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No. 80430-3 CLERK

(King County Superior Court No. 07-2-16119-8 SEA)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

FUTUREWISE and SERVICE EMPLOYEES INTERNATIONAL
HEALTHCARE 775NW,

Appellants,

SAM REED, Secretary of State
of the State of Washington

Respondent.

**BRIEF OF AMICI CURIAE VOTERS WANT MORE CHOICES, TIM
D. EYMAN, M. J. (MIKE) FAGAN, AND LEO J. (JACK) FAGAN**

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IDENTITY AND INTEREST OF AMICI

Amici Curiae, Voters Want More Choices, Tim D. Eyman, M. J. (Mike) Fagan, and Leo J. (Jack) Fagan, are the sponsors of Initiative 960. Amici have expended considerable time and effort drafting Initiative 960, engaging the public in persuasive dialogue regarding its merits, and successfully securing the requisite signatures to ensure its appearance on the November 2007 General Election ballot. Inasmuch as Appellants unabashedly and expressly request this Court to hold that Initiative 960 be “prohibited from placement on the ballot and/or invalidated,” Appellants’ Opening Br. at 45, Amici will be profoundly affected if Appellants receive their requested relief. Finally, as sponsors of Initiative 960, Amici are uniquely positioned to refute Appellants’ mischaracterizations regarding Initiative 960 and its proposed changes to existing state law.

INTRODUCTION

A lawsuit to strike an initiative or referendum from a ballot is one of the deadliest weapons in the arsenal of the measure’s political opponents. With increasing frequency, opponents of ballot proposals are finding the weapon irresistible and are suing to stop elections... [I]t is generally improper for courts to adjudicate pre-election challenges to a measure’s substantive validity.

James D. Gordon III & David B. Magleby, *Pre-Election Judicial Review of Initiatives and Referendums*, 64 Notre Dame L. Rev. 298, 298 (1989).

This suit is nothing more than an invitation for this Court to perform Appellants' political bidding. However, neither binding jurisprudence nor its accompanying public policy support Appellants' extraordinary request to enjoin Initiative 960 from appearing on the November 2007 General Election ballot. Appellants' invitation is one that this Court should justifiably refuse.

At its most fundamental level, Appellants' suit is also a political tactic to detract Amici from their campaign and to encourage Amici to expend funds for purposes other than informing the public of Initiative 960's virtues. Accordingly, Amici justifiably resist the invitation to brief all issues raised in this appeal, and instead rely on the briefing provided by Defendant Secretary of State Reed, except as supplemented herein.¹ Specifically, Amici augment the Secretary's arguments that (1) this suit is not justiciable and Appellants lack standing, (2) relevant jurisprudence and public policy disfavor substantive pre-election review of initiatives, and (3) even if considered on their merits, Appellants' contentions must fail.

STATEMENT OF THE CASE

On May 17, 2007, Appellants commenced this action in King County Superior Court seeking an order excluding proposed Initiative 960 from the November 6, 2007 General Election ballot. At that time, Amici were fully

¹ In accordance with RAP 10.3(e), Amici have read all briefs on file with the Court and have attempted to avoid repetition of those matters sufficiently briefed by the parties.

consumed in the difficult process of obtaining the requisite 224,880 valid voter signatures by the constitutionally established deadline of July 6, 2007.² Although Amici are sponsors of Initiative 960, Amici were not named as defendants in this action.

On June 28, 2007, Amici filed a motion for leave to file a brief of amici curiae along with a proposed brief, which was ultimately granted. CP 127-38. Appellants subsequently filed a response to that brief. CP 139-167. On July 13, 2007, the trial court dutifully followed binding jurisprudence and dismissed Appellants' case. CP 168-170. A few days later, on July 19, 2007, the Secretary of State confirmed that Initiative 960 had sufficient valid signatures to qualify for the November 2007 General Election ballot. This appeal followed.

Amici respectfully suggest that Appellants' preferred tactic before the trial court was to distort and mischaracterize Initiative 960's proposed changes to existing state law.³ Such mischaracterizations continue here on

² Pursuant to Art. II, § 1 of the State Constitution, "[i]nitiative petitions shall be filed with the secretary of state not less than four months before the election at which they are to be voted upon...".

³ The Secretary of State also misapprehends an aspect of Initiative 960. The Secretary states that with respect to the deletion of the current reference to "revenue-neutral tax shifts," Initiative 960 "could be read as somewhat narrowing the scope of the supermajority requirement." Br. of Resp't, at 28 n.11. Revenue-neutral tax shifts necessarily require the increase of one tax with a proportionate decrease in a different tax. Inasmuch as the supermajority voting requirement applies to tax increases, Amici note the obvious that any tax increase, even one which is part of a revenue-neutral tax

appeal. Amici agree with the Secretary of State's observation that "[q]uestions about the meaning or construction of I-960...are not properly before the Court in this case." Br. of Resp't at 29 n.13. Nonetheless, Amici must clarify one of Appellants' more egregious and oft-repeated mischaracterizations of Initiative 960.

Specifically, Appellants consistently mischaracterize Initiative 960 as imposing a new two-thirds supermajority voting requirement for legislation that increases taxes. *See, e.g.*, Appellants' Opening Br. at 2, 31. Yet, existing state law already provides for a two-thirds vote requirement for tax increases. *See* RCW 43.135.035(1). The trial court correctly exposed Appellants' deliberate mischaracterization of Initiative 960:

It's been argued to me on this motion that Initiative 960 also is a new in enacting a two-thirds super majority requirement within the State legislature. However, **it's clear in reviewing the text of Initiative 960 that the language discussed is already part of existing Washington State law.**

Trans. (July 13, 2007) at 4 (emphasis added). The Secretary of State also agrees with this observation. *See* Br. of Resp't at 27-29. Initiative 960 does not require two-thirds legislative approval for tax increases because that is existing law.

shift, would be subject to the supermajority requirement. The resolution of this difference in interpretation, however, is better left for a later day.

ANALYSIS

I.

THIS ACTION IS NOT JUSTICIABLE AND APPELLANTS LACK STANDING

Appellants' Complaint, CP 1-82, expressly alleged standing exclusively under the Uniform Declaratory Judgments Act ("UDJA"). However, "[t]o proceed under the UDJA, a person must present a justiciable controversy and establish standing." *Nelson v. Appleway Chevrolet, Inc.*, 129 Wn. App. 927, 938, 121 P.3d 95 (2005). In the context of the UDJA, "the requirement of standing tends to overlap justiciability requirements." *To-Ro Trade Shows v. Collins*, 144 Wn.2d 403, 411 n.5, 27 P.3d 1149 (2001).

Under the UDJA, a justiciable controversy is one that is:

- (1) an actual, present and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement.
- (2) between parties having genuine and opposing interests,
- (3) which involves interests that must be direct and substantial, rather than potential, theoretical, abstract or academic, and
- (4) a judicial determination of which will be final and conclusive.

Id. at 411. See also *Coppernoll v. Reed*, 155 Wn.2d 290, 300, 119 P.3d 318 (2005). Similarly, standing is a distinct and personal interest in an issue which is not contingent or a mere expectancy, and more than an abstract interest in having others, such as Secretary Reed, comply with Appellants' view of the law. See *Vovos v. Grant*, 87 Wn.2d 697, 699, 555 P.2d 1343

(1976); *Primark, Inc. v. Burien Gardens*, 63 Wn. App. 900, 823 P.2d 1116 (1992); *Paris American Corp. v. McCausland*, 52 Wn. App. 434, 438, 759 P.2d 1210 (1988).

An analysis of the justiciability and standing doctrines reveals that Appellants have not, and simply cannot, meet these legal requirements. Such an analysis also reveals why this Court has historically declined to engage in substantive pre-election review of initiatives.

The Secretary of State's brief addresses some of the reasons why the instant case does not present a justiciable controversy, including the observation that Initiative 960 may never be enacted and the absence of truly adverse parties. *See* Br. of Resp't at 8-10. Amici agree with these observations and do not repeat them here. Inasmuch as there is no guarantee that Initiative 960 will be enacted by the voters, it is evident that this suit is the epitome of a "possible, dormant, hypothetical, speculative, or moot disagreement," and that any "harm" suffered by Appellants is merely "potential, theoretical, abstract or academic" at best. Clearly, this case does not present a justiciable controversy. However, in addition to a lack of justiciability, Appellants also lack standing.

Unlike the Secretary of State, however, Amici are unwilling to relegate Appellants' lack of standing to a mere footnote. *See* Br. of Resp't at 10, n.4 (correctly recognizing that "Appellants here have failed to allege

concrete harm to them, much less concrete harm caused by the mere act of proposing the initiative.”). Appellants cannot demonstrate standing.

A. Appellants’ Assertion of Standing is Based Upon the Legally Inadequate Premise that “if [Initiative 960] Proceeded to the Ballot, [They] Would Be Forced to Try to Defeat It”

In response to Amici’s argument below regarding a lack of standing, Appellants submitted two affidavits to clarify their alleged standing. *See* CP __ (Declaration of Adam Glickman) and CP __ (Declaration of Aaron Ostrom, Executive Director of Plaintiff Futurewise)(attached as Appendices A and B, respectively).⁴ Judge Schaffer reviewed these declarations. *See* CP 169; Trans. (July 13, 2007) at 11. Accordingly, a finding of standing is implicit in the trial court’s decision to dismiss this action on its merits. *See Dick Enter., Inc. v. Metro./King County*, 83 Wn. App. 566, 571, 922 P.2d 184 (1996) (recognizing that “the existence of standing [is] implicit in [a] disposition on the merits.”).

Appellate courts review issues of standing *de novo*. *See, e.g., Wolstein v. Yorkshire Ins. Co., Ltd.*, 97 Wn. App. 201, 206, 985 P.2d 400 (1999). It is well established in this State, “[i]f a plaintiff lacks standing to

⁴ Although Appellants’ Opening Brief cited to these declarations, the citations did not include page numbers for the clerk’s papers. *See* Appellants’ Opening Br. at 6 n.6. Reviewing the trial court docket reveals that these declarations were not filed individually with the trial court clerk, but were likely attached instead as appendices to a brief. To resolve any confusion, Amici have appended these declarations to this brief.

bring a suit, courts lack jurisdiction to consider it.” *High Tide Seafoods v. State*, 106 Wn.2d 695, 701-02, 725 P.2d 411 (1986).

In deciding whether a plaintiff has standing, courts have looked at whether the plaintiff has a special or peculiar interest which has been aggrieved any differently in kind or degree than what is experienced by the general public. *See Ocean Spray Cranberries, Inc. v. Doyle*, 81 Wn.2d 146, 154, 500 P.2d 79 (1972); *State ex rel. Gebhardt v. Superior Court*, 15 Wn.2d 673, 680, 131 P.2d 943 (1942).

Appellants’ primary justifications to establish standing are unpersuasive. First, Appellants assert that their respective organization’s goals could be frustrated if government funds were expended on an election for an otherwise unlawful initiative, which is akin to taxpayer standing. *See* App. A and B. However, there has been no showing by Appellants that they have made any request to the Attorney General for representation, let alone had such a request denied, before proceeding in this matter. *See, e.g., Farris v. Munro*, 99 Wn.2d 326, 329, 662 P.2d 821 (1983). Appellants also assert that they are “opposed to I-960 and, if it proceeded to the ballot, [they] would be forced to try to defeat it.” App. A and B. These alleged interests are legally insufficient to establish standing.

As previously indicated, any interests Appellants might have with respect to Initiative 960 are simply unknown at this time. There is no guarantee that Initiative 960 will receive voter approval. In this regard, it has

been stated that “[t]here being before us no statute, or initiative measure enacted by the people, the proposed measure presents no justiciable controversy and we, therefore, do not pass upon its validity.” *State ex rel. O’Connell v. Kramer*, 73 Wn.2d 85, 436 P.2d 786 (1968). *See also In re Initiative Petition No. 349, State Question No. 642*, 838 P.2d 1, 21 (Okla. 1992) (concurrency) (“[n]o showing of actual or threatened injury can be made [by] a measure that is not law.”).

In addition, Appellants’ interest in not allowing Initiative 960 to be placed on the ballot is completely abstract. Although many people may wish that particular matters were not on the ballot, the “injury” in having an opportunity to vote on Initiative 960 is imperceptible and one that is not “special or peculiar” to Appellants. Rather, disagreements regarding public policy are the natural product of our free and collective society.

Appellants also claim an interest in avoiding the expenditure of funds to defeat Initiative 960. *See* App. A and B. Yet, nothing requires them to do so. While such an interest may be unique to Appellants, it is not an interest which the Court should recognize as legally sufficient to confer standing. If the mere choice to oppose the enactment of a law was sufficient to confer standing, the standing requirement itself would be rendered a nullity. Lobbyists would become litigators and legislative processes would likely come to a halt if anyone opposed to a potential law could simply sue on the

basis that they do not want to go through the trouble to oppose it. The Court should deny Appellants the relief they seek because they lack standing.

II.

PUBLIC POLICY, AS EMBODIED IN THIS COURT'S JURISPRUDENCE, FAVORS THE PREEMINENT CONSTITUTIONAL RIGHT OF INITIATIVE

Appellants ask this Court to take an unprecedented step in prohibiting the public from voting on a measure that has already gathered sufficient signatures to be placed on the November 2007 General Election ballot. They ask the Court to take this step based on their arguments that the measure is (in their view) both unconstitutional and beyond the scope of the initiative power.

The Secretary of State sufficiently and convincingly demonstrated in its brief that Appellants' claims are nothing more than constitutional challenges asserted under the pretext of a subject matter challenge. Amici concur that Appellants' claims parallel those of *Coppernoll*, 155 Wn.2d 290 (2005), to such a degree as to be virtually indistinguishable. Under the unanimous *Coppernoll* decision, the right of initiative must prevail, and Appellants' claims must fail.

A. Pre-election Substantive Review of Initiative Petitions Represents an Unconstitutional Restraint on Political Speech

Appellants' claims fail to recognize that the campaign for Initiative 960 is a valid expression of political speech, and that such expression is still

fulfilled even if Initiative 960 is not enacted, or even if enacted and subsequently invalidated by judicial decree.

In *Coppernoll*, this Court expressly recognized the First Amendment concerns raised by substantive pre-election review. Specifically, this Court used Initiative 695, the measure at issue in *Amalgamated Transit Union*, 142 Wn.2d 183, 11 P.3d 762 (2000), to illustrate this critical principle:

Because ballot measures are often used to express popular will and to send a message to elected representatives (regardless of potential subsequent invalidation of the measure), substantive preelection review may also unduly infringe on free speech values. ... For example, after voter passage of Initiative 695 requiring \$30 vehicle license tabs, it was ruled invalid by the trial court. A nearly identical measure was quickly passed by the legislature and signed by the governor before an appeal could be heard.

Coppernoll, 155 Wn.2d at 298.

In a closely analogous context, the U.S. Supreme Court has also recognized that certain aspects the initiative process come within the ambit of political speech:

Appellees seek by petition to achieve political change in Colorado; their right freely to engage in discussions concerning the need for that change is guarded by the First Amendment.

The circulation of an initiative petition of necessity involves both the expression of a desire for political change and a discussion of the merits of the proposed change... [T]he circulation of a petition involves the type of interactive communication concerning political change that is appropriately described as “core political speech.”

Meyer v. Grant, 486 U.S. 414, 421-22, 108 S.Ct. 1886, 100 L.Ed.2d 425 (1988).

Clearly, the relief Appellants seek is foreclosed by the historical protection of the right of people to vote in the initiative process. Here, the trial court similarly recognized the sanctity of the free speech rights that Appellants now seek to suppress. *See* Trans. (July 13, 2007) at 8.

Ultimately, the campaign for Initiative 960 may have less to do with the initiative itself than it does the right of the people to discuss, debate, and vote on the issues contained therein. Appellants seek to block the voters from discussing or considering the policies, provisions, and principles embodied in Initiative 960. Initiative campaigns are not just about passing laws, they are about informing and involving the people in a discussion over public policy. They are the preferred vehicle for accomplishing what lawmakers may be hesitant, or simply unwilling, to accomplish. *See* M. Sean Radcliffe, *Pre-Election Judicial Review of Initiative Petitions: An Unreasonable Limitation on Political Speech*, 30 Tulsa L. J. 425, 425 (1994).

Initiatives allow the voters to more directly convey their views on issues with much less room for misinterpretation. Initiatives that qualify for the ballot, even those that are ultimately rejected by the voters, serve the people and our system of government in many positive ways. Just as the Legislature considers bills that may or may not be signed into law by the

Governor, so too, the people must be free to discuss and debate initiatives and their policies even if the initiative never becomes law.

B. Appellants' Argument That Initiative 960 Exceeds the Legislative Power Is Directly Foreclosed By this Court's Unanimous *Coppernoll* Decision and Its Progeny

Just over two years ago, this Court issued its unanimous, controlling, and well-reasoned decision in *Coppernoll v. Reed*, 155 Wn.2d 290 (2005). Appellants expend countless pages of nuanced argument in an unpersuasive attempt to distinguish *Coppernoll*. As demonstrated by the Secretary of State, the unanimous *Coppernoll* decision was not an aberration by this Court. In fact, in the short period of time since its issuance, *Coppernoll* has also become a model for other state supreme courts that have expressly relied upon it and adopted this Court's reasoning. See *Stewart v. Advanced Gaming Tech., Inc.*, 723 N.W.2d 65, 77-78 (Neb. 2006); *Herbst Gaming, Inc. v. Heller*, 141 P.3d 1224, 1228-29 (Nev. 2006). *Coppernoll* merely reiterated principles that have guided this court since the right of initiative was adopted by the people. While Alaska courts may have a different view of this issue, the Washington Supreme Court has made the law here crystal clear.⁵

⁵ Appellants cite *Alaskans for Efficient Government, Inc. v. State*, 153 P.3d 296 (Alaska 2007) as a recent case indicating that a supermajority vote requirement was inconsistent with the Alaska constitution. Alaska jurisprudence, however, is quite different than Washington's in regard to the role of the judiciary in pre-election review of initiatives. Alaska apparently allows courts to review and decide whether a measure is unconstitutional prior to enactment. Washington clearly does not.

The Court in *Alaskans* prohibited an initiative that imposed a

In 1912, with the adoption of the seventh amendment to the state constitution, the people reserved unto themselves the initiative power. Less than four years later, in an effort similar to this suit, opponents of an initiative requested this Court to engage in pre-election review of an initiative. In response, this Court stated:

With the ultimate question of the validity of this proposed legislation we have no present concern. Courts will not determine such questions as to contemplated legislation which may, perchance, never be enacted.

State ex. rel. Griffiths v. Superior Ct., 92 Wash. 44, 47, 159 P. 101 (1916).

Appellants ask this Court to engage in pre-election review of the constitutionality of Initiative 960, a role that Washington courts have repeatedly refused to take. While pre-election review is rarely authorized where a proposed measure is outside the scope of the initiative power, *i.e.*, *Philadelphia II v. Gregoire*, 128 Wn.2d 707, 911 P.2d 389 (1996), claims that some provisions in the initiative might be unconstitutional are insufficient to justify the extraordinary step of pre-election review. This is obviously based on ripeness concerns because there is no guarantee that the initiative will appear on the ballot. It is uncertain whether sufficient

supermajority requirement for certain bills. Alaska apparently did not have any preexisting supermajority legislative vote requirements in its legislative toolbox. Washington, however, has had supermajority requirements for the Legislature at least since Initiative 601 was enacted in 1993. RCW 43.135.035(1), re-enacted by the Legislature and the voters by Referendum 49 in 1998, and re-enacted again by the Legislature in 2005).

signatures will be gathered, whether sufficient valid signatures are submitted, and it is uncertain whether, if placed on the ballot, the measure will be approved by the voters. Pre-election review of initiatives suffers from the most extreme form of ripeness problems because there are multiple contingencies, all of which must occur before there is an actual case or controversy.

Cleverly, Appellants argue that Initiative 960 fits within the subject matter exception to the rule against pre-election review. They claim that Initiative 960 is beyond the scope of the initiative power because there is no power to enact an initiative that contains provisions that opponents claim are unconstitutional. The argument has an obvious problem if applied to the other lawmaking institution in this state, the Legislature. One cannot stop the Legislature from voting on an allegedly unconstitutional bill because legislators have no power to enact unconstitutional laws. Similarly, one cannot stop the people from voting on an initiative regardless of whether opponents believe some provisions in it may be unconstitutional.

III.

EVEN IF CONSIDERED ON THE MERITS, APPELLANTS' CLAIMS MUST FAIL

Although Amici believe that a detailed analysis of the constitutional issues raised by Appellants is inappropriate at this time, a cursory review of

the law evidences that the Appellants' constitutional arguments are far from certain to be successful if Initiative 960 is ever approved by the voters.

In addition to Appellants' mischaracterizations regarding the two-thirds supermajority vote requirement for tax increases, Appellants also mischaracterize the nature of other provisions of Initiative 960. Contrary to Appellants' assertions, Initiative 960 does not require a referendum or any binding vote of any kind. Appellants misread Section 5, Subsection 1, which merely recognizes that the Legislature has the power to subject bills to the referendum process. Recognition of this power is not the creation of a new referendum procedure that the Court addressed in *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183 (2000). Initiative 960 does create nonbinding advisory votes, but that was not addressed in *Amalgamated Transit Union*, and has never previously been suggested to be unconstitutional.

Appellants also misunderstand Initiative 960 with respect to the public vote on taxes that exceed the State's expenditure limit. This public vote provision is part of existing law that was adopted by Initiative 601 over a dozen years ago. RCW 43.135.035. Initiative 960 does not amend this subsection of existing law. Although the Supreme Court was asked to determine whether this provision was unconstitutional in *Walker v. Munro*, 124 Wn.2d 402, 879 P.2d 920 (1994), the Court declined to do so because the issue was unripe. Surely, if issues about public votes on tax increases above

the spending limit mandated by Initiative 601 were unripe after its adoption, any similar issues are also unripe in a potential initiative that merely sets forth in full this existing requirement and which may not be approved by voters.

The only other public vote provision in Initiative 960 which has drawn Appellants' ire is the advisory vote policies in Sections 6 through 13. No Washington court has ever held that advisory votes are unconstitutional; advisory votes have been part of the political landscape in Washington for years. *See, e.g., State ex rel. Peninsula Neighborhood Ass'n v. Washington State Dept. of Transp.*, 142 Wn.2d 328, 12 P.3d 134 (2000) (discussing Tacoma Narrows Bridge-Improvements-Advisory Vote, Laws of 1996, ch. 280). The Court should not rush to the decision that this initiative is unconstitutional (or as Appellants package the issue, beyond the scope of the initiative power) in the absence of any precedent whatsoever and without adequate briefing on an issue of this magnitude.

Finally, the notion that a nonbinding advisory vote is somehow unconstitutional conflicts with the Supreme Court's decision in *Pierce County v. State*, 150 Wn.2d 422, 78 P.3d 640 (2003). There, the Court found that the nonbinding portions of an initiative, such as in a preamble or intent section, could not create a second subject for purposes of the single subject rule in Article II, Section 19. The reason was because they were not binding. The Court, however, gave no indication that an initiative could not include

nonbinding or advisory material. If an initiative can be used to convey nonbinding, advisory information, there is no logical reason why a separate public vote cannot do the same as provided in Initiative 960.

Ultimately, for purposes of this appeal, the Court need only consider whether Initiative 960 is legislative in nature. As correctly observed by the Secretary of State in its briefing below:

The legislature is free to enact bills on such subjects as fiscal notes, procedural requirements on enactment of bills, calling for advisory votes and setting procedures for such a process, and the procedure for changing taxes and fees. The people, acting as an alternative legislature, may use the power of initiative to enact laws on the same subjects.

CP 114.

Appellants cannot claim that their constitutional arguments are based on settled law. The resolution of their arguments should be settled only if and when the initiative is approved by the voters based on thorough briefing of the legal issues.

CONCLUSION

Amici urge the Court to deny Appellants the relief they seek.

RESPECTFULLY submitted this 23rd day of August, 2007.

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APPENDIX A

SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

FUTUREWISE and SERVICE EMPLOYEES)
INTERNATIONAL UNION 775 ,)

Plaintiffs,)

v.)

SAM REED,)

Defendant)

No 07-2-16119-8 SEA

DECLARATION OF ADAM
GLICKMAN

I, Adam Glickman, hereby declare the following under penalty of perjury under the laws of the State of Washington.

1. I am Director of Public Affairs of plaintiff Service Employees International Union 775 ("SEIU 775"). I am also very well informed on the initiative process. Under my direction, SEIU 775 has supported several ballot measure campaigns and we have opposed several others. I have played a leadership role on a number of statewide ballot measure campaigns.

2. SEIU 775 represents thousands of taxpayers of the State of Washington. Our members have an interest in seeing that tax moneys are not wasted on holding an election on an initiative that is not a proper subject matter for initiatives under the State Constitution. In addition, such waste of public resources harms our organization's goals, which require adequate public funding.

3. The costs of processing an initiative are substantial, requiring validation of at least 224, 880 signatures.¹ The Secretary of State proposed a biennial budget of over \$6.4

¹ 224,880 valid signatures are required to qualify I-960, but many more may need to be counted depending upon the validity rate of the signatures that are submitted.

1 million for functions related to the initiative process, including validation of initiatives and
2 preparation of voter pamphlets.²

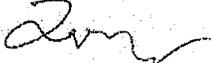
3 4. The mission of plaintiff Service Employees International Union 775 ("SEIU
4 775") is to unite the strength of all Long Term Care workers, to improve the lives of working
5 people and lead the way to a more just and humane world. In Washington, public funds,
6 including Medicaid, comprise a majority of the money dedicated to providing long term care.
7 SEIU 775's members work in an industry reliant upon state spending on health care.
8 Consequently, the Union's members will be adversely impacted by the waste of tax money
9 processing I-960, and by I-960's provisions, which will likely cut healthcare spending.
10 Without adequate revenue, SEIU 775's members and their clients will suffer.

11 5. SEIU 775 is opposed to I-960 and, if it proceeded to the ballot, we would be
12 forced to try to defeat it. SEIU 775 would have no choice but to spend thousands of dollars in
13 resources and many hours of staff time on this campaign. This would be wasted effort if the
14 measure were in fact beyond the scope of the initiative process.

15 6. The statements relating to SEIU 775 and our interest in this litigation contained
16 in our briefing are true and I hereby attest to them.

17 Stated under oath this 11th day of July, 2007.

18 
19 Adam Glickman

20 
21 (per telephonic
22 approval)

23
24
25
26 ² <http://www.ofm.wa.gov/budget07/recsum/085.pdf>

APPENDIX B

SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

FUTUREWISE and SERVICE EMPLOYEES))	
INTERNATIONAL UNION 775,))	
)	No 07-2-16119-8 SEA
Plaintiffs,))	
)	DECLARATION OF AARON
v.))	OSTROM, EXECUTIVE DIRECTOR
)	OF PLAINTIFF FUTUREWISE
SAM REED,))	
)	
Defendant))	

I, Aaron Ostrom, hereby declare the following under penalty of perjury under the laws of the State of Washington.

1. I am Executive Director of plaintiff Futurewise. I am also very well informed on the initiative process. Under my direction, our organization has supported several ballot measure campaigns and we have opposed several others. I have played a leadership role on a number of statewide ballot measure campaigns.

2. Futurewise represents thousands of taxpayers of the State of Washington. Our members have an interest in seeing that tax moneys are not wasted on holding an election on an initiative that is not a proper subject matter for initiatives under the State Constitution. In addition, such waste of public resources harms our organization's goals, which require adequate public funding.

3. The costs of processing an initiative are substantial, requiring validation of at least 224,880 signatures.¹ The Secretary of State proposed a biennial budget of over \$6.4 million for functions related to the initiative process, including validation of initiatives and preparation of voter pamphlets.²

¹ 224,880 valid signatures are required to qualify I-960, but many more may need to be counted depending upon the validity rate of the signatures that are submitted.

² <http://www.ofm.wa.gov/budget07/recsum/085.pdf>

1 4. Plaintiff Futurewise is a member-supported 501(c)(3) nonprofit organization
2 dedicated to protecting Washington's farms, forests and open space while keeping our
3 communities great places to live. Many of Futurewise' priorities are dependent on State
4 expenditures and Futurewise' mission would be adversely impacted by the drain on revenue
5 resulting from processing invalid initiatives, as well as by the proposals within I-960.

6 5. The placement of I-960 on the ballot poses a particularized threat to
7 Futurewise's membership, which includes members of the Washington State Legislature.
8 These Futurewise members will be negatively impacted in numerous ways if the invalid
9 measure is placed on the ballot and/or allowed to take effect. For example, these members'
10 constitutional privilege to pass laws by a majority would be replaced by a super-majority
11 requirement. Moreover, they have taken an oath of office to uphold the Constitution,
12 including its referendum provisions, and I-960 would bind the Legislature to a modified
13 referendum process. If the measure passes, it would have almost immediate effect. Members
14 of the Washington State Legislature would be bound by its unconstitutional provisions.
15 Furthermore, the uncertainty caused by mere placement of the measure on the ballot will likely
16 interfere with the Legislature's lawfully delegated authority to levy administrative fees and the
17 budgets passed in reliance upon that authority.

18 6. The placement of I-960 would also have an immediate impact on State
19 Legislators' previous delegation of authority to administrative agencies and the budgets they
20 have enacted. For example, the Legislature has previously delegated to state agencies the task
21 of setting most administrative fees. Many of these fees are set to go into effect on January 1,
22 2008, and the revenue generated by these fees is relied upon in enacted budgets.

23 7. For example, pursuant to its delegated authority, General Administration
24 ("GA") has announced that parking fees on the Capitol Campus will be increased as of
25 January 1, 2008, to cover increased operating costs. Like many fees, this increase has been set
26 and publicized for many months; in many cases the agencies also held public meetings. A
27 quick internet search reveals that countless fees are scheduled to go into effect January 1.
These fees include ferry tolls, contractors' registration, nursery inspection fees, orchard
burning fees, vehicle weight fees, underground storage tank fees, testing fees, CPA
examination section fees, etc. etc. Agencies scheduled to implement fees include the

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1 Departments of Agriculture, Ecology, Transportation, Health, Labor and Industries, and
2 Licensing.

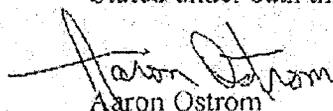
3 8. The placement of I-960 on the ballot will place in doubt a myriad of new fees
4 or fee increases that state agencies have scheduled for January 1, 2008. If I-960 were to pass,
5 it would take effect in December, 2007, and would prohibit new or increased administrative
6 fees set to go into effect on January 1. I-960 § 14, 19. None of these fees could go into effect
7 without specific legislative approval after preparation of a detailed fiscal analysis prepared by
8 the Office of Financial Management. I-960 § 14.

9 9. The mere placement of I-960 on the ballot will, as a practical matter, require
10 some state agencies to put on hold fee adjustments scheduled for January 1st, 2008. For some
11 agencies, it simply would not be feasible to cancel a fee increase at the last moment. Due to
12 the complexities of implementing administrative fees, especially on a statewide level, many
13 agencies have to make final decisions about 2008 fees many months in advance. If their
14 delegated authority to set fees rests upon the outcome of the November election, they may be
15 forced to place a hold on scheduled fee adjustment. Thus, even before the vote, I-960 will
16 interfere with the exercise of lawfully delegated administrative duties and undermine
17 legislatively enacted budgets.

18 10. Futurewise is opposed to I-960 and, if it proceeded to the ballot, we would be
19 forced to try to defeat it at the ballot. Futurewise would have no choice but to spend thousands
20 of dollars in resources and many hours of staff time on this issue. This would be wasted effort
21 if the measure were in fact beyond the scope of the initiative process.

22 11. The statements relating to Futurewise and our interest in this litigation
23 contained in our briefing are true and I hereby attest to them.

24 Stated under oath this 11th day of July, 2007.

25 
26 Aaron Ostrom