCEMENT

If an officer believes that an individual taken into custody for a felony is also an undocumented alien, and after he/she is formally charged and there is no intention to transport to the county jail, ICE shall be informed by the arresting officer so that they may consider placing an immigration hold on the individual.

Whenever an officer has reason to believe that any person arrested for an offense other than a felony may not be a citizen of the United States, and the individual is not going to be booked into the county jail, the arresting officer may cause ICE to be notified for consideration of an immigration hold. In making the determination whether to notify ICE in such circumstances, the officer should, in consultation with a supervisor, consider the totality of circumstances of each case, including, but not limited to:

- (a) Seriousness of the offense.
- (b) Community safety.
- (c) Potential burden on ICE.

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- (d) Impact on the immigrant community.

Generally, officers will not need to notify ICE when booking arrestees at the county jail. Immigration officials routinely interview suspected undocumented aliens who are booked into the county jail on criminal charges and notification will be handled according to jail operation procedures.

428.4 CONSIDERATIONS PRIOR TO REPORTING TO ICE

The Spokane Police Department is concerned for the safety of local citizens and thus detection of criminal behavior is of primary interest in dealing with any person. The decision to arrest shall be based upon those factors which establish probable cause and not on arbitrary aspects. Race, ethnicity, age, gender, sexual orientation, religion, and socioeconomic status alone are of no bearing on the decision to arrest.

All individuals, regardless of their immigration status, must feel secure that contacting law enforcement will not make them vulnerable to deportation. Members should not attempt to determine the immigration status of crime victims and witnesses or take enforcement action against them absent exigent circumstances or reasonable cause to believe that a crime victim or witness is involved in violating criminal laws. Generally, if an officer suspects that a victim or witness is an undocumented immigrant, the officer need not report the person to ICE unless circumstances indicate such reporting is reasonably necessary.

Nothing in this policy is intended to restrict officers from exchanging legitimate law enforcement information with any other federal, state or local government entity (Title 8 U.S.C. §1373 and 8 U.S.C. § 1644).

428.4.1 U-VISA/T-VISA NONIMMIGRANT STATUS

Under certain circumstances, federal law allows temporary immigration benefits to victims and witnesses of certain qualifying crimes (8 USC § 1101(a)(15)(U and T)). A declaration/certification for a U-Visa/T-Visa from the U.S. Citizenship and Immigration Services must be completed on the appropriate U.S. Department of Homeland Security (DHS) Form I-918 or I-914 by law enforcement and must include information on how the individual can assist in a criminal investigation or prosecution in order for a U-Visa/T-Visa to be issued.

Any request for assistance in applying for U-Visa/T-Visa status should be forwarded in a timely manner to the Investigation Bureau sergeant assigned to supervise the handling of any related case. The Investigation Bureau sergeant should do the following:

- (a) Consult with the assigned detective to determine the current status of any related case and whether further documentation is warranted.
- (b) Review the instructions for completing the declaration/certification if necessary. Instructions for completing Forms I-918/I-914 can be found on the U.S. DHS web site at <http://www.uscis.gov/portal/site/uscis>.

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- (c) Contact the appropriate prosecutor assigned to the case, if applicable, to ensure the declaration/certification has not already been completed and whether a declaration/certification is warranted.
- (d) Address the request and complete the declaration/certification, if appropriate, in a timely manner.
- (e) Ensure that any decision to complete or not complete the form is documented in the case file and forwarded to the appropriate prosecutor. Include a copy of any completed certification in the case file.

DECLARATION OF SERVICE

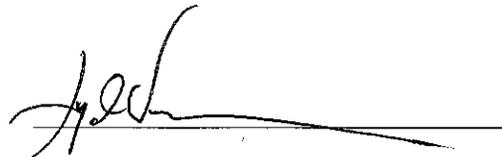
I, Lydia Newell, declare, under penalty of perjury, that on the 11th day of April, 2018, I caused a true and correct copy of the foregoing “Brief of Respondents, Global Neighborhood, Et Al.” to be electronically filed with the Washington State Court of Appeals, Division III, which will send notification of such filing to the following:

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