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Washington State Supreme Court

OCT -5 2015

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Clerk

NO. 91551-2

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

SPOKANE ENTREPRENEURIAL CENTER, *et al*,

Appellants,

v.

ENVISION SPOKANE, *et al*,

Respondents.

APPENDIX TO SUPPLEMENTAL BRIEF OF PETITIONERS

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APPENDICES

	<u>Page</u>
Appendix E	1
Selected Clerk's Papers:	
4-66	2-64
100-102	65-67
126-201	68-143
213-229	144-160
251-257	161-167
422-435	168-181
457-459	182-184
460-464	185-189
466-469	190-193
Appendix F.....	194
Motion for Reconsideration	195-244
Order Denying Reconsideration	245-246

RESPECTFULLY SUBMITTED this 2nd day of October, 2015.

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Attorneys for Petitioners

By 

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CERTIFICATE OF SERVICE

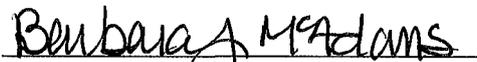
The undersigned hereby declares that on October 2, 2015, I caused to be served, via U.S. First-Class Mail, the APPENDIX TO SUPPLEMENTAL BRIEF OF PETITIONERS to counsel of record whose names and addresses are listed below:

<p><i>For Envision Spokane:</i> Lindsey Schromen-Wawrin Community Environmental Legal Defense Fund 306 W. Third Street Port Angeles, WA 98362</p>	<p><i>For City of Spokane:</i> Nancy L. Isserlis Nathaniel J. Odle Office of the City Attorney 808 W. Spokane Falls Blvd. 5th Floor Spokane, WA 99201-3333</p>
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<p><i>For Amicus WSAMA:</i> Andrea L. Bradford Porter Foster Rorick LLP 800 Two Union Square 601 Union Street Seattle, WA 98101</p>	<p><i>For Amici WSAC, AWB, BIAW, Inland Northwest ACG and Washington Realtors:</i> Robert Battles Assoc of Wash. Business 1414 Cherry St. SE Olympia, WA 98501</p> <p>Josh Weiss Wash. State Assoc. of Counties 206 Tenth Ave. SE Olympia, WA 98501</p>

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

Executed this 2nd day of October, 2015, in Seattle, Washington.


Barbara J. McAdams

APPENDIX E

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FILED

JUN 21 2013

THOMAS R. FALLQUIST
SPOKANE COUNTY CLERK

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

SPOKANE ENTREPRENEURIAL CENTER,
SPOKANE COUNTY, DOWNTOWN
SPOKANE PARTNERSHIP, GREATER
SPOKANE INCORPORATED, THE
SPOKANE BUILDING OWNERS AND
MANAGERS ASSOCIATION, SPOKANE
ASSOCIATION OF REALTORS, THE
SPOKANE HOME BUILDERS
ASSOCIATION, THE INLAND PACIFIC
CHAPTER OF ASSOCIATED BUILDERS
AND CONTRACTORS, AVISTA
CORPORATION, PEARSON PACKAGING
SYSTEMS, WILLIAM BUTLER, NEIL
MULLER, STEVE SALVATORI, NANCY
MCLAUGHLIN, MICHAEL ALLEN, and TOM
POWER,

Plaintiffs,

vs.

SPOKANE MOVES TO AMEND THE
CONSTITUTION, ENVISION SPOKANE,
VICKY DALTON, SPOKANE COUNTY
AUDITOR, in her official capacity, and THE
CITY OF SPOKANE,

Defendants.

No. **13202495-5**

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

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

COMPLAINT - 1
DWT 22121184v5 0043952-000026

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1 Tom Power bring the following complaint for declaratory and injunctive relief against
2 defendants Spokane Moves To Amend The Constitution (“SMAC”), Envision Spokane
3 (“Envision”), the Spokane County Auditor, and the City of Spokane (the “City”).

4 I. INTRODUCTION

5 SMAC and Envision seek to abuse the local initiative power by trying to take away
6 constitutional rights of citizens in the City of Spokane. A city may not – whether through
7 initiative or otherwise – deprive its citizens of their protections under the United States
8 Constitution, the Washington Constitution, and other federal and state laws. Local Initiative No.
9 2013-4, “A SMAC Initiative of Rights: a CLEAN and Fair Elections and Government
10 Ordinance” (the “SMAC Initiative”) and Initiative No. 2013-3, “A City Charter Amendment
11 Establishing a Envision Initiative of Rights” (the “Envision Initiative”) exceed the local
12 initiative power and will harm Spokane citizens.

13 The SMAC Initiative purports to criminalize constitutionally protected speech, sharply
14 circumscribes lobbying by corporate entities (including non-profit and for-profit entities) and by
15 individuals acting for those entities, and bans political contributions by businesses. The
16 Envision Initiative purports to: eliminate corporate rights; create new “fundamental and
17 inalienable” rights for natural resources enforceable through lawsuits by Spokane residents;
18 provide for “neighborhood majorities” to approve all zoning variances for certain developments;
19 and apparently seeks to eliminate the state action requirement for constitutional claims by
20 employees. Both initiatives exceed Spokane’s legislative authority, involve powers delegated
21 by the legislature to councils or municipal boards rather than the City itself, and involve matters
22 that are administrative rather than legislative. As a result, the initiatives exceed the local
23 initiative power and should not appear on the ballot.

24 Through this lawsuit, a coalition of Spokane individuals, non-profit and for-profit
25 entities, and Spokane County, seek the Court’s protection from SMAC’s and Envision’s efforts
26 to burden or eliminate their rights and the rights of their members, organizations, or fellow
27 Spokane citizens. To protect those rights, Plaintiffs respectfully ask the Court to enter a

COMPLAINT – 2
DWT 22121184v5 0043952-000026

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1 declaratory judgment declaring the local initiatives proposed by SMAC and Envision exceed the
2 local initiative power and enter an injunction preventing the unlawful measures from appearing
3 on the November 5, 2013 election ballot.

4 The relief Plaintiffs seek is part of a well-established process for examining the
5 lawfulness of local initiatives before communities waste resources to vote on initiatives that
6 cannot become law. Four times in the last year, the Court of Appeals has affirmed trial court
7 decisions preventing unlawful local initiatives from appearing on ballots in Washington.¹ In
8 this case, Plaintiffs are a diverse group of community members who value *all* forms of political
9 speech by *all* members of the Spokane community—from an individual’s vote on a lawful
10 initiative to an association’s conversation with a city council member or a business’s political
11 advertisement or campaign contribution. Plaintiffs bring this pre-election challenge to ensure
12 *all* rights are protected. Local initiatives may not eliminate rights protected under the United
13 States or Washington constitutions; they may not criminalize and chill political expression; and
14 they may not conflict with federal and state law. Plaintiffs ask the Court to ensure the
15 unenforceable and unlawful measures do not appear on the ballot.

16 II. PARTIES, JURISDICTION AND VENUE

17 1. Defendant SMAC. Defendant Spokane Moves to Amend the Constitution
18 (“SMAC”) is a Washington nonprofit corporation headquartered in Spokane, Washington.
19 SMAC is the sponsor of the SMAC Initiative. A true and correct copy of the SMAC Initiative,
20 sometimes referred to as the “Voter Bill of Rights,” is attached hereto as Exhibit A. This Court
21 has personal jurisdiction over SMAC because SMAC maintains offices and transacts business in
22 the State of Washington.

23 2. SMAC’s Purpose is to Amend the Constitution. On information and belief,
24 SMAC is the Spokane affiliate of an organization called “Move to Amend.” SMAC’s and
25 Move to Amend’s stated purpose is to amend the Constitution in response to the United States

26 ¹ *City of Longview v. Wallin*, 301 P.3d 45 (Wn. Ct. App., 2013); *Eyman v. McGehee*, 173 Wn. App. 684 (2013);
27 *City of Monroe v. Wash. Campaign for Liberty*, 2013 WL 709828 (Wn. Ct. App. Feb. 25, 2013); and *City of*
Bellingham v. Whatcom County, No. 691520 (Wn. Ct. App. Sept. 21, 2012).

1 Supreme Court's ruling in *Citizens United v. Federal Election Commission*, 558 U.S. 310
2 (2010). In particular, SMAC and Move to Amend seek to change the First Amendment to
3 eliminate protections for corporations (whether non-profit or for-profit) to engage in political
4 and lobbying activities. The SMAC website, www.s-m-a-c.org, explains SMAC's Initiative
5 strategy—a transparent attempt to limit through local initiatives the First Amendment
6 protections the United States Supreme Court has made plain are accorded to all citizens:

7 **Corporations are not people**
8 **Money is not speech**

9 * * *

10 *Unlimited spending by corporations and billionaires is undermining our*
11 *American democracy. In January 2010, five justice of the U.S. Supreme Court*
12 *ruled in Citizens United that that corporations have the First Amendment right to*
13 *spend unlimited amount of money promoting or attacking candidates in local,*
14 *state and federal elections. This reckless, radical decision rolls back a century of*
15 *political tradition and more than 60 years of legal precedent prohibiting direct*
16 *corporate involvement in elections. The First Amendment was never intended to*
17 *let nonhuman corporations spend unlimited cash to influence our elections.*

18 3. Defendant Envision. Defendant Envision Spokane (“Envision”) is a Washington
19 nonprofit corporation headquartered in Spokane, Washington. Envision is the sponsor of the
20 Envision Initiative. A true and correct copy of the Envision initiative, sometimes referred to as
21 the “Community Bill of Rights,” is attached hereto as Exhibit B. This Court has personal
22 jurisdiction over Envision because Envision maintain offices and transacts business in the State
23 of Washington.

24 4. A Parallel Bellingham Measure was Enjoined from the Ballot. Last year,
25 Bellingham considered an initiative similar to the current Envision Initiative. In response to a
26 pre-election challenge establishing the Bellingham initiative exceeded the local initiative power,
27 the Whatcom County Superior Court entered an injunction preventing the Bellingham initiative
from appearing on the ballot. The Court of Appeals affirmed the decision. *City of Bellingham v*
Whatcom Cnty., No. 691520, slip op. (Wash. Ct. App. Sept. 21, 2012).

1 5. Defendant City of Spokane. Defendant City of Spokane is a first class charter
2 city and a municipal corporation organized and existing under the laws of the State of
3 Washington and does business in Spokane County, Washington. This Court has personal
4 jurisdiction over the City because the City maintains offices and transacts business in the State
5 of Washington. The City is named as a defendant because a challenge concerning the local
6 initiative power necessarily involves considering of the City's authority to enact legislation that
7 conflicts with federal and state laws.

8 6. Defendant Spokane County Auditor. Defendant Vicky Dalton is the Spokane
9 County Auditor. Plaintiffs name the defendant in her official capacity only. This Court has
10 personal jurisdiction over the Auditor because the Auditor maintains offices and transacts
11 business in the State of Washington. Plaintiffs name the Auditor as a defendant because an
12 injunction preventing the unlawful initiatives from appearing on the ballot will require the
13 Auditor's action.

14 7. Plaintiff Spokane Entrepreneurial Center. Plaintiff Spokane Entrepreneurial
15 Center (the "Entrepreneurial Center") is a Washington limited liability company located in
16 Spokane. The Entrepreneurial Center was founded by Spokane City Council Member Steve
17 Salvatori. The Entrepreneurial Center owns real estate in the City of Spokane and assists
18 Spokane entrepreneurs and small businesses by providing downtown office space with no
19 deposit, no lease agreement, and at minimal cost. The Entrepreneurial Center currently provides
20 space for 54 companies. Over the past six years, the Entrepreneurial Center has provided space
21 to over 200 companies. Many alumni of the Center's programs have grown into viable
22 businesses and graduated into the larger Spokane community. The Entrepreneurial Center
23 regularly engages in public advocacy and regularly communicates with elected officials from
24 the City of Spokane, Spokane County, and the State of Washington. The Entrepreneurial Center
25 also contributes to various political causes, candidates, and campaigns.

26 8. Plaintiff Spokane County. Plaintiff Spokane County is a political subdivision of
27 the State of Washington. Spokane County is governed by the Board of County Commissioners

1 of Spokane County, Washington. Under RCW 36.32.120(6), the Spokane County
2 Commissioners are charged with “the management of the county funds and business” and may
3 “in the name of the county prosecute and defend all actions for and against the county.”
4 Spokane County seeks to: (a) avoid the cost of placing before the voters measures that would be
5 unenforceable if enacted; (b) avoid the public confusion that would otherwise arise if the
6 Initiatives are enacted and then later found to be legally invalid; (c) eliminate potential negative
7 impacts the Initiatives may have on Spokane County’s economic development efforts between
8 now and the November 5, 2013 election; (d) protect the taxpayers of Spokane County from
9 having to pay the costs of multiple lawsuits that are likely to arise post-election from an
10 increased number of litigants granted standing under the Initiatives; and (e) eliminate potential
11 post-election challenges to important Spokane County public works projects, such as the
12 Spokane County Regional Water Reclamation Facility (the largest public works project in
13 Spokane County history) which discharges into the Spokane River.

14 9. Plaintiff Downtown Spokane Partnership. Plaintiff Downtown Spokane
15 Partnership is a nonprofit Washington corporation headquartered in Spokane, Washington. The
16 Downtown Spokane Partnership serves as Spokane’s city advocate and is dedicated to
17 enhancing the quality and economic vitality of downtown Spokane. The Downtown Spokane
18 Partnership is involved in various public advocacy, business development, physical
19 improvement projects, public safety, beautification, and marketing programs. Each of these
20 programs is intended to ensure the continued success of Spokane’s downtown district and
21 Spokane’s economic vibrancy. The Downtown Spokane Partnership’s membership includes
22 individuals and businesses throughout the City of Spokane and the surrounding area. On behalf
23 of its membership, the Downtown Spokane Partnership engages elected officials, (including
24 elected members of the Spokane City government and candidates for elected office) and
25 promotes efforts to attract investment in downtown Spokane.

26 10. Plaintiff Greater Spokane Incorporated. Greater Spokane Incorporated (“Greater
27 Spokane”) is a nonprofit Washington corporation that is the Spokane region’s Chamber of

1 Commerce and Economic Development organization. Greater Spokane's mission is to grow
2 jobs and business investment through programs in economic development, workforce
3 development, public policy and small business. Greater Spokane advocates on behalf of the
4 Spokane business community and its members at the local, state, and federal level to ensure a
5 healthy and vibrant business climate. Greater Spokane is also responsible for the recruitment,
6 retention and expansion of businesses to the Spokane region, and works with community
7 partners and elected officials on workforce and education initiatives to ensure a qualified and
8 skilled workforce for businesses in Spokane County. Greater Spokane is a nonprofit
9 organization and is funded through a combination of private and public investment, including
10 1,200 private-sector member investors and nonprofits; Spokane County; Washington State
11 Department of Commerce; the U.S. Department of Defense and the cities of Spokane, Spokane
12 Valley, Cheney, Liberty Lake, Airway Heights, Medical Lake and Newport, as well as the
13 Kalispel Tribe of Indians. As part of its mission, Greater Spokane employs lobbyists that
14 engage government officials at the city, state, and federal level.

15 11. Plaintiff Spokane Building Owners and Managers Association. Plaintiff Spokane
16 Building Owners and Managers Association ("BOMA") is a nonprofit Washington corporation
17 located in Spokane, Washington. BOMA is an association representing more than 100
18 individuals and businesses in and around Spokane that own or manage commercial real estate,
19 or are otherwise involved in the commercial real estate industry. BOMA monitors legislative
20 and regulatory developments related to construction, development, and building management,
21 and lobbies elected and appointed officials at the federal, state, and local levels.

22 12. Plaintiff Spokane Association of Realtors. Plaintiff Spokane Association of
23 Realtors ("Realtors Association") is a nonprofit Washington corporation. The Realtors
24 Association is a professional trade association serving real estate agent members. The Realtors
25 Association helps members pursue successful real estate careers, enforces the Realtors Code of
26 Ethics, and engages in advocacy on various public policy issues. The Realtors Association's
27 advocacy efforts include, among other things, electioneering, lobbying elected officials from the

1 City of Spokane, Spokane County, and the State of Washington, and contributions to various
2 political causes, candidates, and campaigns.

3 13. Plaintiff Spokane Home Builders Association. Plaintiff Spokane Home Builders
4 Association (the "Builders Association") is a nonprofit Washington corporation located in
5 Spokane. The Builders Association represents the interests of nearly 700 individuals and
6 businesses within the Greater Spokane Area and throughout Eastern Washington. A principal
7 function of the Association is to promote, protect, and support the housing industry and the
8 community primarily through education and advocacy. The Builders Association's advocacy
9 efforts include, among other things, electioneering, promoting public policy to elected officials
10 from the City of Spokane, Spokane County, and the State of Washington, and contributions to
11 various political causes, candidates, and campaigns.

12 14. Plaintiff The Inland Pacific Chapter of Associated Builders & Contractors.
13 Plaintiff The Inland Pacific Chapter of Associated Builders & Contractors ("Associated
14 Builders") is a nonprofit Washington corporation located in Spokane Valley, Washington.
15 Associated Builders represents over 220 companies involved in the commercial and industrial
16 construction industry in Washington and Idaho. Among other things, Associated Builders
17 communicates with local, state, and federal government officials on behalf of its members
18 regarding industry, employment, and collective bargaining issues.

19 15. Plaintiff Avista Corporation. Plaintiff Avista Corporation is a Washington
20 corporation that provides residents of the City of Spokane and the greater Spokane region with
21 electric and natural gas service. Avista owns and operates electric generation, transmission, and
22 distribution facilities within the City of Spokane, as well as natural gas distribution
23 infrastructure within the City of Spokane. In particular, Avista operates five hydroelectric
24 facilities on the Spokane River that provide enough clean, reliable hydroelectric energy to
25 power hundreds of thousands of homes and businesses throughout Washington. Avista's
26 hydroelectric operations on the Spokane River are regulated by various state and federal laws.
27 Avista and its employees regularly communicate with elected officials from the City of

1 Spokane, Spokane County, and the State of Washington. Avista and its employees also
2 contribute to various political causes, candidates, and campaigns.

3 16. Plaintiff Pearson Packaging Systems. Plaintiff Pearson Packaging Systems
4 (“Pearson”) is a Washington corporation located in Spokane. Since 1955, Pearson has provided
5 packaging equipment and assisted customers with the delivery of food, beverage, and health
6 care goods in and around the City of Spokane. Pearson and its employees regularly
7 communicate with elected officials from the City of Spokane, Spokane County, and the State of
8 Washington. Pearson also contributes to various political causes, candidates, and campaigns.

9 17. Plaintiff William Butler. Plaintiff William Butler is a resident of Spokane
10 County and the City of Spokane. Mr. Butler is the president WEB Properties, Inc., a
11 commercial real estate firm based in Spokane, Washington. As the owner of WEB Properties,
12 Inc. and as a licensed real estate broker, Mr. Butler routinely works with real estate developers
13 on new developments. Some of these developments require variances from existing zoning
14 regulations. As a resident of the City of Spokane, Mr. Butler pays various City and County
15 taxes and fees that are used for, among other things, funding local elections.

16 18. Plaintiff Neil Muller. Plaintiff Neil Muller is a resident of Spokane County and
17 the City of Spokane. Mr. Muller is a volunteer representative for BOMA who participates in
18 lobbying and legislative efforts at the local level. As a resident of the City of Spokane, Mr.
19 Muller pays various City and County taxes and fees that are used for, among other things,
20 funding local elections.

21 19. Plaintiff Steve Salvatori. Plaintiff Steve Salvatori is a resident of Spokane
22 County and the City of Spokane. Mr. Salvatori is a member of the Spokane City Council but he
23 is suing in his individual capacity, not in his capacity as a member of the Spokane City Council.
24 In his individual capacity as a potential candidate for elected office, Mr. Salvatori’s ability to
25 communicate with important community members and receive campaign contributions from
26 community members will be harmed by the SMAC Initiative. Mr. Salvatori is also the founder
27 of the Spokane Entrepreneurial Center. As a resident of the City of Spokane, Mr. Salvatori pays

1 various City and County taxes and fees that are used for, among other things, funding local
2 elections.

3 20. Plaintiff Nancy McLaughlin. Plaintiff Nancy McLaughlin is a resident of
4 Spokane County and the City of Spokane. Ms. McLaughlin is a member of the Spokane City
5 Council but she is suing in her individual capacity, not in her capacity as a member of the
6 Spokane City Council. In her individual capacity as a potential candidate for elected office, Ms.
7 McLaughlin's ability to communicate with important community members and receive
8 campaign contributions from community members will be harmed by the SMAC Initiative. Ms.
9 McLaughlin is also the co-owner of a residential construction and remodeling business in
10 Spokane. As a resident of the City of Spokane, Ms. McLaughlin pays various City and County
11 taxes and fees that are used for, among other things, funding local elections.

12 21. Plaintiff Michael Allen. Plaintiff Michael Allen is a resident of Spokane County
13 and the City of Spokane. Mr. Allen is a member of the Spokane City Council but he is suing in
14 his individual capacity, not in his capacity as a member of the Spokane City Council. In his
15 individual capacity as a potential candidate for elected office, Mr. Allen's ability to
16 communicate with important community members and businesses will be harmed by the SMAC
17 Initiative. Mr. Allen is also the owner of a consulting business. As a resident of the City of
18 Spokane, Mr. Allen pays various City and County taxes and fees that are used for, among other
19 things, funding local elections.

20 22. Plaintiff Tom Power. Plaintiff Tom Power is a resident of Spokane County and
21 the City of Spokane. Mr. Power purchases, sells, manages and develops commercial real estate
22 in and around Spokane County and the City of Spokane. His developments often require
23 variances from existing zoning regulations. As a resident of the City of Spokane, Mr. Power
24 pays various City and County taxes and fees that are used for, among other things, funding local
25 elections.

26 23. Venue. Venue is proper in Spokane County pursuant to RCW 4.12.020. Venue
27 is also proper because defendants do business in Spokane County.

1 to participate in the political process, and it restricts all elected officials from any level of
2 government communicating freely with members of the Spokane community.

3 28. SMAC's Initiative Will Harm Neighborhood Councils. In addition to the effect
4 the Initiative will have on all Plaintiffs, SMAC's initiative will have immediate and significant
5 effects throughout the Spokane community. For instance, Spokane currently has twenty-seven
6 active neighborhood councils. Some of these councils are nonprofit corporations that review
7 and recommend actions, policies, and plans to the City Council, the City of Spokane and various
8 city agencies, commissions or boards on matters affecting their respective neighborhoods. The
9 SMAC Initiative would all but prevent these councils from engaging in their core advocacy
10 activities. The SMAC Initiative would also criminalize the conduct of Neighborhood Council
11 members who engage in such advocacy on behalf of their Councils.

12 **B. The Envision Initiative.**

13 29. Envision's Filing. On April 12, 2012, Envision filed the Envision Initiative with
14 the Spokane City Clerk's office seeking to amend the Spokane City Charter on multiple
15 disparate subjects.

16 30. Envision's Initiative Log Rolls Subjects Beyond the Initiative Power. The
17 Envision Initiative seeks to amend the Spokane City Charter to (1) require "neighborhood
18 majorities" approve the City Council's zoning decisions, (2) supersede state and federal laws
19 governing water and labor relations, (3) strip corporations of constitutional and statutory rights,
20 and (4) apparently eliminate the state action requirement for employees to pursue constitutional
21 claims.

22 31. Envision Initiative Key Provisions. The Envision Initiative provides, among
23 other things:

24 Neighborhood majorities shall have the right to approve all zoning changes
25 proposed for their neighborhood involving major commercial, industrial, or
26 residential development. Neighborhood majorities shall mean the majority of the
27 registered voters residing in an official city neighborhood who voted in the last
general election.

1 All residents of Spokane possess fundamental and inalienable rights to
2 sustainably access, use, consume, and preserve water drawn from natural cycles
3 that provide water necessary to sustain life within the City. The City of Spokane
4 and any resident of the City or group of residents have standing to enforce and
5 protect these rights.

6 Employees shall possess United States and Washington Bill of Rights'
7 constitutional protections in every workplace within the City of Spokane, and
8 workers in unionized workplaces shall possess the right to collective bargaining.

9 32. Envision Strips Corporate Rights. The Envision Initiative also includes a
10 provision punishing corporations that violate the Charter by stripping their existing
11 constitutional and statutory protections:

12 Corporations and other business entities which violate the rights secured by this
13 Charter shall not be deemed "persons," nor possess any other legal rights,
14 privileges, powers, or protections which could interfere with the enforcement of
15 rights enumerated by this Charter.

16 33. Envision's Previous Spokane Efforts Were Rejected. This is not the first time
17 Envision has proposed such legislation. In 2009, Envision sought to amend Spokane's City
18 Charter to "recognize[] rights to a local economy, affordable housing, preventive healthcare,
19 renewable energy, nature, neighborhood decision-making power, workers' rights, and
20 subordinat[e] corporate rights to community rights." In 2011, Envision proposed four Spokane
21 Charter amendments focusing on "neighborhoods, the Spokane River and Rathdrum Prairie
22 Spokane Valley Aquifer, workers, and corporate power." Both were rejected by the voters.

23 **C. The City Obtained Two Legal Opinions Recognizing the Initiatives Exceed
24 the Initiative Power.**

25 34. City Attorney's Opinion. The Spokane City Attorney provided a memorandum
26 to the Mayor and the City Council on April 22, 2013 analyzing the validity of the Initiatives.
27 The City Attorney set forth several bases on which the Initiatives could be challenged. A copy
of the City Attorney's analysis is attached as Exhibit C-1 to this complaint.²

² Exhibits C-1 and C-2 are labeled as attorney-client privileged material. Both analyses have since become public information and have been shared with Spokane County.

1 35. Independent Legal Opinion Prepared by K&L Gates for the City. On May 9,
2 2013, the City of Spokane obtained a second legal opinion, from independent counsel at K&L
3 Gates, regarding the validity of the proposed Initiatives. A copy of the opinion—which
4 confirms the City Attorney’s conclusions—is attached as Exhibit C-2 to this complaint. The
5 opinion correctly explains the political speech SMAC challenges lies “at the heart of the First
6 Amendment.” The SMAC Initiative exceeds the scope of the local initiative power because it
7 “seeks to alter or amend the United States and Washington Constitutions and Federal and State
8 statutory law.” *Id.* at 12. The opinion likewise correctly explains that the Envision Initiative
9 exceeds the initiative power of the City of Spokane because, among other things, the Initiative
10 (a) involves powers delegated to the city council, not the city itself, (b) conflicts with state and
11 federal laws regarding water resources, urban growth, land use, and labor relations, and (c)
12 attempts to strip corporate citizens of important statutory and constitutional protections.

13 36. City Council Action. As state law requires, on June 3, 2013, the Spokane City
14 Council performed its ministerial duties and adopted two resolutions requesting an election in
15 conjunction with the scheduled general election and directing the City Clerk to transmit copies
16 of the resolutions to the Spokane County Auditor no later than August 6, 2013. After
17 completing their mandatory duties referring the measures to the City Clerk, three members of
18 the City Council voted to direct the City itself to file a pre-election challenge to the initiatives on
19 the basis they exceed the local initiative power.

20 37. County Commissioners Authorize Pre-Election Challenge. On June 21, 2013,
21 the Board of County Commissioners of Spokane County passed a resolution authorizing a legal
22 challenge to the Initiatives because, among other things, the initiatives exceed the local initiative
23 power and would impair Spokane County’s ability to perform its statutory responsibilities. The
24 resolution, a true and correct copy of which is attached as Exhibit C, to this complaint, provides:

25 the analysis of the City Attorney of the City of Spokane and the legal opinion of
26 K&L Gates address various issues regarding pre-election challenges to both
27 Initiatives including that the subject matter of the initiatives is beyond the
 people’s initiative power and infringes on powers specifically granted by the

1 legislature to the governing body of the City of Spokane and the subject matter of
2 the initiative(s) is in conflict with decisions of the United States Supreme Court
and as such is beyond the City of Spokane's legislative authority; and

3 elements of [the Initiatives] ...could affect the ability of the Board of County
4 Commissioners of Spokane County to carry out their statutory responsibilities ...
[and] could impact the County Commissioners' obligation ...[to] "support the
5 Constitution and laws of the United States and the State of Washington"

6 the analysis of the Spokane City Attorney and the legal opinion of K&L Gates
7 are supported by recent court decisions in the state that have declared comparable
8 local initiatives to be illegal, and issued injunctions preventing them from
appearing on the ballot ...

9 as a result of the analysis of the Spokane City Attorney and legal opinion of
10 K&L Gates, the Board of County Commissioners of Spokane County believe it is
in the best interests of the citizens of Spokane County to determine the validity of
both[the Initiatives] ... prior to the Election to be held on November 5, 2013...

11 pursuant to the provisions of RCW 36.32.120(6), that the Board does hereby
12 authorize legal counsel to join a lawsuit or lawsuits on behalf of Spokane County
challenging the validity of [the Initiatives].

13 **IV. THE INITIATIVES EXCEED THE LOCAL INITIATIVE POWER**

14 **A. The Scope of the Initiative Power of the City of Spokane.**

15 38. State Statute Authorizes Local Initiatives. First class charter cities such as
16 Spokane are authorized by state statute to provide in their charter "for direct legislation by the
17 people through the initiative and referendum upon any matter within the scope of the powers,
18 functions, or duties of the city." RCW 35.22.200.

19 39. Spokane's Charter Authorizes Local Initiatives, Subject to State Law. The City
20 of Spokane's Charter provides that the "initiative shall be exercised ... in accordance with the
21 general laws of the state." Spokane City Charter § 82.

22 40. Local Initiatives are Limited in Permissible Scope. Cities may not adopt
23 initiatives that exceed the City's authority to legislate. For example, cities may not adopt
24 initiatives that purport to create local laws conflicting with the United States or Washington
25 constitutions, or with other state or federal laws. Similarly, cities may not adopt initiatives
26 involving powers delegated by the Washington legislature to a city council or other local board,
27

1 rather than the city itself. In addition, cities may not adopt initiatives that are administrative,
2 rather than legislative, in nature.

3 41. Invalid Initiatives Should Not Appear on the Ballot. Initiatives that exceed the
4 scope of the initiative power of a city in any manner are invalid and should not be placed on the
5 ballot.

6 **B. The SMAC Initiative Exceeds the City's Initiative Power.**

7 42. SMAC Acknowledges Its Goal is to Change Constitutional Protections. SMAC
8 publicly stated that its intent with the SMAC Initiative is to overturn the United States Supreme
9 Court's decision in *Citizens United* and to eliminate First Amendment protections for
10 corporations.

11 43. SMAC Initiative Exceeds the Initiative Power. The SMAC Initiative exceeds the
12 initiative power of the City of Spokane because the City does not have the legislative authority
13 to reduce federal and state constitutional rights or otherwise enact laws conflicting with federal
14 and state laws. The SMAC Initiative also intrudes on administrative matters, which are beyond
15 the permissible scope of a local initiative.

16 44. SMAC Initiative Expressly Seeks to Eliminate Constitutional Rights. On its
17 face, the SMAC Initiative expressly indicates it intends to eliminate rights guaranteed by the
18 United States or Washington constitutions. The SMAC Initiative provides at § 2.06.050:

19 Corporations in violation of the rights and prohibitions established by the ordinance, or
20 seeking to engage in activities prohibited by this ordinance shall not have the rights of
21 "persons" afforded by the United States and Washington Constitutions, nor shall those
22 corporations be afforded rights under the First or Fifth Amendments ...

23 45. SMAC Initiative's Effort to Criminalize Corporate Speech Rights Conflicts with
24 Federal and State Law. The SMAC Initiative unlawfully seeks to prohibit and criminalize the
25 rights – protected under federal and state law – corporations and their directors, officers, and
26 agents have to participate in elections and lobbying activities. Since the 19th century, the United
27 States Supreme Court has recognized that corporations have the same rights as natural persons
under the Constitution. *See, e.g., Pembina Consol. Silver Mining Co. v. Pennsylvania*, 125 U.S.

1 181 (1888) (Recognizing corporations are “persons” under the 14th Amendment). The United
2 States Supreme Court has frequently recognized that First Amendment protection extends to
3 corporations. The protection has been explicitly extended to corporate rights to engage in
4 political speech. Similarly, the Washington Constitution guarantees that “[n]o law shall be
5 passed granting to any citizen, class of citizens, or corporation other than municipal, privileges
6 or immunities which upon the same terms shall not equally belong to all citizens, or
7 corporations.” Wash. Const. art I, § 12. And Washington’s Business Corporation Act
8 recognizes that “every corporation has the same powers as an individual to do all things
9 necessary or convenient to carry out its business and affairs.” RCW 23B.03.020(C). The
10 SMAC Initiative exceeds the power of the local initiative by conflicting with these rights and
11 laws.

12 46. SMAC Initiative’s Effort to Ban Corporate Electioneering Conflicts with
13 Constitutional Rights. The SMAC Initiative may not ban electioneering by corporations and
14 their directors, officers, and agents because it exceeds the City’s legislative authority and the
15 scope of the local initiative power to eliminate rights protected under federal and state law. The
16 First Amendment “‘has its fullest and most urgent application’ to speech uttered during a
17 campaign for political office.” *Eu v. S.F. Cnty. Democratic Central Comm.*, 489 U.S. 214, 223
18 (1989) (quoting *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272 (1971)). The United States and
19 Washington constitutions protect political expenditures by individuals and corporations. The
20 SMAC Initiative provides that “[i]t shall be unlawful for any corporation to make a contribution
21 or expenditure to influence any election within the City of Spokane.” The SMAC Initiative
22 provision stripping constitutional protections for political contributions by corporations exceeds
23 the initiative power of the City of Spokane because the provision directly conflicts with the
24 United States and Washington constitutions.

25 47. SMAC Initiative’s Effort to Ban Electioneering Conflicts with Washington
26 Statutes. The SMAC Initiative’s ban on electioneering also exceeds the local initiative power
27 because it conflicts with Washington statutes concerning campaign finance. Subject to

1 constitutional limitations, RCW 42.17A, "Campaign Disclosure and Contribution," controls
2 campaign finance law in Washington, including regulation of contributions in city council,
3 mayoral, and school board elections. RCW 42.17A.405. The statute allows "persons" to
4 contribute to campaigns and political committees and specifically includes private and public
5 corporations in the definition of "persons." RCW 42.17A.005(35).

6 48. SMAC Initiative's Effort to Ban Electioneering Involves Administrative Matters.

7 The SMAC Initiative's regulation of electioneering also unlawfully involves the administrative
8 rather than legislative authority. Campaign finance law in Washington is heavily regulated by
9 the State. The Public Disclosure Commission promulgated numerous administrative regulations
10 concerning businesses' involvement in campaign finance, including electioneering activities.
11 The local initiative power is limited to legislative affairs and cannot intrude on the state's
12 administrative powers in campaign finance regulation. The SMAC Initiative's attempt to
13 regulate electioneering activities within Spokane, including with respect to county, state, and
14 federal candidates in Spokane is beyond the legislative authority of the City.

15 49. SMAC Initiative's Effort to Ban Corporate Lobbying Conflicts with
16 Constitutional Rights. The SMAC Initiative may not ban lobbying by corporations or their
17 directors, officers, and agents because it exceeds the City's legislative authority and the scope of
18 the local initiative power to eliminate rights protected under federal and state law. Lobbying is
19 "protected by the right to petition the Government for a redress of grievances guaranteed by the
20 First Amendment of the United States Constitution." *U.S. v. Kincaid-Chauncey*, 556 F.3d 923,
21 941-42 (9th Cir. 2009) (citations omitted). The SMAC Initiative provides that "[i]t shall be
22 unlawful for any corporation to communicate with an elected official within the City of Spokane
23 urging support or opposition to pending legislation or citizen initiative." The SMAC Initiative
24 also strips First Amendment protections for "individuals purporting to communicate on behalf
25 of the corporation." The SMAC Initiative provisions removing constitutional protections for
26 lobbying exceed the initiative power of the City of Spokane because the provisions directly
27 conflict with the United States and Washington constitutions.

1 50. SMAC Initiative's Effort to Ban Corporate Lobbying Conflicts with Washington
2 Statutes. The SMAC initiative's attempt to ban lobbying also exceeds the legislative authority
3 because it conflicts with Washington statutes concerning lobbying. RCW 42.17A.005(35)
4 recognizes corporations are "persons" under public disclosure law and RCW 42.17A.005(31)
5 recognizes a "lobbyist" is any person who lobbies either in his or her own or another's behalf.

6 51. SMAC Initiative's Effort to Ban Corporate Lobbying Involves Administrative
7 Matters. The SMAC Initiative's attempt to ban lobbying also unlawfully involves the
8 administrative rather than legislative authority. Lobbying is heavily regulated by the federal and
9 state governments. The local initiative power is limited to legislative affairs and cannot intrude
10 on the state's administrative powers in campaign finance regulation. The SMAC Initiative's
11 attempt to regulate lobbying within Spokane, including with respect to county, state, and federal
12 candidates or elected officials in Spokane is beyond the legislative authority of the City.

13 52. SMAC Initiative's Effort to Attack Money as Speech Conflicts with
14 Constitutional Rights. The SMAC Initiative (and the City) lack the legislative authority to
15 lawfully redefine "speech" under the United States and Washington constitutions. The SMAC
16 Initiative provides that "the people of the City of Spokane have the right to ... the elimination of
17 the treatment of money as speech for elections purposes." The SMAC Initiative also provides
18 that "[m]onies expended within the City of Spokane for political purposes shall not be
19 considered constitutionally-protected speech within the City of Spokane." The SMAC
20 Initiative's attempt to eliminate speech protections for money spent within the City for political
21 purposes exceeds the legislative authority and the scope of the local initiative power. Political
22 speech is a core First Amendment activity. Money spent by individuals and corporations for
23 political purposes is speech protected under the First Amendment to the United States and
24 Washington constitutions. The SMAC Initiative's provisions stripping constitutional
25 protections for money used for political purposes exceed the initiative power of the City of
26 Spokane because the provisions directly conflict with rights guaranteed under the United States
27 and Washington constitutions.

1 53. Plaintiffs Have a Well-Founded Fear. All Plaintiffs have a well-founded fear
2 of the immediate invasion of their rights because the SMAC Initiative will strip all Plaintiffs of
3 constitutional, statutory, and regulatory protections for political speech.

4 54. SMAC Initiative Will Harm All Corporate Entity Plaintiffs. The SMAC
5 Initiative will strip all Plaintiffs organized as corporate entities (and all such entities in the City
6 of Spokane) of the protections accorded to political contributions by the First Amendment and
7 will also restrict their ability to petition government. These Plaintiffs include the Downtown
8 Spokane Partnership, Spokane County, Greater Spokane, Building Association, Association Of
9 Realtors, Spokane Entrepreneurial Center, Avista, and Pearson Packaging. For example, the
10 SMAC Initiative will prevent the Downtown Spokane Partnership from meeting with city
11 council members and other city officials regarding new ordinances to attract new businesses to
12 the City of Spokane. The SMAC Initiative will similarly prohibit Greater Spokane from
13 engaging city officials on issues critical to its work in public policy, economic development,
14 workforce development, small business, and creating a strong business climate in the City of
15 Spokane and the surrounding area. The same is true for the Spokane Entrepreneurial Center's
16 efforts to promote its programs aimed at making the City more accessible to small businesses.

17 55. SMAC Initiative Will Harm Plaintiffs that Routinely Participate in Public
18 Advocacy. Other Plaintiffs, including Greater Spokane, the Builders Association, the Realtors
19 Association, BOMA, Associated Builders (the "Public Advocacy Plaintiffs"), are nonprofit
20 corporations that primarily engage in public policy work on behalf of their members and
21 Spokane County and City residents in general. The SMAC Initiative will prevent the Public
22 Policy Plaintiffs from carrying out a primary purpose of their organizations.

23 56. SMAC Initiative Will Harm Individual Plaintiffs. The SMAC Initiative's effects
24 on the individual Plaintiffs are no less significant. Individual Plaintiffs will suffer injury as a
25 result of the chilling effect the Initiatives have on speech in Spokane and on economic
26 development, thereby harming the entire community. These Plaintiffs include Mr. Butler, Mr.
27 Muller, Mr. Salvatori, Ms. McLaughlin, Mr. Power, and Mr. Allen. For example, the SMAC

1 Initiative would prohibit Mr. Salvatori from speaking with Spokane officials on behalf the
2 Spokane Entrepreneurial Center—an entity he founded—in any non-public forum. The SMAC
3 Initiative would have the same effect on Ms. McLaughlin, who serves as a member of the board
4 of directors of the Salvation Army, and Mr. Butler, who owns WEB Properties, Inc. As
5 potential candidates for elected office, Ms. McLaughlin, Mr. Salvatori, and Mr. Allen will also
6 be harmed by the restrictions on their ability to freely associate with, communicate with, and
7 accept contributions from members of the Spokane community or others visiting the City of
8 Spokane.

9 **C. The Envision Initiative Exceeds the Initiative Power.**

10 57. The Envision Initiative Exceeds the Initiative Power. The Envision Initiative
11 exceeds the local initiative power because the City lacks the legislative authority to reduce
12 federal and state constitutional rights or otherwise enact laws conflicting with federal and state
13 laws. The Envision initiative also unlawfully involves powers delegated by the Washington
14 legislature to the city council or other legislative authority, rather than to the City itself. The
15 Envision Initiative also unlawfully intrudes on administrative matters, which are beyond the
16 permissible scope of a local initiative.

17 **1. Neighborhood Majority Provision.**

18 58. The Neighborhood Majority Provision Interferes with Responsibilities Delegated
19 to the City Council Not the City itself. The Envision Initiative may not vest the “right to
20 approve all zoning changes” for certain developments with “neighborhood majorities” because
21 the Washington legislature has delegated exclusive power to adopt and administer zoning
22 ordinances and comprehensive growth plans to the Spokane City Council—not the City of
23 Spokane itself. RCW 35.63.110 (delegating authority for zoning decisions to the municipal
24 “council or board”); *Lince v. City of Bremerton*, 25 Wn. App. 309, 311 (1980) (holding the
25 Washington Legislature delegated zoning power to cities’ legislative bodies *not* the voters).
26 This power is not subject to “repeal, amendment, or modification by the people through the
27 initiative ... process.” *Mukilteo Citizens for Simple Gov’t v. City of Mukilteo*, 174 Wn. 2d 41,

1 51 (2012).

2 59. Plaintiffs Have a Well-Founded Fear. All Plaintiffs have a well-founded fear
3 of an immediate invasion of their rights because Envision's Neighborhood Majority provision
4 will impede their ability to obtain variances from zoning for certain developments, benefit from
5 the existence of these developments in their neighborhoods, and benefit from the tax revenue
6 and economic stimulation that developments create.

7 60. The Neighborhood Majority Provision Will Harm Plaintiffs that Engage in Real
8 Estate Development. Many Plaintiffs, including the Downtown Spokane Partnership, Spokane
9 County, Greater Spokane, the Spokane Home Builders Association, the Realtors Association,
10 BOMA, Associated Builders & Contractors, Avista, Mr. Power, and Mr. Butler (the "City
11 Development Plaintiffs"), are individuals and organizations involved with the development of
12 residential, commercial, and industrial projects in the City of Spokane. The Neighborhood
13 Majority provision will thus impede one of the primary functions of the City Development
14 Plaintiffs.

15 61. The Neighborhood Majority Provision Will Harm Mr. Power. Plaintiff Tom
16 Power has a well-founded fear of the immediate invasion of his rights in particular. Mr. Power
17 has interests in real property that would be directly affected by the Neighborhood Majority
18 provision. The Neighborhood Majority provision would prevent Mr. Power from obtaining
19 variances from zoning regulations that cover this property and will also decrease the value of the
20 property.

21 **2. Water Rights Provision.**

22 62. The Water Rights Provision Conflicts With State and Federal Laws Governing
23 Water Resources. The Spokane River is subject to the Clean Water Act, 33 U.S.C. § 1251 *et*
24 *seq.*, a comprehensive statutory scheme that regulates the quality and flow of navigable
25 waterways in the United States. The Clean Water Act is implemented by the Washington State
26 Department of Ecology ("DOE") and the federal Environmental Protection Agency ("EPA").
27 Aquifers such as the Spokane Aquifer are also regulated by various state and federal laws. For

1 example, the Washington Growth Management Act, RCW 36.70A *et seq.* and the Safe Drinking
2 Water Act, 42 U.S.C. § 300f *et seq.*, regulate aquifers in Washington, and the quality and flow
3 of sources that feed them. The Washington Legislature has also vested authority to regulate the
4 purity of Washington's public water supplies with the Department of Health ("DOH"). RCW
5 43.20.050. Under this statutory scheme, the DOH has authority to adopt rules and regulation to
6 ensure Washington's drinking water is safe. The Envision Initiative purports to create new
7 "fundamental and inalienable" rights in the Spokane River, its tributaries, and the Spokane
8 Aquifer, and grants private citizens the power to enforce these rights and regulate the quality
9 and flow of the Spokane River, its tributaries, and the Spokane Aquifer through civil lawsuits.
10 Envision's attempt to regulate these resources through private litigation exceeds the initiative
11 power of the City of Spokane because it conflicts with the comprehensive state and federal
12 statutory scheme that already exists to protect and manage these resources. Local voters may
13 not use the local initiative power to usurp the authority of the DOE, EPA, or DOH to regulate
14 water quality and flow and may not take actions conflicting with state and federal statutes
15 regulating water.

16 63. The Water Rights Provision Involves Administrative Matters. Envision's
17 attempt to regulate Spokane's water resources through private litigation also unlawfully
18 involves the administrative rather than legislative authority. The water regulation provision
19 exceeds the initiative power of the City of Spokane because the regulation of these resources is
20 administrative in nature and is not subject to the initiative or legislative process. As discussed
21 above, the quality and flow of water resources are heavily regulated by the EPA, DOH, and
22 DOE. Cities "lack the authority to add additional legal restrictions [to water quality regulation]
23 any decisions regarding the purity of public water systems are administrative in nature." *City of*
24 *Port Angeles v. Our Water-Our Choice*, 145 Wn. App. 869, 877-78 (2008).

25 64. The Water Rights Provision Interferes with Responsibilities Delegated
26 Exclusively to the City Council. To the extent city governments have any role in regulating
27 water quality, the Washington Legislature has delegated this authority to the City Council, not

1 the city itself. For instance, the Washington Legislature requires city councils and county
2 boards to adopt comprehensive plans that provide protection for the quality and quantity of
3 ground water. See RCW 36.70A.070. The authority to create and implement these plans is not
4 subject to the initiative process.

5 65. The Water Rights Regulates Matters Beyond the Territorial Jurisdiction of the
6 City of Spokane. Envision's attempt to regulate the Spokane River, its tributaries, and the
7 Spokane Aquifer also exceeds the initiative power of the City of Spokane because these
8 resources extend far beyond the borders of the City of Spokane and serve millions of people in
9 different cities, counties, and states. The Envision Initiative's reach would extend far beyond
10 the City of Spokane and affect millions of people in the cities, counties, and states that use these
11 resources. The City of Spokane cannot enact regulations that limit the rights of other cities,
12 counties, and states to use natural resources.

13 66. Plaintiffs Have a Well-Founded Fear. All Plaintiffs have a well-founded fear
14 of the immediate invasion of their rights because Envision's attempt to create new fundamental
15 and inalienable rights regulate water quality and flow through private lawsuits will impede their
16 ability to use water from the Spokane River, its tributaries, and the Spokane Aquifer.

17 67. The Water Rights Provision Will Harm Plaintiff Spokane County. Plaintiff
18 Spokane County has a well-founded fear of the immediate invasion of its rights in particular.
19 Consistent with chapter 36.94 RCW, Spokane County owns and operates a sanitary sewage
20 collection, treatment and disposal system. The treatment facility is commonly referred to as the
21 "Spokane County Regional Water Reclamation Facility." The facility provides wastewater
22 treatment for residents of the City of Spokane Valley, the City of Millwood and adjacent
23 unincorporated urbanized areas within Spokane County. The facility discharges high quality
24 treated effluent into the Spokane River meeting all requirements of a NPDES permit. The rights
25 created by the Envision Initiative's water regulation may impede Spokane County's statutory
26 responsibilities to provide sanitary sewage collection, treatment and disposal services. In
27 particular, the Water Rights provision will clothe individuals with the ability to challenge the

1 County's discharges of high quality treated effluent into the Spokane River consistent with its
2 NPDES permit.

3 68. The Water Rights Provision Will Harm Plaintiff Avista. Plaintiff Avista also has
4 a particularly well-grounded fear of the immediate invasion of its rights because it operates
5 hydroelectric facilities on the Spokane River that affect the river's flow. The Water Rights
6 provision thus threatens Avista's ability to generate hydroelectric power for the City of Spokane
7 and other cities and counties in eastern Washington. Envision's initiative also subjects Avista to
8 conflicting regulation by the Water Rights provision on one hand, and regulations by the DOE,
9 DOH, EPA, and the Federal Energy Regulation Commission (which regulates certain
10 hydroelectric dams on the Spokane River), on the other.

11 **3. Labor Rights Provision.**

12 69. The Labor Rights Provision Conflicts With the United States Constitution. The
13 Envision Initiative's attempt to extend the Bill of Rights to "every workplace within the City of
14 Spokane" exceeds the local initiative power because it conflicts with the United States
15 Constitution. The Bill of Rights places limits on government powers and applies only to the
16 conduct of governmental actors, not private citizens. The Envision Initiative exceeds the
17 initiative power of the City of Spokane because it eliminates the "state action" requirement for
18 constitutional claims by impermissibly attempting to extend the Bill of Rights to the conduct of
19 private actors.

20 70. The Labor Rights Provision Conflicts With Federal and State Labor Law. The
21 Envision Initiative's labor rights provision also exceeds the initiative power because it provides
22 that "all workers in unionized workplaces shall possess the right to collective bargaining." This
23 provision conflicts with federal and state law governing collective bargaining rights such as the
24 National Labor Relations Act and RCW ch. 49.32.

25 71. Plaintiffs Have a Well-Founded Fear. All plaintiffs have a well-grounded fear
26 of the immediate invasion of their rights because the Labor Rights provision will affect their
27 rights as employees or employers.

1 72. The Labor Rights Provision Will Harm All Employer Plaintiffs. Many Plaintiffs
2 are employers in the City of Spokane. These Plaintiffs include Spokane County, Avista, the
3 Downtown Spokane Partnership, Greater Spokane, the Spokane Home Builders Association, the
4 Realtors Association, BOMA, Associated Builders & Contractors, Pearson, Mr. Butler, and Mr.
5 Power (the “Employer Plaintiffs”). The Employer Plaintiffs have a particularly well-grounded
6 fear of an immediate invasion of their rights because Envision’s labor rights provision will
7 impede their ability to interact and negotiate with their employees.

8 73. The Labor Rights Provision Will Harm Plaintiff Associated Builders. Plaintiff
9 Associated Builders & Contractors has a particularly well-grounded fear of the immediate
10 invasion of its rights because it regularly advocates before local, state, and federal government
11 officials on behalf of its members regarding employment and collective bargaining issues.

12 **4. Corporate Rights Provision.**

13 74. The Corporate Rights Provision Conflicts with the United States and Washington
14 Constitutions. The Corporate Rights Provision strips corporations and other business entities of
15 their protections as “persons.” This provision exceeds the initiative power of the City of
16 Spokane because it conflicts with the United States and Washington constitutions which treat
17 corporate entities as persons and extend to them many of the same protections afforded to
18 natural persons.

19 75. The Corporate Rights Provision Conflicts with the Washington Business
20 Corporation Act. The Corporate Rights Provision conflicts with the Washington Business
21 Corporation Act which provides that, in general, “every corporation has the same powers as an
22 individual to do all things necessary or convenient to carry out its business and affairs.” RCW
23 23B.03.010(C).

24 76. Plaintiffs Have a Well-Founded Fear. All Plaintiffs have a well-grounded fear
25 of the immediate invasion of their rights because the Corporate Rights Provision will strip
26 corporations and other business entities of constitutional, statutory, and regulatory protections.

27 77. The Corporate Rights Provision Will Harm Corporate Entity Plaintiffs. All

1 Plaintiffs who are “corporations or other business entities” have a particularly well-grounded
2 fear of the immediate invasion of their rights because this provision seeks to strip them of
3 various rights, including protections afforded under the United States and Washington
4 constitutions. These Plaintiffs include Spokane County, Avista, the Entrepreneurial Center, the
5 Downtown Spokane Partnership, Greater Spokane, the Spokane Home Builders Association, the
6 Realtors Association, BOMA, Associated Builders & Contractors, and Pearson.

7 **D. The Offending Provisions of the Initiatives Are Not Severable From Non-**
8 **Offending Provisions.**

9 78. Severability Clauses. The Initiatives both contain severability clauses. The
10 SMAC Initiative provides that “[i]f any part of or provision of these Charter provisions is held
11 invalid, the remainder of these provisions shall not be affected by such a holding and shall
12 continue in full force and effect.”³ The Envision Initiative provides that “[i]f any part of or
13 provision of these Charter provisions is held invalid, the remainder of these provisions shall not
14 be affected by such a holding and shall continue in full force and effect.”

15 79. Unlawful Provisions are Vital to Intended Purposes. The provisions of the
16 Envision Initiative and the SMAC Initiative that exceed the initiative power of the City of
17 Spokane are vital to the Initiatives’ intended purposes.

18 80. Not Severable. The Court cannot sever the offending provisions of the Initiatives
19 from the non-offending provisions without rendering the Initiatives useless for the purposes
20 intended by SMAC and Envision.

21 81. SMAC’s Ballot Title. The Ballot Title of the SMAC Initiative provides:

22 Shall The Spokane Municipal Code Be Amended To Add A Voter Bill Of Right
23 For Clean And Fair Elections And Government Ordinance That Prohibits
24 Corporate Lobbying, Corporate Involvement in Initiatives, And Corporate
25 Donations To Candidates For Elected Office?

26 82. SMAC’s Ballot Title is Misleading if any Provisions are Severed. Severing any
27 or all of the offending provisions from the SMAC Initiative would render the Ballot Title for the

³ The SMAC Initiative inexplicably refers to unidentified “Charter provisions” but does not purport to amend the City Charter.

1 SMAC Initiative misleading to voters.

2 83. Envision's Ballot Title. The Ballot Title of the Envision Initiative provides:

3 Shall the City Charter be amended to add a Community Bill of Rights, which
4 secures the right of neighborhood residents to approve re-zonings proposed for
5 major new development, recognizes the right of neighborhood residents to reject
6 development which violates the City Charter or the City's Comprehensive Plan,
7 expands protections for the Spokane River and Spokane Valley-Rathdrum Prairie
8 Aquifer, provides constitutional protections in the workplace, and elevates
9 Charter rights above rights claimed by corporations?

10 84. Envision's Ballot Title Is Misleading if any Provisions are Severed. Severing
11 any or all of the offending provisions from the Envision Initiative would render the Ballot Title
12 for the Envision Initiative misleading to voters.

13 **V. CLAIMS FOR RELIEF**

14 **A. Count One: Declaratory Judgment.**

15 85. Plaintiffs incorporate the previous allegations as if fully set forth herein.

16 86. Pursuant to the Washington Declaratory Judgment Act, RCW 7.24 *et seq.*, this
17 Court may declare the validity of a proposed initiative.

18 87. The matter is ripe for declaratory relief because a dispute exists as to the validity
19 of the Initiatives.

20 88. A declaratory judgment action is proper to determine whether the Initiatives
21 exceed the initiative power of the City of Spokane and thus whether they may be submitted to
22 the qualified electors at the November, 2013 special election.

23 **B. Count Two: Injunctive Relief.**

24 89. Plaintiffs incorporate the previous allegations as if fully set forth herein.

25 90. Pursuant to RCW 7.40 *et seq.* the Court has the power to grant injunctive relief.
26 The Court may grant an injunction at the time the action is commenced or at any time
27 afterwards.

91. The ballot measures have been referred to the City Clerk to be directed to the
County Auditor for placement on the November, 2013 ballot. As a result, Plaintiffs have a well-

1 grounded fear of an immediate invasion of clear legal and equitable rights under federal and
2 state law. Plaintiffs will suffer actual and substantial injuries if an injunction is not entered
3 preventing the measures from appearing on the ballot.

4 92. Only a valid initiative may be placed on a ballot for a local election.
5 Accordingly, an invalid initiative, is not an initiative as a matter of Washington law, and may
6 not be placed on an election ballot.

7 93. For the reasons described in the preceding paragraphs of this complaint,
8 Plaintiffs have a well-grounded fear of the immediate invasion of their rights should the Auditor
9 place the Initiatives on the ballot. Additionally, the Initiatives seek to alter protections afforded
10 by the United States and Washington constitutions, as well as state and federal law. If enacted
11 and enforced by the City of Spokane, the City would be subject to the time and cost of
12 defending post-election litigation.

13 94. A preliminary and permanent injunction precluding placement of the Initiatives
14 on the November 5, 2013, ballot is also proper (1) because the presence of invalid initiatives
15 steals attention, time and money from other valid propositions on the same ballot; (2) to avoid
16 the cost of placing before the voters measures that would be unenforceable if enacted; (3) to
17 avoid the public confusion that would otherwise arise if the Initiatives are enacted and then later
18 found to be invalid; (4) to eliminate potential negative impacts the Initiatives may have on
19 Spokane County's economic development efforts between now and the November 5, 2013
20 election; (5) protect the taxpayers of Spokane County from having to pay for multiple lawsuits
21 likely to arise post-election from an increased number of litigants granted standing under the
22 Initiative(s); and (6) eliminate potential post- election challenges to important Spokane County
23 public works projects, such as the Spokane County Regional Water Reclamation Facility (the
24 largest public works project in Spokane County history) which discharges into the Spokane
25 River.

26 95. Injunctive relief is the only adequate remedy for an invalid initiative.
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VI. PRAYER FOR RELIEF

Plaintiffs respectfully request the Court enter an order and judgment in its favor against defendants as follows:

A. declaring that the Envision Initiative is beyond the scope of the initiative power of the City of Spokane, is otherwise invalid and unenforceable, and should not be placed on the ballot;

B. for injunctive relief precluding placement of the Envision Initiative on the November 5, 2013, ballot;

C. declaring that the SMAC Initiative is beyond the scope of the initiative power of the City of Spokane, is otherwise invalid and unenforceable, and should not be placed on the ballot;

D. for injunctive relief precluding placement of the SMAC Initiative on the November 5, 2013, ballot; and

E. for such other relief that the Court deems appropriate.

DATED this 21st day of June, 2013.

Davis Wright Tremaine LLP
Attorneys for Plaintiffs.

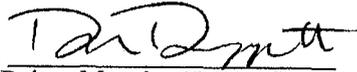
By: 
Robert Maguire, WSBA #29909
Craig Gannett, WSBA #9269
Ryan C. Gist, WSBA #41816
David Daggett, WSBA #28359
1201 Third Avenue, Suite 2200
Seattle, Washington 98101-3045
Telephone: 206-757-8094
Fax: 206-757-7094
E-mail: robmaguire@dwt.com

EXHIBIT A

LGL 2012-0049
Initiative 2012-4

RECEIVED
APR 16 2012
CITY CLERK'S OFFICE
SPOKANE, WA

April 16, 2012

Terri Pfister, Clerk
City of Spokane
5th Floor, City Hall
808 West Spokane Falls Boulevard
Spokane, Washington 99201

Re: Filing of Petition for Ballot Initiative Using the SMC Direct Filing Process

Dear Terri,

We are submitting a petition that is qualified for a ballot initiative. This petition has been created with to be eligible for as an initiative according to Section 2.02.055 (A) of the Spokane Municipal Code. We would like an initiative number for this initiative. Also, we are filing this initiative under the direct filing process that the municipal code contains. Thank you very much for your attention to this matter.

Sincerely,

Spokane Moves to Amend (SMAC)
2614 N. Stevens
Spokane, WA
99205

TITLE: "A VOTER BILL OF RIGHTS: A CLEAN AND FAIR ELECTIONS AND GOVERNMENT ORDINANCE"

ORDINANCE NO.

AN ORDINANCE AMENDING THE SPOKANE MUNICIPAL CODE TO PROHIBIT CORPORATE LOBBYING, CORPORATE INVOLVEMENT IN INITIATIVES, AND CORPORATE DONATIONS TO CANDIDATES FOR ELECTED OFFICE

NOW, THEREFORE, THE PEOPLE OF THE CITY OF SPOKANE HEREBY ORDAIN:

Section 1. That there is adopted a new chapter 2.06 to Title 2 of the Spokane Municipal Code to read as follows:

Chapter 2.06 Fair and Clean Elections and Government Ordinance

2.06.010. Findings and Purpose

The purpose of this chapter is to recognize the right of Spokane residents to fair elections and clean local government by prohibiting corporate involvement in elections and lobbying activities.

2.06.020. Right to Fair Elections

The people of the City of Spokane have the right to fair elections, which shall include the right to an electoral process free from corporate influence, and the elimination of the treatment of money as speech for elections purposes.

2.06.030. Right to Clean Government

The people of the City of Spokane have the right to clean government, which shall include the right to a City legislative process free from corporate influence.

2.06.040. Prohibited Activities

2.06.040(a). Ban on Electioneering. It shall be unlawful for any corporation to make a contribution or expenditure to influence any election within the City of Spokane.

2.06.040(b). Ban on Lobbying. It shall be unlawful for any corporation to communicate with an elected official within the City of Spokane urging support or opposition to pending legislation or citizen initiative.

2.06.040(c). Exceptions to Ban on Lobbying. The ban on corporate lobbying shall not be construed to prohibit open forum communications between corporate lobbyists and elected officials.

2.06.040(d). Money as Speech. Monies expended within the City of Spokane for political purposes shall not be considered constitutionally-protected speech within the City of Spokane.

2.06.050. Corporate Rights

Corporations in violation of the rights and prohibitions established by this ordinance, or seeking to engage in activities prohibited by this ordinance shall not have the rights of "persons" afforded by the United States and Washington Constitutions, nor shall those corporations be afforded rights under the First or Fifth Amendments to the United States Constitution or corresponding sections of the Washington Constitution.

2.06.060. Enforcement

Violation of the provisions of this ordinance shall constitute a criminal offense under 01.02.950(T) of the Spokane Municipal Code, with remedies sought against the corporate entity violating this ordinance, in addition to corporate directors, officers, or other corporate agents participating in the decision to violate the provisions of this ordinance.

2.06.070. Definitions

"Communicate" - The term shall include any written or oral communication, and shall include, but not be limited to, political advertising.

"Contribution or Expenditure" - The phrase shall include any action deemed to be a contribution or expenditure under Washington State Elections law, including, but not limited to, expenditures made independently of candidates, and in-kind contributions of anything of value.

"Corporation" - The term shall include shall include any corporation, limited partnership, limited liability partnership, business trust, or limited liability company organized under the laws of any state of the United States or under the laws of any country, and any other business entity that possesses State-conferred limited liability attributes for its owners, directors, officers, and/or managers. The term shall include individuals purporting to communicate on behalf of the corporation.

"Open Forum Communications" - The phrase shall include any communications made at a forum open to the public, including, but not limited to, meetings of the Spokane City Council.

Section 2. Effective Date of Amendment to City Charter. If approved by the electors, this City ordinance amendment shall take effect and be in full force upon issuance of the certificate of election by the Spokane County Auditor's Office.

Section 3. All ordinances, resolutions, motions, or orders in conflict with this City ordinance amendment are hereby repealed to the extent of such conflict. If any part or provision of these Charter provisions is held invalid, the remainder of these provisions shall not be affected by such a holding and shall continue in full force and effect.

EXHIBIT B

A CITY CHARTER AMENDMENT ESTABLISHING A COMMUNITY BILL OF RIGHTS

Whereas, the people of the City of Spokane wish to build a healthy, sustainable, and democratic community;

Whereas, the people of the City of Spokane wish to build that community by securing the rights, freedoms, and well-being of residents, workers, neighborhoods, and the natural environment;

Whereas, the people of the City of Spokane recognize their responsibility to be well-informed and involved citizens of the City of Spokane, to be stewards of the natural environment, and to assume the responsibility for enforcing their rights and the rights of others;

Whereas, the people of the City of Spokane have adopted a Comprehensive Plan for the City of Spokane, which envisions the building of a healthy, sustainable, and democratic community, but the people recognize that the Comprehensive Plan is not legally enforceable in many important respects;

Whereas, the people of the City of Spokane wish to create a Community Bill of Rights which would, among other goals, establish legally enforceable rights and duties to implement the vision laid out in the Comprehensive Plan; and

Whereas, the people of the City of Spokane wish to create a Community Bill of Rights, which would elevate the rights of the community over those of corporations.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF SPOKANE HEREBY ORDAIN:

Section 1. A new section be added to the beginning of the Charter of the City of Spokane, which shall be known as the "Community Bill of Rights," and which provides as follows:

FIRST. NEIGHBORHOOD RESIDENTS HAVE THE RIGHT TO DETERMINE MAJOR DEVELOPMENT IN THEIR NEIGHBORHOODS.

Neighborhood majorities shall have the right to approve all zoning changes proposed for their neighborhood involving major commercial, industrial, or residential development. Neighborhood majorities shall mean the majority of registered voters residing in an official city neighborhood who voted in the last general election. Proposed commercial or industrial development shall be deemed major if it exceeds ten thousand square feet, and proposed residential development shall be deemed major if it exceeds twenty units and its construction is not financed by governmental funds allocated for low-income housing.

It shall be the responsibility of the proposer of the zoning change to acquire the approval of the neighborhood majority, and the zoning change shall not be effective without it. Neighborhood majorities shall also have a right to reject major commercial, industrial, or residential development which is incompatible with the provisions of the City's Comprehensive Plan or this Charter.

Approval of a zoning change or rejection of proposed development under this section shall become effective upon the submission of a petition to the City containing the valid signatures of neighborhood majorities approving the zoning change or rejecting the proposed development, in a petition generally conforming to the referendum provisions of the Spokane municipal code.

SECOND. THE RIGHT TO A HEALTHY SPOKANE RIVER AND AQUIFER.

The Spokane River, its tributaries, and the Spokane Valley-Rathdrum Prairie Aquifer possess fundamental and inalienable rights to exist and flourish, which shall include the right to sustainable recharge, flows sufficient to protect native fish habitat, and clean water. All residents of Spokane possess fundamental and inalienable rights to sustainably access, use, consume, and preserve water drawn from natural cycles that provide water necessary to sustain life within the City. The City of Spokane, and any resident of the City or group of residents, have standing to enforce and protect these rights.

THIRD. EMPLOYEES HAVE THE RIGHT TO CONSTITUTIONAL PROTECTIONS IN THE WORKPLACE.

Employees shall possess United States and Washington Bill of Rights' constitutional protections in every workplace within the City of Spokane, and workers in unionized workplaces shall possess the right to collective bargaining.

FOURTH. CORPORATE POWERS SHALL BE SUBORDINATE TO PEOPLE'S RIGHTS.

Corporations and other business entities which violate the rights secured by this Charter shall not be deemed to be "persons," nor possess any other legal rights, privileges, powers, or protections which would interfere with the enforcement of rights enumerated by this Charter.

Section 2. Effective Date of Amendment to City Charter. If approved by the electors, this City Charter amendment shall take effect and be in full force upon issuance of the certificate of election by the Spokane County Auditor's Office.

Section 3. All ordinances, resolutions, motions, or orders in conflict with this City Charter amendment are hereby repealed to the extent of such conflict. If any part or provision of these Charter provisions is held invalid, the remainder of these provisions shall not be affected by such a holding and shall continue in full force and effect.



Envision a vibrant Spokane.
Envision a Community Bill of Rights
www.envisionspokane.org

April 12, 2012

Terri Pfister, Clerk
City of Spokane
5th Floor, City Hall
808 West Spokane Falls Boulevard
Spokane, Washington 99201

RECEIVED
APR 12 2012
CITY CLERK'S OFFICE
SPOKANE, WA

Re: Filing of Petition for Ballot Initiative Using the SMC Direct Filing Process

Dear Terri,

Attached to this letter is a petition that has been prepared for the qualification of a ballot initiative, pursuant to provisions contained within Section 2.02.055 (A) of the Spokane Municipal Code. The provisions in that section read that the "sponsor of the initiative shall have filed the initiative petition with the city clerk who shall have assigned an initiative number to the petition" prior to circulation of the petition for signatures.

Thus, this petition for the qualification of a ballot initiative is being filed under the "direct filing" process established by the Code, and is not being filed under the optional preliminary filing method as contained within the Spokane Municipal Code, which is set forth in SMC 2.02.030 through SMC 2.02.050.

Your attention to this important matter is greatly appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Brad Read".

Brad Read, President
Envision Spokane
1028 East 13th Avenue
Spokane, Washington 99202

EXHIBIT C

NO. 13-0604

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF SPOKANE COUNTY, WASHINGTON

IN THE MATTER OF AUTHORIZING)
JOINING IN A LAWSUIT OR LAWSUITS)
DETERMINING THE LEGALITY OF:)

- (1) INITIATIVE NO. 2012-3, FILED BY)
ENVISION SPOKANE POLITICAL)
COMMITTEE (COMMUNITY BILL OF)
RIGHTS) WITH THE CITY OF)
SPOKANE CLERK AND SUBMITTED)
TO THE ELECTOR OF THE CITY OF)
SPOKANE AT THE NOVEMBER 5,)
2013 GENERAL ELECTION BY THE)
CITY COUNCIL UNDER)
RESOLUTION NO. 2013-0038, and)
(2) INITIATIVE NO. 2012-4, FILED BY)
SPOKANE MOVES TO AMEND)
POLITICAL COMMITTEE (VOTER'S)
BILL OF RIGHTS) WITH THE CITY OF)
SPOKANE CLERK AND SUBMITTED)
TO THE ELECTORATE OF THE CITY)
OF SPOKANE AT THE NOVEMBER 5,)
2013 GENERAL ELECTION UNDER)
RESOLUTION NO 2013-0039.)

RESOLUTION

WHEREAS, pursuant to the provisions of RCW 36.32.120(6), the Board of County Commissioners of Spokane County, Washington, has the care of county property and the management of county funds and business and in the name of the county may prosecute and defend all actions for and against the county, and such other powers as are or may be conferred by law; and

WHEREAS, pursuant to the provisions of City of Spokane Resolution No. 2013-0038, the City Council of the City of Spokane requested the Spokane County Auditor hold a special election on November 5, 2013 in conjunction with the scheduled General Election for the purpose of submitting to the voters of the City of Spokane for their approval or rejection PROPOSITION NO 1 captioned "A City Charter Amendment Establishing a Community Bill of Rights" also commonly known as Initiative No. 2012-3 (Community Bill of Rights); and

WHEREAS, pursuant to the provisions of City of Spokane Resolution No. 2013-0039, the City Council of the City of Spokane requested the Spokane County Auditor hold a special election on November 5, 2013 in conjunction with the scheduled General Election for the purpose of submitting to the voters of the City of Spokane for their approval or rejection PROPOSITION NO 2 captioned "A Voter Bill of Rights: A Clean and Fair Elections and Govenemnt (sic) Ordinance" also commonly known as Initiative No. 2012-4 (Voters Bill of Rights); and

WHEREAS, City Attorney for the City of Spokane submitted to the Mayor and the Council a memorandum dated April 22, 2013 wherein the City Attorney provided analysis on pre-election challenges to the legal validity of both Initiatives. A copy of that analysis is attached hereto as Attachment "1" and incorporated herein by reference; and

WHEREAS, the City of Spokane made available to the public a legal opinion provided to the City by the law firm of K&L Gates, which concluded that both Initiatives are likely to be found legally invalid when challenged. A copy of that opinion is attached hereto as Attachment "2" and incorporated herein by reference; and

WHEREAS, the analysis of the Spokane City Attorney and legal opinion of K&L Gates address various issues regarding pre-election challenges to both Initiatives, including that the subject matter of the initiatives is beyond the people's initiative power and infringes on powers specifically granted by the legislature to the governing body of the City of Spokane and the subject matter of the initiative(s) is in conflict with decisions of the United States Supreme Court and as such is beyond the City of Spokane's legislative authority; and

WHEREAS, elements of both Initiative No. 2012-3 (Community Bill of Rights) and Initiative No. 2012-4 (Voters Bill of Rights) if passed by the electors could affect the ability of the Board of County Commissioners of Spokane County to carry out their statutory responsibilities, including, but not limited to, those set forth in the Growth Management Act (chapter 36.70A RCW) and those relating to sewage treatment and disposal (chapter 36.94 RCW); and

WHEREAS, both Initiative No. 2012-3 (Community Bill of Rights) and Initiative No. 2012-4 (Voters Bill of Rights) if passed by the electors could impact the County Commissioners' obligation under their respective oaths of office wherein they each affirmed that they "will support the Constitution and laws of the United States and the State of Washington...."; and

WHEREAS, the analysis of the Spokane City Attorney and the legal opinion of K&L Gates are supported by recent court decisions in the state that have declared comparable local initiatives to be illegal, and issued injunctions preventing them from appearing on the ballot. *City of Longview v. Wallin* 301 P.3d 45, 2013 WL 1831602 (Wash. App. Div. 2, April 30, 2013); and *City of Bellingham v. Whatcom County* (No. 691520, slip op. (Wash. Ct. App. Sept. 21, 2012); and

WHEREAS, as a result of the analysis of the Spokane City Attorney and the legal opinion of K&L Gates, the Board of County Commissioners of Spokane County believe it is in the best interests of the citizens of Spokane County to determine the legal validity of both Initiatives prior to the election to be held on November 5, 2013. Such pre-election challenge would:

- (1) avoid the cost of placing before the voters measures that would be unenforceable if enacted;
- (2) avoid the public confusion that would otherwise arise if the Initiatives are enacted and then later found to be legally invalid;
- (3) eliminate potential negative impacts the Initiatives may have on Spokane County's economic development efforts between now and the November 5, 2013 election;
- (4) protect the taxpayers of Spokane County from having to pay the costs of multiple lawsuits that are likely to arise post-election from an increased number of litigants granted standing under the Initiative(s); and
- (5) eliminate potential post- election challenges to important Spokane County public works projects, such as the Spokane County Regional Water Reclamation Facility (the largest public works project in Spokane

County history) which discharges into the Spokane River, and is therefore potentially affected by Initiative No. 2012-3 (Community Bill of Rights); and

WHEREAS, the action of the Board of County Commissioners under this resolution is not intended to promote or oppose the ballot propositions submitted by the City of Spokane to the Spokane County Auditor. The action is only to determine the validity of such ballot propositions. If the court determines that all or portions of the ballot propositions are lawful, the voters of the City of Spokane will have the opportunity to express their opinion on the ballot propositions.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Spokane County, Washington, pursuant to the provisions of RCW 36.32.120(6), that the Board does hereby authorize legal counsel to take any and all action(s) to join in a lawsuit or lawsuits on behalf of Spokane County challenging the validity of Initiative No. 2012-3 (Community Bill of Rights) as transmitted to the Spokane County Auditor under City of Spokane Resolution No. 2013-0038 to be placed before the City of Spokane electors on the November 5, 2013 General Election and Initiative No. 2012-4 (Voters Bill of Rights) as transmitted to the Spokane County Auditor under City of Spokane Resolution No. 2013-0039 to be placed before the City of Spokane electors on the November 5, 2013 General Election.

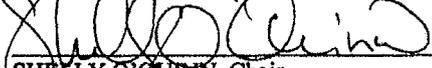
PASSED AND ADOPTED this 21st day of June 2013.

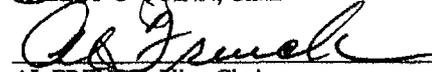


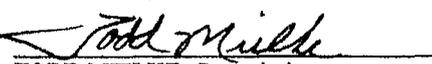
ATTEST:


Daniela Erickson
Clerk of the Board

**BOARD OF COUNTY COMMISSIONERS
OF SPOKANE COUNTY, WASHINGTON**


SHELLY O'QUINN, Chair


AL FRENCH, Vice-Chair


TODD MIELKE, Commissioner

ATTACHMENT "1"

OFFICE OF THE SPOKANE CITY ATTORNEY
CONFIDENTIAL ATTORNEY / CLIENT COMMUNICATION
LEGAL MEMORANDUM

TO: MAYOR DAVID CONDON
COUNCIL PRESIDENT BEN STUCKART
MEMBERS OF THE CITY COUNCIL

FROM: NANCY ISSERLIS, CITY ATTORNEY
PAT DALTON, SENIOR ASSISTANT CITY ATTORNEY
MICHAEL J. PICCOLO, ASSISTANT CITY ATTORNEY

SUBJECT: LEGAL VALIDITY OF INITIATIVE MEASURES

DATE: APRIL 22, 2013

CONFIDENTIALITY NOTICE

The material contained in this legal MEMORANDUM is legally privileged and confidential, intended only for the use of the individual(S) to whom it IS ADDRESSED, as is identified ABOVE. If the reader of this MEMORANDUM is not the intended recipient, you are hereby notified that any dissemination, distribution or duplication of this MEMORANDUM is strictly prohibited. If you have received this MEMORANDUM in error, please immediately notify us by telephone at (509) 625-6225 and WE WILL MAKE ARRANGEMENTS TO RETRIEVE it. Thank you.

Initiative petition signatures have been filed by the sponsors for both the Envision Spokane Community Bill of Rights initiative and the Spokane Moves to Amend (SMAC) Voters Bill of Rights initiative. The City administration and the City Council have been asked questions regarding the legal validity of both measures. This memorandum will address the legal validity of both measures and the legal options available to the City in response to the initiative measures.

Washington State case law provides that citizen initiatives can be challenged in court pursuant to both a pre-election challenge and a post-election challenge. Post-election challenges generally involve issues related to whether the initiative violated the single subject rule and whether the subject of the initiative contained multiple unrelated topics. *City of Burien v. KIGA*, 144 Wn.2d 819 (2001).

As a general rule, courts refrain from reviewing the validity of a proposed initiative

before it has been enacted. *Coppernoll v. Reed*, 155 Wn.2d 290, 297, (2005); *see also Futurewise v. Reed*, 161 Wn.2d 407, 410 (2007). It is well established, however, that a pre-election challenge to the scope of the initiative power is both permissible and appropriate. *Futurewise*, 161 Wn.2d at 411; *Coppernoll*, 155 Wn.2d at 299; *City of Sequim v. Malkasian*, 157 Wn.2d 251, 255 (2006). Pre-election challenges are also preferred if the issues raised in the challenges involve significant and continuing matters of public importance that merit judicial resolution. *American Traffic Solutions, Inc. v. City of Bellingham*, 163 Wn.App. 427, 433 (2011).

Courts will consider only two types of challenges to an initiative prior to an election: that the initiative does not meet the procedural requirements for placement on the ballot and that the subject matter of the initiative is beyond the people's initiative power. *Futurewise v. Reed*, 161 Wn.2d 407, 411 (2007). It is this second challenge that is most relevant.

An initiative can be determined to be beyond the scope of initiative power if the initiative:

- 1) involves powers granted by the legislature to the governing body of a city;
- 2) legislates on administrative issues; and
- 3) involves powers not granted to cities.

Initiatives that involve powers granted to the legislative body.

The State Supreme Courts have been very clear on the standards for whether an initiative is beyond the scope of initiative power by stating that:

An initiative is beyond the scope of the initiative power if the initiative involves powers granted by the legislature to the governing body of a city, rather than the city itself." *City of Sequim v. Malkasian*, 157 Wash.2d 251, 261, 138 P.3d 943 (2006). "[A] grant of power to the city's "legislative authority or legislative body "means exclusively the mayor and city council and not the electorate." *Id.* at 265, 138 P.3d 943. When the legislature enacts a general law granting authority to the legislative body (or legislative authority) of a city, that legislative body's authority is not subject to "repeal, amendment, or modification by the people through the initiative or referendum process." *Id.*; *see also State ex rel. Guthrie v. City of Richland*, 80 Wash.2d 382, 384, 494 P.2d 990 (1972); *Leonard v. City of Bothell*, 87 Wash.2d 847, 852-53, 557 P.2d 1306 (1976). We look to the language of the relevant statute to determine the scope of the authority granted from the legislature to the local governing body. *See Malkasian*, 157 Wash.2d at 262-63, 138 P.3d 943; *Am. Traffic Solutions, Inc. v. City of Bellingham*, 163 Wash.App. 427, 260 P.3d 245 (2011).

Mukilteo Citizens for Simple Government v. City of Mukilteo, 174 Wash.2d 41, 51(2012).

There have been a number of examples where initiatives have attempted to legislate matters that were granted to the legislative body of a city. In the *American Traffic Solutions* case, an initiative was filed that would prohibit the use by the City of Bellingham of automated traffic safety cameras unless approved by a majority of the city council and a majority of the voters. The Court concluded that the initiative was beyond the scope of initiative power because RCW 46.63.170 specifies that in order to use automatic traffic safety cameras for the issuance of traffic infractions, the "appropriate local legislative authority must first enact an

ordinance allowing for their use.” *American Traffic Solutions, Inc. v. City of Bellingham*, 163 Wn.App. 427, 434 (2011). The Court concluded that the State Legislature granted the authority to decide whether to implement the use of automatic traffic safety cameras to the local city council and that this authority is not subject to initiative powers.

Initiatives that involve administrative matters.

The State Supreme Court has stated that administrative matters, particularly local administrative matters, are not subject to initiative. *Port Angeles v. Our Water-Our Choice*, 170 Wn.2d 1, 8 (2010). 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. *Port Angeles* at 10. An initiative is administrative in its nature if it merely pursues a plan already adopted by the legislative body itself, or some power superior to it. (quoting 5 McQuillin, *supra*, § 16.55, at 214).

In the *Port Angeles* case, the Court concluded that the legislature, pursuant to RCW 57.08.012, explicitly vested the power to decide whether or not to fluoridate in the board of commissioners of a water district. Furthermore, WAC 246-290-460 permits cities the administrative authority to determine which of specified chemicals it may add to its public water supplies. Such actions were considered administrative decisions to implement a pre-existing plan.

Initiatives that enact laws that are beyond the legislative powers granted to cities.

The State Supreme Court has stated that not only must a proposed initiative be legislative in nature, but it must be within the authority of the jurisdiction passing the measure. *Philadelphia II v. Gregoire*, 128 Wn.2d 707, 719 (1996). A local initiative that conflicted with state law would be attempting to achieve something that was not within its powers and is, therefore, invalid. *Seattle Bldg & Constr. Trades Council*, 94 Wn.2d 740, 747- 748 (1980).

In the *Philadelphia II v. Gregoire* case, an initiative sought to establish in the United States “direct democracy” by means of a federal, nationwide initiative process to complement the current congressional system, and ultimately to call a world meeting where representatives from participating countries will discuss global issues. The sponsors of *Philadelphia II* believe that if 51 percent of the nation’s eligible voters choose to adopt *Philadelphia II*, it will automatically become federal law. The sponsors hope to achieve this goal by placing the *Philadelphia II* measure before voters in individual states, thereby gaining the necessary 51 percent of votes if successful. The Court issued an injunction preventing the initiative to appear on the ballot on the basis that the initiative was not legislative in nature and not within the State’s power to enact. *Philadelphia II v. Gregoire*, 128 Wn.2d 707, 719 (1996).

Envision Spokane Community Bill of Rights.

The Community Bill of Rights initiative measure ballot proposition states:

Shall the City Charter be amended to add a Community Bill of Rights, which secures the right of neighborhood residents to approve re-zonings proposed for major new development, recognizes the right of neighborhood residents to reject development which violates the City Charter or the City’s Comprehensive Plan, expands protections for the Spokane River and Spokane Valley-Rathdrum Prairie Aquifer, provides constitutional protections in the workplace, and elevates the Charter rights above rights claimed by corporations?

The specific amendments to the City Charter would provide that:

- 1) Neighborhood Residents Have the Right to Determine Major Development in Their Neighborhoods. A majority of neighborhood residents would have the right to determine major development in their neighborhoods by having the right to approve all zoning changes proposed for their neighborhood involving major commercial, industrial, or residential development, the reject of which must be based on the development being incompatible with the provisions of the City's Comprehensive Plan or Charter;
- 2) The Right to a Healthy Spokane River and Aquifer. The Spokane River, its tributaries and the Spokane Valley-Rathdrum Prairie Aquifer would possess fundamental and inalienable rights to exist and flourish, which shall include the right to sustainable recharge, flows sufficient to protect native fish habitat and clean water. Spokane residents would possess fundamental and inalienable rights to sustainably access, use, consume, and preserve water drawn from natural cycles that provide water necessary to sustain life within the City. The City, its residents or group of residents would have legal standing to enforce and protect those rights.
- 3) Employees Have the Right to Constitutional Protections in the Workplace. Employees shall possess United States and Washington State Bill of Rights' constitutional protections in every workplace within the City of Spokane and workers in unionized workplaces shall possess the right to collective bargaining.
- 4) Corporate Powers shall be subordinate to People's Rights. Corporations and other business entities which violate rights secured by the City Charter shall not be deemed to be "persons," nor possess any other legal rights, privileges, powers, or protections which would interfere with the enforcement of rights enumerated by the Charter.

Spokane Moves to Amend (SMAC) Voters Bill of Rights.

The Community Bill of Rights initiative measure ballot proposition states:

Shall the Spokane Municipal Code be amended to add a Voter Bill of Rights for clean and fair elections and government ordinance that prohibits corporate lobbying, corporate involvement in initiatives, and corporate donations to candidates for elected office?

The specific amendments to the Spokane Municipal Code would provide that:

- 1) Corporations would be prohibited from a) making contributions or expenditures to influence any election within the City and b) communicating with an elected official within the City urging support or opposition to pending legislation or citizen initiative except during open forum communication.
- 2) Monies expended within the City for political purposes would not be considered constitutionally protected speech within the City.
- 3) Corporations in violation of the rights and prohibitions established by this ordinance or seeking to engage in activities prohibited by this ordinance shall

not have the rights of "person" afforded by the U.S. or Washington State constitutions, nor would these corporations be afforded rights under the First or Fifth amendments of the U.S. Constitution or corresponding sections of the Washington State Constitution.

- 4) Violations of this ordinance would be a criminal offense.

Basis for Challenging the Legal Validity of the Initiative Measures.

Legal challenge to the legal validity of the Community Bill of Rights would be based upon the follow:

- 1) The provisions of the initiative regarding the regulation of water quality would be beyond the City's legislative authority and conflict with both the federal Clean Water Act and the state Water Pollution Control Act and Water Resources Act. A conflict created by a local regulation would be pre-empted by the Supremacy Clause of the U.S. Constitution.
- 2) Other aspects of ground water protection falls under the Growth Management Act requiring local jurisdictions to adopt comprehensive plans including provisions related to aquifer protection. The provisions of the initiative regarding the aquifer would be beyond the scope of initiative power since the state legislature has delegated those powers to city and county legislative bodies.
- 3) The initiative would also interfere with the City's administrative functions to regulate water within its jurisdiction pursuant to adopted plans.
- 4) The provisions of the initiative regarding the ability of residents to reject zone changes of major developments is beyond the scope of initiative authority since the State Legislature has delegated to the City Council the authority to establish development plans for the city.
- 5) The provisions of the initiative relating to employee rights in unionized workplaces to collective bargaining are pre-empted by either the federal National Labor Relations Act or the state Public Employees' Collective Bargaining Act and, therefore, beyond the scope of initiative power by exceeding the City's legislative authority.
- 6) The initiative provides for the elimination or reduction of a corporation or business entities status and legal rights. Such provisions would conflict with the Washington State Constitution and legislative enactment of the Washington Business Corporation Act. This provision would be beyond the scope of initiative authority by exceeding the City's legislative authority.

Legal challenge to the legal validity of the Voter Bill of Rights would be based upon the follow:

- 1) The initiative redefines the ability of corporations to contribute to election campaigns and to communicate with elected officials outside of an open forum. Such provisions would conflict with the decision of the U.S. Supreme Court in the Citizens United v. Federal Election Commission decision and with state law regarding campaign disclosure and contribution. The initiative would, therefore, be beyond the City's legislative authority.

- 2) The initiative proposes to deny corporations constitutional protections of the First and Fifth amendments of the U.S. Constitution and corresponding provisions of the State Constitution, as well as denying corporations the right afforded to a "person." These provisions are beyond the scope of the City's legislative powers.

ATTACHMENT "2"

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MEMORANDUM

TO: Nancy Isserlis, City Attorney
Michael J. Piccolo, Assistant City Attorney

FROM: Michael K. Ryan

DATE: May 9, 2013

RE: Legal Validity of Proposed Initiative Measures and Possible Courses of Action

You have asked me to provide an opinion as to the legal validity of two separate proposed citizen initiatives and to address the possible courses of action the City of Spokane can take with respect to the measures. *First*, this Memorandum discusses the proposed initiatives. *Second*, this Memorandum sets forth the legal criteria against which these initiatives would be reviewed in a pre-election challenge. *Third*, this Memorandum analyzes the particular initiatives in light of the legal standards that would apply in a pre-election challenge. *Finally*, the Memorandum discusses the various courses of action the City of Spokane can take with respect to these initiatives.

Thank you for the opportunity to provide you with a legal opinion regarding the validity of the proposed initiatives and please contact me if you have any questions or concerns regarding the analysis below.

I Proposed Initiatives

A. Envision Spokane's Community Bill of Rights -- Initiative No. 2012-3.

This initiative, which was filed by Envision Spokane with the Spokane City Clerk on April 12, 2012 under former Spokane Municipal Code ("SMC") 2.02.055(A), seeks to amend the Spokane City Charter to create a "Community Bill of Rights." On May 2, 2013, an official from Spokane County Elections confirmed that Envision Spokane had gathered sufficient signatures to place this initiative on the ballot. This proposed initiative will be referred to as the "Envision Initiative."

The Envision Initiative seeks to amend the Spokane City Charter in four ways.

First, it seeks to establish the right of "neighborhood residents"¹ to determine whether any proposed zoning changes related to "major development" can or cannot occur within an undefined

¹ All quoted language relating to the proposed initiatives discussed above come directly from the proposed initiatives.

K&L|GATES

Memorandum

May 9, 2013

Page 2

"neighborhood." It effectuates this goal by providing "neighborhood majorities" with the "right to approve all zoning changes" that occur within a neighborhood for all "major commercial, industrial or residential development." Proposed commercial or industrial development is deemed to be "major" if it exceeds ten thousand square feet. Proposed residential development is deemed "major" if it exceeds twenty units, but this does not include government financed low-income housing.

In addition, it requires all developers who seek any zoning change for such development to "acquire the approval of the neighborhood majority" by gathering signatures of over 50% of the "neighborhood residents" and then to submit those signature "to the City." No zoning change can be effective without the collection of these signatures. Further, "neighborhood majorities shall also have the right to reject major commercial, industrial, or residential development which is incompatible with the provisions of the City's Comprehensive Plan or" the Spokane City Charter.

Second, the Evisation Initiative creates "fundamental and inalienable rights to exist and flourish" for the Spokane River and the Spokane-Valley-Rathdrum Prairie Aquifer. The Evisation Initiative does not appear to differentiate between those parts of the river or aquifer that lie within or without the City of Spokane's geographic limits. It also creates for all of Spokane's "residents" rights to "sustainably access, use, consume, and preserve water drawn from natural cycles that provide water necessary to sustain life within the City." In order to enforce these rights, the Evisation Initiative creates legal standing for the City of Spokane and all of its residents "to enforce and protect those rights."

Third, the Evisation Initiative grants rights under the "United States and Washington Bill of Rights" to all employees that work within the City of Spokane. In addition, it creates collective bargaining rights for all unionized workplaces.

Fourth, the Evisation Initiative strips corporations of legal rights within the City of Spokane. It states: "Corporations and other business entities which violate the rights secured by this Charter shall not be deemed to be 'persons,' nor possess any other legal rights, privileges, powers, or protections which would interfere with the enforcement of rights enumerated by this Charter."

The vast majority of terms in the Evisation Initiative are not defined. If it passes, the Evisation Initiative would amend the City Charter upon the issuance of the certificate of election by the Spokane County Auditor's Office. The Evisation Initiative contains both a repealer clause and a severability clause.

B. Spokane Moves to Amend (SMAC) – Initiative No. 2012-4.

This initiative, which was filed by Spokane Moves to Amend (SMAC) with the Spokane City Clerk on April 16, 2012 under former SMC 2.02.055(A), seeks to enact an ordinance banning "corporations from making contributions or expenditures to influence any election with in [sic] the City of Spokane." As of the date of this Memorandum, Spokane County Elections has not yet

K&L|GATES

Memorandum

May 9, 2013

Page 3

confirmed whether sufficient, valid signatures have been gathered so that this initiative can be placed on the ballot. This initiative will be referred to as the "SMAC Initiative."

The SMAC Initiative underlying purpose is to "prohibit[] corporate involvement in elections and lobbying activities." The operative provisions of the SMAC Initiative make it a criminal offense for any corporation to (1) "make a contribution or expenditure to influence any election within the City of Spokane;" or (2) "communicate with an elected official within the City of Spokane urging support of opposition to pending legislation or citizen initiative," except where such communication occurs within an "open forum." The SMAC Initiative also states that "Monies expended within the City of Spokane for political purposes shall not be considered constitutionally-protected speech within the City of Spokane."

The SMAC Initiative also provides that any "corporations" that violate any of the "rights or prohibitions established by this ordinance, or seek[] to engage in activities prohibited by this ordinance shall not have the right of 'persons' afforded by the United States and Washington Constitutions, nor shall those corporations be afforded rights under the First and Fifth Amendments to the United States Constitution or corresponding sections of the Washington Constitution."

If the SMAC Initiative passes, it would become effective upon the issuance of the certificate of election by the Spokane County Auditor's Office. The SMAC Initiative has both a repealer and severability clause.

II Overview of the Law on Pre-election Challenges.

As a general rule, pre-election review of an initiative is disfavored. *Coppermoll v. Reed*, 155 Wn.2d 290, 301, 119 P.3d 318 (2005). In Washington, courts may only consider two types of pre-election challenges to an initiative: (1) whether the initiative meets the procedural requirements (i.e., sufficient signatures, etc.); or (2) whether the initiative's subject matter is outside the scope of the initiative power being exercised. *Futerniss v. Reed*, 161 Wn.2d 407, 411, 166 P.3d 708 (2007). The longstanding rule in Washington is that pre-election review of proposed initiatives is proper to determine whether the proposed initiative is within the scope of the initiative power being exercised. *See, e.g., Philadelphia II v. Grigsby*, 128 Wn.2d 707, 717, 911 P.2d 389 (1996) (citing *Berry v. Superior Court*, 92 Wash. 16, 159 P. 92 (1916)); *see also Mukitoo Citizens for Simple Gov't v. City of Mukitoo*, 174 Wn.2d 41, 51, 272 P.3d 227 (2012); *City of Sequim v. Malheanian*, 157 Wn.2d 251, 260, 138 P.3d 943 (2006); *Seattle Bldg. & Constr. Trades Council v. City of Seattle*, 94 Wn.2d 740, 746, 620 P.2d 82 (1980); *City of Longview v. Wallin*, -- P.3d --, 2013 WL 1831602 at * 9 (Wn.App. Div. 2 Apr. 30, 2013); *Am. Traffic Solutions, Inc. v. City of Bellingham*, 163 Wn.App. 427, 432, 260 P.3d 245 (Div. 1 2011). In conducting such review, courts look at both the subject and substance of an initiative to assess whether a particular initiative is within the scope of the initiative power being exercised. *Coppermoll*, 155 Wn.2d at 299 ("Subject matter challenges do not raise concerns regarding justiciability because postelection events will not further sharpen the issue (i.e., the subject of the proposed measure is either proper for direct legislation or it is not)."). Notably, because the local initiative power is not derived from the Washington State Constitution, courts are more likely to review the underlying

K&L|GATES

Memorandum
May 9, 2013
Page 4

substance of an initiative in a pre-election challenge to local, as opposed to statewide, initiatives. *See, e.g., City of Port Angeles v. Our Water-Our Choice*, 145 Wn.App. 869, 879-80, 188 P.3d 533 (Div. 1 2008), *aff'd in relevant part*, 170 Wn.2d 1 (2010).

This Memorandum will focus on the second type of pre-election challenge: Whether the proposed initiatives are outside the scope of the local initiative power. An initiative is outside the scope of the local initiative power if it (1) involves powers granted by the State Legislature to the governing body of the city, as opposed to the corporate entity itself; (2) is administrative as opposed to legislative in nature; or (3) seeks to legislate in areas that are simply not within the local legislative power.

A. Powers Granted By State Legislature to Local Governing Body.

"An initiative is beyond the scope of the initiative power if the initiative involves powers granted by the legislature to the governing body of a city, rather than the city itself." *Malkasian*, 157 Wn.2d at 261 (citing *Leonard v. City of Bothell*, 87 Wn.2d 847, 853, 557 P.2d 1306 (1976) & *State ex. Rel. Guthrie v. City of Richland*, 80 Wn.2d 382, 384, 494 P.2d 990 (1972)). "A grant of power to the city's legislative authority or legislative body means exclusively the mayor and city council and not the electorate." *Mukilteo Citizens*, 174 Wn.2d at 51 (citations, quotations and alterations omitted). Thus, if the State Legislature enacts a general law granting authority to a local legislative body or authority of a city, that body's authority is not subject to the local initiative power. *Id.* (citations omitted).

For example, in *Mukilteo Citizens*, the Washington Supreme Court held that because the State Legislature "granted to local legislative bodies the exclusive power to legislate on the subject and use of traffic safety cameras" the local electorate, through the initiative power, had no authority to place restrictions on the local governing body's exercise of that power. *Id.* at 51-52; *see also City of Longview*, - P.3d -, 2013 WL 1831602 at *9 (Wn.App. Div. 2 Apr. 30, 2013); *Am. Traffic Solutions*, 163 Wn.App. at 432 (Div. 1 2011) ("The subject matter of the initiative is therefore clearly beyond the scope of the local initiative power."). As explained further below, the court in *Linco v. City of Bremerton*, held that the local zoning power was not subject to the local initiative power because the State Legislature had granted that exclusive authority to zone local cities within the local governing body, not the city as a corporate entity itself. 25 Wn.App. 309, 312-13, 607 P.2d 329 (Div. 2 1980).

B. Legislative v. Administrative.

Whether an initiative is within the scope of the local initiative power often turns on the distinction between legislative acts versus administrative acts. *See, e.g., City of Port Angeles v. Our Water-Our Choice*, 170 Wn.2d 1, 10, 239 P.3d 589 (2010). "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." *Id.* (citations omitted). Distinguishing between a legislative act and an administrative act can be a difficult task. *Id.*

K&L|GATES

Memorandum
May 9, 2013
Page 5

For example, in *City of Port Angeles*, the Washington Supreme Court held that a proposed initiative that, among other things, imposed additional documentation requirements on top of an existing state and federal regulatory scheme was administrative in nature and therefore outside the initiative power. 170 Wn.2d at 14 (“These are not the details of a new policy of plan, indicative of a legislative act; these are modifications of a plan already adopted by the legislative body itself, or some power superior to it, indicative of an administrative act.”) (citations and alterations omitted). Likewise, in *Leonard*, *supra*, the Washington Supreme Court held that an ordinance which rezoned property was not a legislative act, but rather an administrative act and therefore not subject to referendum. 87 Wn.2d at 851, 557 P.2d 1306 (1976).²

C. Areas Outside the Local Legislative Power.

“Not only must the proposed initiative be legislative in nature, but it must be within the authority of the jurisdiction passing the measure.” *Philadelphia II*, 128 Wn.2d at 719, 911 P.2d 389 (1996) (citing *Seattle Bldg. & Constr. Trades Council*, 94 Wn.2d at 747, 620 P.2d 82 (1980)). Succinctly stated: “Local initiatives . . . must be within the local legislative power.” *City of Port Angeles*, 145 Wn.App. at 536 (Div. 1 2008) (emphasis in original), *aff’d*, 170 Wn.2d 1 (2010). In fact, it has long since been established that “[w]hile inhabitants of a municipality may enact legislation governing local affairs, they cannot enact legislation which conflicts with state law.” *Seattle Bldg. & Constr. Trades Council*, 94 Wn.2d at 747; *see also Priorities First v. City of Spokane*, 93 Wn.App. 406, 411, 968 P.2d 431 (Div. 3 1998) (“An ordinance that conflicts with a state statute is invalid.”).

For example, in *Philadelphia II*, a unanimous Washington State Supreme Court in a pre-election challenge struck down a proposed initiative that sought to create a federal initiative process because it went “beyond the scope of [the] Washington State initiative power as it attempts to exercise authority that goes beyond the jurisdiction of the state.” 128 Wn.2d at 719. In so holding, the court stated: “While the goals of the Philadelphia II initiative may be laudable, it is simply not within Washington’s power to enact federal law.” *Id.* Likewise, in *Seattle Building & Construction Trades Council*, the court affirmed an injunction preventing a vote on a citywide initiative relating to the location of Interstate 90 because it conflicted with state law. 94 Wn.2d at 747; *see also id.* at 749 (“But the difficulty is that these relate to matters upon which the City has no authority to legislate—namely, the location and construction of state limited access facilities.”); *accord Ceppermoll*, 155 Wn.2d at 303, 119 P.2d 318 (2005) (rejecting a pre-election challenge because “I-330 does not purport to effectuate a federal law; amend the U.S. or Washington Constitution; or create any other type of law outside the state’s legislative power.”).

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² The power of local referendum is subject to similar limitations as the local initiative power. *See, e.g., 1000 Friends of Washington v. McFarland*, 159 Wn.2d 165, 173-74, 149 P.3d 616 (2007).

K&L|GATES

Memorandum

May 9, 2013

Page 6

III Analysis of Proposed Initiatives

A. Envision Initiative

This Memorandum will analyze each particular section of the Envision Initiative and also address issues relating to severability.

1. Zoning Provisions.

The Washington Supreme Court recognized: “[Z]oning ordinances and regulations are beyond the power of initiative or referendum in Washington because the power and responsibility to implement zoning was given to the legislative bodies of municipalities, not to the municipality as a whole.” *1000 Friends of Washington*, 159 Wn.2d at 174 (2007) (citing *Lins*, 25 Wn.App. at 312-13 (Div. 2 1980) (citing *Leonard v. City of Bothell*, 87 Wn.2d 847, 854, 557 P.2d 1306 (1976)). As the court in *Lins* explained:

Washington’s general law grants and limits zoning powers to legislative bodies of charter cities as well as code cities. RCW Ch. 35.63 defines “cities” as “every incorporated city and town” and then grants the zoning power to the city council at 35.63.110. The council, in turn, is defined as the “chief legislative body of a city.”

Lins, 25 Wn.App. at 312. Accordingly, the *Lins* court, in a post-election challenge, held that a local initiative that changed the pre-existing zoning code was outside the scope of the local initiative power. *Id.* at 312 (“where the general law grants authority to the legislative authority of a city, that authority may not be exercised by the city as a corporate entity, nor [is it] subject to repeal, amendment or modification by the people through the initiative of referendum procedure.” (quoting *State ex rel. Gutbris v. Richland*, 80 Wn.2d 382, 384, 494 P.2d 990 (1972)); *see also Leonard*, 87 Wn.2d at 853 (holding that zoning decision was not subject to referendum because grant of authority was to local legislative body not the local corporate entity).

Based on this authority, the first section of the Envision Initiative is outside the scope of the local initiative power because it “involves powers granted by the legislature to the governing body of a city, rather than a city itself.” *Malkasian*, 157 Wn.2d at 261 (2006). Because the State Legislature granted the zoning powers to local legislative bodies and not the local corporate entity, any attempt to amend the zoning laws by requiring neighborhood approval of certain zoning projects is outside the scope of the initiative power and subject to a pre-election challenge.

In addition, this portion of the Envision Initiative may also be outside the scope of the local initiative power because it is an administrative, not a legislative, act. The Washington Supreme Court stated: “Amendments of the zoning code or rezones usually are decisions by a municipal legislative body implementing the zoning code or comprehensive plan. The legislative body essentially is then performing its administrative function.” *Leonard*, 87 Wn.2d at 850 (1976) (pre-election invalidation of referendum that attempted to overturn rezoning decision); *but see Lins*, 25 Wn.App. at 311 (refusing to invalidate initiative on administrative action ground given that initiative “dramatically changed” the prior zoning code). Thus, not only is this section subject to a pre-

K&L|GATES

Memorandum
May 9, 2013
Page 7

election challenge on the basis that it involves powers granted to local governing bodies, it also is subject to a pre-election challenge on the grounds that it is an administrative and not a legislative act.

2. Spokane River and Spokane Valley-Rathdrum Prairie Aquifer Provisions.

Section 2 of the Envision Initiative is outside the scope of the initiative process for several reasons.

First, the bodies of water at issue are subject to regulation by the Federal Water Pollution Control Act, which is better known Clean Water Act, or State laws, including the Water Rights Code and the Growth Management Act ("GMA"), which all govern and regulate the appropriation and use of these water bodies.

"The Clean Water Act is a comprehensive water quality statute designed to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." *Pub. Utility Dist. No. 1, of Prnd Orville Cnty. v. State, Dep't of Ecology*, 146 Wn.2d 778, 806, 51 P.3d 744 (2002) (citations and quotations omitted). As a navigable waterway of the United States, the Spokane River is subject to the Clean Water Act and the regulations promulgated in pursuance of the Act. Under the Clean Water Act, "each state must establish, subject to federal approval, comprehensive water quality standards setting water quality standards for intrastate water." *Id.* Pursuant to RCW 90.48.260, the Washington State Department of Ecology "is the designated state agency for purposes of securing the benefits of and meeting the requirements of the Clean Water Act." *Id.* As a result of this delegation, the Department of Ecology has promulgated comprehensive regulations and such regulations often require approval by the Federal Environmental Protection Agency. *Id.* at 807-08. Thus, any attempt by the local initiative process to augment or hinder this Federal/State cooperative exercise by adding additional requirements or creating additional rights that do not already exist would be administrative in nature and not subject to the local initiative power. *See, e.g., City of Port Angeles*, 170 Wn.2d at 14 (finding local initiative to be administrative in nature where it "directly impacts existing water regulations promulgated by state and federal agencies.") & *id.* at 10 ("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.").

In addition, Chapter 90 of the Revised Code of Washington, entitled "Water Rights - Environment," sets forth a comprehensive set of laws that regulate and govern water rights within the State of Washington. For example, RCW 90.03.010³, provides that it is within "[t]he power of the state to regulate and control the waters within this state[.]" Indeed, RCW 90.03.010 specifically notes that "[n]othing in this chapter shall be construed to lessen, enlarge, or modify the existing rights of any riparian owner, or any existing right acquired by appropriation or otherwise." Moreover, RCW 90.03.600 grants the Department of Ecology with the authority to impose civil penalties for violations of the Water Code. Likewise, RCW 90.22.010,⁴ states that "[t]he department

³ Which is part of the chapter entitled the "Water Code."

⁴ Which is part of the chapter entitled "Minimum Water Flows and Levels."

K&L|GATES

Memorandum
May 9, 2013
Page 8

of ecology may establish minimum water flows or levels for streams, lakes or other public waters[.]” Similarly, the Water Pollution Control Act provides the Department of Ecology with jurisdiction over, among other things, “underground waters of the state of Washington” and with rule-making authority necessary to effectuate the Chapter, to bring enforcement actions and impose penalties for violations of the act. RCW 90.48.30, .35, .37 & .140. In addition, the “Water Resources Act of 1971” directs, among others, “all local government agencies” to ensure for the protection of groundwater aquifers if they are the sole source of drinking water. RCW 90.54.140.

This comprehensive legislative scheme demonstrates that the State, a power superior to that of the City of Spokane, has extensive regulations and laws relating to the right and use of waterways that lie within the State. To the extent that these new rights created by the Envision Initiative would be in conflict with any state regulations or laws by going above and beyond what state law requires or by extinguishing pre-existing water rights, this would also be outside the scope of the local initiative power because municipalities cannot pass laws that are in conflict with State law. *See, e.g., Seattle Bldg. & Constr. Trades Council*, 94 Wn.2d at 747. Similarly, this section of the initiative can also be seen as being administrative in nature because it seeks to either “further (or hinder)” a regulatory regime enacted by a power superior to the City of Spokane—the State. *City of Port Angeles*, 170 Wn.2d at 10.

Also, the GMA, RCW 36.70A *et seq.*, requires comprehensive land use planning by counties and cities. The GMA requires the designation and protection of Critical Areas, which includes areas that areas relating to aquifers. *See, e.g., RCW 36.70A.030(5)*. In *City of Seattle v. Yes for Seattle*, the court concluded that a Seattle initiative that related to creek restoration was properly the subject of pre-election review and outside the scope of the local initiative power because “citizens cannot use the initiative power to enact GMA development regulations.” 122 Wn.App. 382, 398, 93 P.3d 176 (2005).

Second, the Spokane Valley-Rathdrum Prairie Aquifer is vast, covering approximately 322 square miles in Washington and Idaho. *See* <http://www.spokanewater.org/aquifer/>. Likewise, the Spokane River is approximately 117 miles long, and is located in both Washington and Idaho. *See* http://en.wikipedia.org/wiki/Spokane_River. Despite the massive size of these two resources, the Envision Initiative does not limit its reach to only those portions of either the river or the aquifer that lie within the borders of the City of Spokane. Thus, the potential impacts of the proposed initiative reach well outside the scope of the City of Spokane. For example, under the initiative a resident of Spokane could sue an individual or a developer located in Idaho (presumably in Spokane County Superior Court or Spokane Municipal Court) for violations of the proposed Charter amendment that occurred outside the borders of the City of Spokane. To the extent that this section attempts to confer a private right of action to Spokane residents for actions that occur outside the City of Spokane it is outside the scope of the local “initiative power as it attempts to exercise authority that goes beyond the jurisdiction of” the City of Spokane. *See, e.g., Philadelphia II*, 128 Wn.2d at 719. Similarly, to the extent this right to standing conflicts with either the Clean Water Act and/or Washington’s Water Rights code, it will be in conflict with those “superior” laws.

Third, this section attempts to create new “fundamental and inalienable rights” for both natural objects and natural persons. The creation of these new “fundamental and inalienable rights”

K&L|GATES

Memorandum
May 9, 2013
Page 9

is not within the local initiative power as it is a judicial function. The term "fundamental" right is most often associated with the concept of substantive due process, which is a judge-made recognition of those rights and liberties that are so "deeply rooted in our Nation's history and tradition" or "implicit in the concept of ordered liberty" that neither "liberty of justice would exist if they were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 720-21, 117 S.Ct. 2258, 138 L.Ed.2d 772 (1997) (also noting that such "rights" must be carefully drawn and described) (citations and quotations omitted). Here, it appears as though the Envision Initiative seeks to create new constitutional rights. If this is its intent, it is outside the scope of the local initiative power because such constitutional rights can only be "created" by judicial decision or a constitutional amendment. Furthermore, by attempting to grant standing to all Spokane residents, the initiative is outside the scope of the local initiative power because it violates the separation of powers doctrine. The concept of standing is a judicial function and numerous judge-made rules apply to who does or does not have standing to enforce environmental rights. *See, e.g., Sierra Club v. Morton*, 405 U.S. 727, 92 S.Ct. 1361, 31 L.Ed.2d 636 (1972);⁵ *see also Flynn v. Burlington N. Santa Fe Corp.*, 98 F. Supp.2d 1186, 1190-1192 (E.D. Wash. 2000) (denying plaintiff's standing relating to drinking water claim related to Spokane Valley—Rathdrum Prairie Aquifer). Plainly put, the local initiative power does not include this attempt at expanding legal standing.

3. Workplace Provisions.

i) Expansion of Constitutional Rights.

As a general rule, the protections contained in the Bill of Rights restrict governmental, not private, actors. *See, e.g., Pub. Util. Comm. Of D.C. v. Pollack*, 343 U.S. 451, 461, 72 S.Ct. 813, 96 L.Ed. 1068 (1952) ("The [First and Fifth Amendments] concededly apply to and restrict only the Federal Government and not private persons") (citations omitted); *see also NCAA v. Tarkanian*, 488 U.S. 179, 109 S.Ct. 454, 102 L.Ed.2d 469 (1988) ("Embedded in our Fourteenth Amendment jurisprudence is a dichotomy between state action, which is subject to scrutiny under the Amendment's Due Process Clause, and private conduct, against which the Amendment affords no shield, no matter how unfair that conduct may be.") (citations omitted). Here, by expanding the constitutional protections of the Bill of Rights (both Federal and State), the Envision Initiative goes beyond the scope of the local initiative power because it seeks to create constitutional rights where none currently exists.

It is axiomatic that under doctrine of separation of powers, the authority and power to interpret Federal, State, and local statutory and constitutional law rests with the judiciary, not the legislative authority of the City. *Marbury v. Madison*, 5 U.S. 137, 1 Cranch 137, 2 L. Ed. 60 (1803); *Haberman v. Wash. Pub. Power Supply Sys.*, 109 Wn.2d 107, 143, 744 P.2d 1032 (1987) ("Separation of powers principles are violated [] when the Legislature infringes on a judicial function."). As such, any attempt to re-define decisional, constitutional or statutory rights, whether under Federal or

⁵ In fact, the Envision Initiative appears to attempt to create the very rule the Supreme Court rejected in *Sierra Club*. *Id.* at 741-60 (Douglas, J., dissenting) (advocating rule that "environmental objects" have standing and rights).

K&L|GATES

Memorandum

May 9, 2013

Page 10

Washington State law, is beyond the scope of the initiative power because it impermissibly intrudes into an area reserved for another branch of government—namely the judicial branch. Put simply, the City, whether acting through its citizens or otherwise, lacks the authority to “say what the law is.” That is a purely judicial function and therefore not within the legislative authority of the local initiative power.

ii. Expansion of Collective Bargaining Rights.

As with the expansion of constitutional protections, the expansion of collective bargaining rights is not within the local initiative power. The subject of labor negotiations is extensively regulated by both the Federal and State governments. *See, e.g.*, 29 U.S.C. §§ 151-169 (“NLRA”) & RCW 41.56 *et seq.* (“PECBA”). To the extent that the Envision Initiative seeks to expand collective bargaining rights beyond what is required or permissible under the NLRA or the PECBA, such attempts are not within the power of the local initiative power. The local initiative power cannot be used to expand rights that are defined by Federal or State statutes because those laws reign supreme over local laws. Thus, if enacted, such laws would likely face both State and Federal preemption challenges.

4. Corporate Provisions.

Section 4 of the Envision Initiative is beyond the scope of the City’s legislative authority because it seeks to nullify and/or amend State and Federal constitutional provisions and statutes that recognize corporations have rights as legal persons. For example, the Washington Constitution provides in Article 12, Section 5 that “all corporations shall have the right to sue ... in all courts, in like cases as natural persons.” Wash. Const. art. XII, § 5; *see also First Nat. Bank of Boston v. Bellotti*, 435 U.S. 765, 778 n.14, 98 S. Ct. 1407, 55 L. Ed. 2d 707 (1978) (citing the multitude of Supreme Court cases affording corporations the protection of constitutional guarantees such as the First, Fourth, and Fifth Amendments); RCW 23B *et seq.* (Washington Business Corporations Act, which sets forth rights of corporations).

In essence, the Envision Initiative seeks to nullify and/or amend both the Washington and Federal Constitutions, as well as State laws, by denying, or severely limiting, the rights of corporations within City limits. This is not within the proper scope of the local initiative power. *Seattle Bldg & Constr. Trades Council*, 94 Wn.2d at 747 (“While inhabitants of a municipality may enact legislation governing local affairs, they cannot enact legislation which conflicts with state law.”); *see also City of Bellingham v. Whatcom County, et al.*, No. 12-2-01718-9, Whatcom County Superior Court, Aug. 3, 2012 Hearing Transcript at p. 8 (noting that local initiative power cannot be used to “nullify” State or Federal law or case law interpreting the same). Indeed, if the local initiative power cannot be used to “enact legislation which conflicts with state law,” it necessarily follows that it cannot enact legislation that conflict with Federal law, which by virtue of the Supremacy Clause of the United States Constitution is the “supreme Law of the Land.” U.S. Const., art. VI. Put simply, the City of Spokane, whether acting through its own legislative body or through a citizens’ initiative, simply lacks the power to do what this section of the Envision Initiative proposes.

K&L|GATES

Memorandum
May 9, 2013
Page 11

5. Severability Considerations.

The Envision Initiative contains a severability clause. The Washington Supreme Court has held that existence of a severability clause is not dispositive on the question of whether certain portions of a law should remain valid after portions are severed. *McGowan v. State*, 148 Wn.2d 278, 294-95, 60 P.3d 67 (2002). Rather, when assessing the effect of such clauses, courts must look at the entire law in question to determine whether the valid and invalid portions of the law are "so intimately connected with the balance of the act as to make it useless to accomplish the purpose of the legislature" if the invalid portions are severed. *Leonard v. City of Spokane*, 127 Wn.2d 194, 201, 897 P.2d 358 (1995) (citations and quotations omitted). Here, even if a court were to only strike down portions of the Envision Initiative, a strong argument could be made that even the non-objectionable portions of the initiative (to the extent they even exist) should not be placed on the ballot. See, e.g., *Yes for Seattle*, 122 Wn.App. at 395 (Div. 1 2004) ("Given the nature of the initiative and the ballot title, the valid portions are not severable from the invalid portions."); see also *Priorities First*, 93 Wn.App. at 414 (Div. 3 1998) ("The savings clause does not preserve the remaining portions of the initiative because the severed portion is vital to the intended legislative purpose.").

In coming to its conclusion in a pre-election challenge, the *Yes for Seattle* court examined the entirety of the proposed initiative, as well as its ballot title, to determine whether the un-severed portions of the proposed initiative should be placed on the ballot. *Yes for Seattle*, 122 Wn.App. at 394-95. The reason the court focused on the ballot title is because "voters will often make their decision based on the title of the act alone, without ever reading the body of it." *Id.* at 394 (quoting *Citizens for Responsible Wildlife Mgmt. v. State*, 149 Wn.2d 622, 639, 71 P.3d 644 (2003)). Here the ballot title states:

Shall the Charter be amended to add a Community Bill of Rights, which secures the right of neighborhood residents to approve re-zonings proposed for major new development, recognize the right of neighborhood residents to reject development which violates the City Charter or the City's Comprehensive Plan, expand protections for the Spokane River and Spokane Valley-Rathdrum Prairie Aquifer, provides constitutional protections in the workplace, and elevates Charter rights above rights claimed by corporations?

Envision Initiative "Ballot Title."⁶

⁶ Although it may not be a proper subject in a pre-election challenge, the Envision Initiative likely violates the "single-subject rule," which requires "a rational unity among the matters addressed in the initiative[.]" *City of Burien v. Kiga*, 144 Wn.2d 819, 826, 31 P.3d 659 (2001). Here, the scattershot subjects included in the Envision Initiative bear no "rational unity" among one another; thus, if enacted, the Envision Initiative would likely not pass constitutional muster if a "single-subject" challenge is brought.

K&L|GATES

Memorandum
May 9, 2013
Page 12

If a court were to sever certain sections of the Envision Initiative, its ballot title, which likely cannot be changed at this point,⁷ would become hopelessly misleading because certain subjects addressed in the title would no longer be part of the initiative on the ballot. Courts routinely recognize that only non-misleading ballot titles are legitimate. *See, e.g., Wash. Assoc. for Substance Abuse & Violence Prevention v. State*, 278 P.3d 632, 643 (Wash. 2012) (noting that ballot titles cannot be misleading); *see also City of Bellingham v. Whatcom County, et al.*, No. 12-2-01718-9, Whatcom County Superior Court, Aug. 3, 2012 Hearing Transcript at pp. 14-15 (refusing to sever portions of local initiative because, among other things, allowing non-severed portions of initiative to go on the ballot would leave misleading ballot title).

B. SMAC Initiative

The SMAC Initiative is outside the scope of the initiative power because it seeks to alter or amend the United States and Washington Constitutions and Federal and State statutory law. *See, e.g., Philadelphia II*, 128 Wn.2d at 720 (“While the goals of the Philadelphia II initiative may be laudable, it is simply not within Washington’s power to enact federal law.”); *Seattle Bldg. & Constr. Trades Council*, 94 Wn.2d 740, 747, 620 P.2d 82 (1980) (“While the inhabitants of a municipality may enact legislation governing local affairs, they cannot enact legislation which conflicts with state law.”). As explained more fully above, the City’s legislative authority cannot nullify and/or amend State and Federal constitutional provisions and statutes that recognize corporations have rights as legal persons. As such, any attempt to re-define decisional, constitutional or statutory rights, whether under Federal or Washington State law, is beyond the scope of the initiative power because it impermissibly intrudes into an area reserved for another branch of government—namely the judicial branch. Put simply, the City, whether acting through its citizens or otherwise, lacks the authority to “say what the law is.” The doctrine of separation of powers provides that the authority to interpret Federal, State, and local statutory and constitutional law rests with the judiciary, not the legislative authority of the City of Spokane. *Marbury*, 5 U.S. 137 (1803); *Haberman*, 109 Wn.2d at 143 (1987).

Political speech is at the heart of the First Amendment. *Mills v. Alabama*, 384 U.S. 214, 218, 86 S.Ct. 1434, 16 L.Ed.2d 484 (1966) (“there is practically universal agreement that a major purpose of [the First] Amendment was to protect free discussion of governmental affairs.”); *see also Collier v. City of Tacoma*, 121 Wn.2d 737, 746, 854 P.2d 1046 (1993) (“Wherever the extreme perimeters of protected speech may lie, it is clear the First Amendment protects political speech, giving it greater protection over other forms of speech.”) (internal citations omitted). There is no dispute that spending money relating to campaigns and lobbying one’s elected officials, whether those acts are done by corporations or real people, are forms of protected speech under the First Amendment. *See, e.g., Citizens United v. Fed. Elec. Comm’n*, 558 U.S. 310, 339, 130 S.Ct. 876, 175 L.Ed.2d 753 (2010)

⁷ RCW 29A.36.090, entitled “Local measures – Ballot title – Appeal,” which requires all challenges to local ballot titles that were “formulated by the city attorney” to be challenged in the Superior Court “of the county where the question is to appear on the ballot” within ten days of the time the ballot title is filed with the County Auditor. This Section further notes any decision by the Superior Court “is final, and the ballot title or statement so certified will be the established ballot title.”

K&L|GATES

Memorandum
May 9, 2013
Page 13

("Section 441b's prohibition on corporate independent expenditures is thus a ban on speech."); *Belletti*, 435 U.S. at 795 (1978) (striking down, on First Amendment grounds, state criminal statute that prohibited corporations from making contributions or expenditures to influence the outcome of referendum proposals); *Carr Partners LLC v. Lathrop*, 545 F.3d 867, 876 (9th Cir. 2008) ("These alleged activities fall within the First Amendment's protection of the rights to free speech and to petition for redress of grievances. Kilkelly's lobbying efforts, advocacy regarding interpretation of building codes, and this statements to the press are protected by his right to free speech."); *Brown & Root, Inc. v. Louisiana State AFL-CIO*, 10 F.3d 316, 326 (5th Cir. 1994) ("Lobbying, like handbilling, is activity protected by the First Amendment."); *Liberty Lobby, Inc. v. Pison*, 390 F.2d 489, 491 (D.C. Cir. 1968) ("While the term 'lobbyist' has become encrusted with invidious connotations, every group engaged . . . in trying to persuade Congressional actions is exercising the First Amendment right of petition.") (Burger, Circuit Judge).

In this sense, SMAC Initiative Section 2.06.040(a) ban on "electioneering" and 2.06.040(b)'s ban on "lobbying" are striking similar, if not broader, than the "electioneering communication" ban that the Supreme Court struck down in *Citizens United*. The Supreme Court explained the consequences of such a ban as follows:

The law before us is an outright ban, backed by criminal sanctions. Section 441b makes it a felony for all corporations—including nonprofit advocacy corporations—either to expressly advocate the election or defeat of candidates or to broadcast electioneering communications within 30 days of a primary election and 60 days of a general election. Thus, the following acts would all be felonies under § 441b: The Sierra Club runs an ad, within the crucial phase of 60 days before the general election, that exhorts the public to disapprove of a Congressman who favors logging in national forests; the National Rifle Association publishes a book urging the public to vote for the challenger because the incumbent U.S. Senator supports a handgun ban; and the American Civil Liberties Union creates a Web site telling the public to vote for a Presidential candidate in light of that candidate's defense of free speech. These prohibitions are classic examples of censorship.

558 U.S. at 337; see also *Belletti*, 435 U.S. at 795 (1978) (striking down, on First Amendment grounds, state criminal law statute that prohibited corporations from making contributions or expenditures to influence the outcome of referendum proposals). In addition, SMAC Initiative Section 2.06.040(d) attempts to redefine the First Amendment, as interpreted by the United States Supreme Court, by taking away constitutional protection for political speech by stating that money expended for "political purposes shall not be considered constitutionally-protected speech within the City of Spokane." This, as outlined above, conflicts several United States Supreme Court precedents.

Indeed, just last Term, the Supreme Court summarily reversed the Montana Supreme Court's decision upholding a campaign finance law very similar to the one at issue here. In *American Tradition Partnership v. Bullock*, the Court held that a state law which provided that a "corporation may not make . . . an expenditure in connection with a candidate or a political committee that supports or opposes a candidate or a political party" was unconstitutional under the First Amendment. 132

K&L|GATES

Memorandum

May 9, 2013

Page 14

S.Ct. 2490, 2491 (2012) (per curiam). In so doing, the Supreme Court stated that "[t]here can be no serious doubt that" *Citizens United* "applies to the Montana state law." *Id.* Simply put, no matter how unhappy SMAC may be with the Supreme Court's *Citizens United* decision, it is simply not within the power of the local legislative authority to overturn or limit a decision of the United States Supreme Court by attempting to limit its application within a particular jurisdiction. At the end of the day, the Supreme Court of the United States is vested with the authority to "say what the law is" and its decisions are by virtue of the Supremacy Clause the "supreme Law of the Land." *See supra.*

Moreover, the SMAC Initiative's electioneering and lobbying bans conflict with State law. For example, RCW 42.17A.005(35), which is part of the Washington Campaign Disclosure & Contribution law, defines a "person" as "an individual, partnership, joint venture, public or private corporation[.]" Thus, the SMAC Initiative seeks to redefine State law by completely banning corporations from expending any funds relating to any election that takes place in Spokane, even though such expenditures (subject to disclosure requirements) are permitted under Washington law. This is not a proper exercise of the local initiative power.

Also, the electioneering ban applies to "any election within the City of Spokane." SMAC Initiative at 2.06.040(a). Thus, it applies to all Federal and statewide elections, as well as local elections. Thus, in a very real sense, the SMAC Initiative seeks to legislate in areas that are "beyond the jurisdiction of the state," which is not permissible under the local initiative power. *See, e.g., Philadelphia II*, 128 Wn.2d at 720; *cf. U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 115 S.Ct. 1842, 131 L.Ed.2d 881 (1994) (striking down State term limits law as inconsistent with United States Constitution).

Further, Section 2.06.050 of the SMAC Initiative is outside the scope of the legislative authority of the City of Spokane because it seeks to strip corporations of all constitutional rights, and specifically seeks to deny First and Fifth Amendment rights (and corresponding State constitutional rights) to corporations. This directly conflicts with numerous Supreme Court decisions. *See, e.g., Ballotti*, 435 U.S. at 778 n.14 (citing the multitude of U.S. Supreme Court cases affording corporations the protection of constitutional guarantees such as the First, Fourth, and Fifth Amendments).

Finally, a brief word on severability is in order. Here, as explained, the operative portions of the SMAC Initiative are outside the scope of the local initiative power. If any of these sections were invalidated in a pre or post-election challenge, the remainder of the SMAC Initiative would not be severable because removing these provisions would remove the very "heart and soul" of the SMAC Initiative rendering it "virtually worthless without" these provisions. *Leonard*, 127 Wn.2d at 201-02 (invalidating entire Act because funding mechanism was declared unconstitutional and therefore Act would be rendered meaningless); *Priorities First*, 93 Wn.App. at 413 ("provisions of an act are not severable if the constitutional and unconstitutional provisions are so connected that the Legislature would not have passed one without the other, or that the balance is useless to accomplish the legislative purpose"); *Yes for Seattle*, 122 Wn.App. at 393 (same).

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K&L|GATES

Memorandum
May 9, 2013
Page 15

IV Possible Courses of Action

The City of Spokane has several options at this point relating to the two proposed initiatives.

First, as explained in detail above, there are ample grounds for a successful pre-election challenge against both of the proposed initiatives. In order to mount a pre-election challenge, the City would file two separate lawsuits, and each lawsuit would (1) request declaratory relief under the Uniform Declaratory Judgments Act (RCW 7.24 *et seq.*) that the respective proposed initiative is outside the scope of the local initiative power; and (2) seek an injunction which would enjoin the initiative(s) from being placed on the ballot. If such an action were successful, the Superior Court would likely enjoin the placement of the initiatives on the ballot and therefore the City of Spokane would preserve valuable resources that would otherwise need to be expended on administering an election on the proposed initiative(s). *See, e.g., City of Longview*, -- P.3d --, 2013 WL 1831602 at * 11 (Wn.App. Div. 2 Apr. 30, 2013) (affirming injunctive relief request).⁸ Moreover, if such a lawsuit is brought and the sponsor of the initiative(s) is named as a party, past practice suggests that the named sponsor may attempt to file an anti-SLAPP motion under RCW 4.24.525. The success of any such motions would be dependent, however, on whether the initiative(s) are outside the scope of the local initiative power. *See id.* at **11-12 (affirming denial of anti-SLAPP motions because initiative was outside the scope of local initiative power).

Second, the City of Spokane could take no action at this time and allow the proposed initiatives to go on the ballot. If either (or both) of the proposed initiatives did not pass, then the City of Spokane would not be required to take any action. If either (or both) of the initiatives passed, the City may be required to defend the initiatives in court or begin implementing their respective provisions. A defense of either initiative could occur in several ways: (1) an interested party may sue to immediately enjoin the proposed initiatives; (2) an interested party may wait and see how these proposed initiatives are implemented by the City of Spokane and wait to file suit until all or part of the initiatives are implemented in a manner that impacts their interests; or (3) a party may raise an affirmative defense to an enforcement action based on any of these initiatives. As explained, given the nature and scope of these proposed initiatives, the likelihood of a successful post-election challenge to either of these initiatives is a very real possibility. Depending on how such challenges are presented, a party bringing such an action may sue either in State or Federal court and may be entitled to attorney's fees and costs. For example, if a party brought a successful constitutional challenge to the SMAC Initiative under 28 U.S.C. § 1983 for violations of a federal right (*i.e.*, the First Amendment), the City might be required to pay attorney's fees and costs under 28 U.S.C. § 1988.

⁸ If a private party brought a pre-election challenge, there is a distinct possibility that even if the court declared the initiative invalid, it may not enjoin the initiatives from being placed on the ballot and therefore an election would need to be held on an initiative that would be a dead letter. *See, e.g., Am. Traffic Solutions*, 163 Wn.App. at 435 (denying injunctive relief to private party even after declaring traffic camera initiative invalid); *but see id.* at 435 n.4 (noting that injunction might have been granted had City of Bellingham sought injunctive relief).

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**SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE**

SPOKANE ENTREPRENEURIAL CENTER,
SPOKANE COUNTY, DOWNTOWN
SPOKANE PARTNERSHIP, GREATER
SPOKANE INCORPORATED, THE
SPOKANE BUILDING OWNERS AND
MANAGERS ASSOCIATION, SPOKANE
ASSOCIATION OF REALTORS, THE
SPOKANE HOMEBUILDERS
ASSOCIATION, THE INLAND PACIFIC
CHAPTER OF ASSOCIATED BUILDERS
AND CONTRACTORS, AVISTA
CORPORATION, PEARSON PACKAGING
SYSTEMS, WILLIAM BUTLER, NEIL
MULLER, STEVE SALVATORI, NANCY
MCLAUGHLIN, MICHAEL ALLEN, and
TOM POWER,

Plaintiffs,

vs.

SPOKANE MOVES TO AMEND THE
CONSTITUTION, ENVISION SPOKANE,
VICKY DALTON, SPOKANE COUNTY
AUDITOR, in her official capacity, THE CITY
OF SPOKANE,

Defendants.

No. 13-202495-5

DECLARATION OF BRAD READ IN
SUPPORT OF SPECIAL MOTION TO
STRIKE UNDER RCW 4.24.525

BRAD READ, under the penalty of perjury under the laws of the State of Washington,
states and declares as follows:

DECLARATION OF BRAD READ IN
SUPPORT OF SPECIAL MOTION TO
STRIKE UNDER RCW 4.24.525 - 1

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1. I am over 18 years of age and competent to testify with regard to the matters contained herein.
2. The statements made in this declaration are based upon personal knowledge.
3. I am the President of Envision Spokane Political Committee (“Envision Spokane”), whose offices are located at 1028 E. 13th Avenue, Spokane, Washington 99202.
4. Envision Spokane members organized and participated in numerous public meetings between 2008 and present to develop the language of the various “Community Bill of Rights” initiatives.
5. In 2009, no members of the Spokane City Council would agree to sponsor the Community Bill or Rights as a resolution before the council.
6. The first time a Community Bill of Rights initiative qualified and appeared on a City of Spokane ballot was during the 2009 general election.
7. There was significant public interest and media attention to the actions of the City Council in the summer of 2009.
8. A revised Community Bill of Rights initiative qualified and appeared on a City of Spokane ballot during the 2011 general election.
9. The 2011 election resulted in 49% of all votes cast for the Initiative being in favor of adoption.
10. Envision Spokane once against collected a sufficient number of signatures to qualify the Community Bill of Rights for placement on the 2013 ballot.
11. A revised Community Bill of Rights initiative was submitted to the City Clerk for validation in April 2013.
12. The Spokane County Auditor verified that the initiative met the requirements for ballot placement on May 2, 2013.
13. On May 20, 2013, the City Council unanimously voted to request that the Spokane County Auditor place the Community Bill of Rights on the November 2013 ballot for voter approval.
14. On May 20, 2013, the City Council voted down a resolution to request that the Spokane Mayor pursue a legal challenge against the Community Bill of Rights initiative.

DECLARATION OF BRAD READ IN
SUPPORT OF SPECIAL MOTION TO
STRIKE UNDER RCW 4.24.525 - 2

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SIGNED this 10th day of July, 2013 at Spokane, Washington.



Brad Read
President, Envision Spokane

DECLARATION OF BRAD READ IN
SUPPORT OF SPECIAL MOTION TO
STRIKE UNDER RCW 4.24.525 - 3

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SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

SPOKANE ENTREPRENEURIAL CENTER,)
et al.,)
Plaintiffs,)
vs.)
SPOKANE MOVES TO AMEND THE)
CONSTITUTION, *et al.*,)
Defendants.)

No. 13-2-02495-5

DECLARATION OF AVISTA
CORPORATION IN SUPPORT
OF PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION

I, Bruce Howard, declare as follows:

1. Personal Knowledge. I am over the age of eighteen, am competent to testify, and have personal knowledge of the facts set forth in this Declaration. I am the Director of Environmental Affairs of Avista Corporation.

2. Avista Corporation. Avista Corporation is a Washington corporation that provides residents of the City of Spokane and the greater Spokane region with electric and natural gas service. Avista owns and operates electric generation, transmission, and distribution facilities within the City of Spokane, as well as natural gas distribution infrastructure within the City of Spokane. As part of its generation fleet, Avista operates six hydroelectric facilities on the Spokane River that provide enough hydroelectric energy to power thousands of homes and businesses throughout Washington. Avista's hydroelectric operations on the Spokane River are subject to a wide range of local, state and federal laws.

3. The Initiatives' Free Speech Limitations Will Harm Avista. Avista and its employees regularly communicate with elected officials from the City of Spokane, Spokane

DECLARATION OF AVISTA CORPORATION - 1
DWT 221 88224v3 0043952-000026

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1 County, and the State of Washington. Avista and its employees also contribute to various
2 political causes, candidates, and campaigns. The Initiatives will strip Avista of the protections
3 accorded to political contributions by the First Amendment and will also restrict Avista's ability
4 to petition government.

5 4. Avista is Subject to a Myriad of Laws Requiring Regular Communication with
6 Elected Officials. As a public service company engaged in the business of distributing natural
7 gas and generating, transmitting and distributing electric energy, Avista is affected by a myriad
8 of federal, state, and local laws and regulations. Avista communicates regularly with elected
9 officials in many jurisdictions and at all levels of government to represent the interests of the
10 company and its customers, employees and shareholders.

11 5. Avista Communicates Regularly with Elected Officials Concerning Franchise
12 Laws. Avista employees communicate with City and County elected officials on franchise
13 agreements that allow Avista to locate electric and natural gas facilities in public rights-of-way.
14 Franchise agreements with the City of Spokane require approval by the City Council.
15 Negotiating franchise agreements requires Avista to communicate with local elected officials to
16 assist them in their responsibility to best reconcile various affected public interests, and without
17 such agreements, Avista would be at risk of not being able to meet its state obligations or to
18 economically serve our customers. In limiting the First Amendment rights of Avista employees,
19 the SMAC initiative would compromise not just the position of Avista on complex negotiations
20 of an economic nature but also the position of the City as well.

21 6. Avista Communicated with City Officials on Sustainability Plans. Avista
22 employees were invited in 2009 by the Mayor of Spokane to participate in the development and
23 adoption by the City Council of a Sustainability Action Plan for the City of Spokane. The
24 Mayor valued the expertise Avista's employees offered to the process and its ultimate outcome.
25 The company's involvement in this process led to initiatives by Avista to assist the City
26 government in being more energy efficient and to help the City reduce its greenhouse gas
27 emissions. These initiatives and the Action Plan could not have been accomplished without

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1 discussions occurring outside of formal public meetings. The First Amendment restrictions in
2 the SMAC measure will make similar efforts benefiting the community difficult, if not
3 impossible, to accomplish.

4 7. Avista Promotes Economic Development and Community Services. As a major
5 employer and economic concern in the communities we serve, Avista also lends financial and
6 lobbying support to community initiatives promoting economic development and community
7 services. Avista employees regularly participate in policy discussions with local elected
8 officials regarding economic development, including, for illustration, issues associated with
9 zoning and infrastructure planning for the University District, a geographical region in Spokane
10 that embodies a major community initiative aimed at creating higher educational opportunities,
11 providing health care services, supporting health care research, and promoting the development
12 and commercialization of new technologies. The company devotes considerable resources
13 communicating with elected officials on behalf of community needs. Avista employees have
14 often joined with Greater Spokane Incorporated, the Downtown Spokane Partnership and a
15 multitude of non-profit community service organizations in support of their efforts to affect
16 public policy decisions to better the communities Avista serves.

17 8. Avista and its Employees are Politically Active. As a complement to the
18 company's lobbying activities, Avista and its employees make financial contributions to
19 candidates for elective office. The contributions reflect the company's effort to represent the
20 interests of our company and the communities it serves.

21 9. The SMAC Initiative will Chill Avista's First Amendment Activities. Enactment
22 of the SMAC initiative would have a chilling effect on Avista's electioneering and lobbying
23 activities and by doing so could have a material impact on our ability to provide electric and
24 natural gas service to our customers in the most cost-effective manner and to assist communities
25 in achieving their economic development and social service objectives.

26 10. The Neighborhood Majority Provision Will Harm Avista. Avista owns interests
27 in commercial and industrial real estate developments in and around the City of Spokane.

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1 Avista's power generations also entail construction of new facilities such as substations and
2 renovations of existing facilities. The construction and renovation of Avista's facilities can
3 require variances from existing zoning regulations. Currently, I understand that the City
4 Council makes decisions regarding variances from zoning regulations with advice and counsel
5 from individuals, businesses, industry associations, and land use agencies. I understand that if
6 the Envision Initiative is enacted, all zoning decisions regarding larger real estate projects will
7 require the approval of the majority of the residents of any neighborhood (who are registered
8 voters and voted in the last general election). Simply by circulating a petition, a vocal minority
9 of neighborhood residents could block a development. The Neighborhood Majority provision
10 would thus prevent the Avista from obtaining variances from zoning regulations that cover its
11 projects. For example, construction of new transmission and distribution facilities for the
12 delivery of electricity or natural gas could be blocked by neighborhood residents, thereby
13 curtailing Avista's ability to meet its legal obligation to serve. It could thus expose Avista to
14 sanctions from its regulators, or cause it to violate its franchise agreement with the City of
15 Spokane. The Neighborhood Majority provision would have a material, adverse impact on
16 Avista and its customers.

17 11. The Water Rights Provision Will Harm Avista. Avista operates hydroelectric
18 facilities on the Spokane River that affect the river's flow and access to the river. The Water
19 Rights provision thus threatens Avista's ability to operate and generate hydroelectric power for
20 the City of Spokane and other cities and counties in eastern Washington. Envision's initiative
21 also subjects Avista to conflicting regulation by the Water Rights provision on one hand, and
22 regulations by the Washington Department of Ecology and the Federal Energy Regulation
23 Commission ("FERC") (which regulates certain hydroelectric dams on the Spokane River), on
24 the other. The laws overseen and regulations promulgated by these and other agencies conflict
25 with the Water Rights provision in the Envision Initiative. If the Initiative is enacted, Avista
26 will be faced with a choice of either complying with the Initiative or federal and state
27 requirements. For example, in accordance with its FERC license, Avista stores water in Lake

1 Coeur d'Alene during parts of the year, which restricts the flow of the river. This storage could
2 be challenged by a private citizen. If this were to occur, Avista could be in the position of
3 having to choose between complying with its FERC license or following the result of the
4 citizen's lawsuit.

5 12. Post-Election Litigation. The Envision Initiative grants residents of the City of
6 Spokane standing to sue on behalf of various water resources. As discussed above, Avista is
7 involved with various projects that affect the Spokane River. If the Initiative becomes law,
8 private citizens will be able sue Avista over the alleged effects (currently undefined) these
9 projects have on various water resources even though the projects comply with state and federal
10 law. Avista could be required to ignore the terms of its FERC license and be found by FERC to
11 be in noncompliance with no legal recourse.

12 13. The Corporate Rights Provision Will Harm Avista. The Envision Initiative's
13 Corporate Rights provision seeks to strip Avista of various rights, including protections afforded
14 under the United States and Washington constitutions and under state and federal law. The
15 absence of these important rights will severely affect Avista's ability to carry out its corporate
16 purpose.

17 14. The Envision Initiative's Labor Rights Provision Will Harm Avista. Avista
18 employs residents in and around the City of Spokane. The Labor Rights provision in the
19 Envision Initiative will alter Avista's relationship with its employees and impede the company's
20 ability to interact and negotiate with them. In addition, Avista will be faced with conflicting
21 requirements under the National Labor Relations Act, a goal federal preemption was intended to
22 eliminate.

23 I declare under penalty of perjury under the laws of the State of Washington that the
24 foregoing is true and correct and was executed this 10th day of July, 2013 in
25 Spokane, Washington.

26 
27

DECLARATION OF AVISTA CORPORATION - 5
DWT 22188224v3 0043952-000026

Davis Wright Tremaine LLP
LAW OFFICES
Suite 2200
1201 Third Avenue
Spokane, WA 99104-4615
206-622-3130 phone 206-782-2260 fax

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE
COUNTY OF SPOKANE

SPOKANE ENTREPRENEURIAL
CENTER et al

NO: 13-2-02495-5

Plaintiff(s),

AFFIDAVIT PURSUANT TO
GR 17(a) (2)

Vs.
SPOKANE MOVES TO AMEND THE
CONSTITUTION et al

Defendant(s)

L CRAVER, declares and states:

1. I am employed with EASTERN WASHINGTON ATTORNEY SERVICES., and submit this declaration pursuant to GR 17 (a) (2) as recipient of "DECLARATION OF AVISTA CORPORATION IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION" received email at gsauerland@comcast.net for filing with the Court in this matter.

2. I have examined the document. The "DECLARATION OF AVISTA CORPORATION IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION" consists of SIX(06) page(s), including the signature page, and this Declaration page. It is completed and legible.

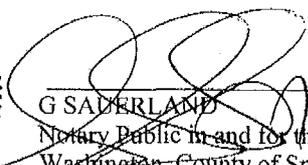
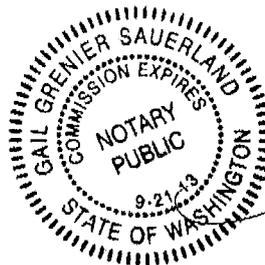
I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED 7/12/13



L CRAVER

SIGNED OR ATTESTED BEFORE ME
THIS 7/12/13



G SAUERLAND
Notary Public in and for the State of
Washington, County of Spokane.
My appointment expires: 09-21-13

FILED

JUL 12 2013

THOMAS R. FALLQUIST
SPOKANE COUNTY CLERK

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

SPOKANE ENTREPRENEURIAL CENTER,
et al.,

Plaintiffs,

vs.

SPOKANE MOVES TO AMEND THE
CONSTITUTION, *et al.*,

Defendants.

No. 13202495-5

DECLARATION OF MARK
RICHARD ON BEHALF OF THE
DOWNTOWN SPOKANE
PARTNERSHIP IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION

I, Mark Richard, declare as follows:

1. Personal Knowledge. I am over the age of eighteen, am competent to testify, and have personal knowledge of the facts set forth in this Declaration.

2. DSP. I am the President of the Downtown Spokane Partnership. The Downtown Spokane Partnership ("DSP") is a nonprofit Washington corporation headquartered in Spokane, Washington. The DSP provides services to aid general economic development and facilitate business and property owner interests in the City of Spokane and is dedicated to enhancing the quality and economic vitality of downtown Spokane. It is involved in various public advocacy, business development, physical improvement, public safety, beautification, and marketing programs. Each of these programs is intended to ensure the continued success of Spokane's downtown district and Spokane's economic vibrancy. The DSP's membership includes individuals, businesses and organizations throughout the City of Spokane and the surrounding area.

3. The DSP's Relationship with the City of Spokane. The DSP, pursuant to RCW

DECLARATION OF DOWNTOWN SPOKANE PARTNERSHIP -- 1
DWT 22188216v2 0043952-000026

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206.622.3150 main • 206.757.7700 fax

1 35.87A.110 and Spokane Municipal Code 4.31.090 administers and operates the Business
2 Improvement District and contracts with the City of Spokane for security, maintenance and
3 other services that benefit the public, business and property owners.

4 4. The DSP Regularly Engages Elected Officials for the Benefit of the Community.

5 On behalf of its membership, the DSP engages elected officials, (including elected members of
6 the Spokane City government and candidates for elected office) to facilitate the above
7 referenced contracts and to promote investment in downtown Spokane. Two recent examples of
8 the DSP's advocacy efforts include:

9 • Working to Make Downtown More Convenient. The DSP staff met recently
10 with members of the City Council to encourage their support for reforming the City's on-street
11 parking system. The DSP staff, City staff, and members of the Downtown community worked
12 together to help the Council adopt an ordinance which, among other things, allowed for the
13 introduction of credit card-accepting parking meters in Downtown. Efforts like the parking
14 system changes required engagement and education beyond what occurs in formal City Council
15 meetings. It involved frequent discussions and exchange of information where it was important
16 to be able to respond to questions, provide information, and work shoulder-to-shoulder in an
17 informal setting.

18 • Working to Make Downtown More Accessible. The DSP has also been a strong
19 advocate for funding the next phase of the Spokane University District Bicycle-Pedestrian
20 Bridge project. This project involved the DSP's affiliate, the University District. The
21 University District encouraged the City Council to fund the project and organized members of
22 the community and the DSP to show their support for the project through emails, phone calls
23 and in person meetings with City officials and Council members. As with the parking system
24 effort, the bicycle pedestrian bridge effort necessarily required working with officials on a more
25 regular basis than just open Council sessions.

26 5. The SMAC Initiative's Limitations on Lobbying Will Harm the DSP. Advocacy,
27 education, and lobbying on behalf of the community are key components of the DSP's mission.

1 It is important for us to be able to partner with our elected officials advancing projects
2 benefiting our community. As the program manager of the Downtown Spokane Business
3 Improvement District, the DSP coordinates its programs with City staff and elected officials on
4 a weekly, if not daily, basis. The SMAC Initiative, however, would criminalize many of our
5 activities conducted outside of formal City Council meetings, particularly the coordination
6 required with elected officials of the City. That the Initiative might appear on the November 5,
7 2013 ballot has already caused the DSP to re-evaluate its very function and advocacy efforts.

8 6. The SMAC Initiative's Ban on Electioneering Will Harm the DSP. In the past,
9 the DSP has contributed to various political organizations including the Jobs and Opportunity
10 Benefitting Spokane Political Action Committee. Our contributions are made on behalf of the
11 DSP's 72 members and are an important part of furthering the organization's mission to
12 improve the vitality and economic competitiveness of Spokane's urban core. The DSP plans to
13 continue to make contributions in the future but the SMAC Initiative would prohibit them and
14 subject staff and Board members to criminal penalties for approving or making contributions on
15 behalf of the DSP. The SMAC Initiative's electioneering restrictions will harm our members,
16 staff, and organization.

17 7. The Neighborhood Majority Provision Will Harm the DSP. The DSP promotes a
18 vibrant business climate in downtown Spokane by encouraging development of a wide range of
19 land use types. Development issues are complicated and require predictability and fairness.
20 The City Council makes decisions regarding variances from zoning regulations with advice and
21 counsel from other city land use agencies, as objective representatives of the citizenry. If the
22 Envision Initiative becomes law, however, the existing regulatory structure will be disrupted
23 and all zoning decisions regarding many real estate projects will require the approval of the
24 majority of the residents of any neighborhood, solely based upon self-interest. The interests
25 the DSP seeks to promote would be directly affected by the Neighborhood Majority provision
26 because the provision would impair builders and owners from obtaining variances from zoning
27 regulations covering their projects, lead to unpredictable and uncertain results, and dramatically

1 decrease investment in our community's development as a result. For example, the Kendall
2 Yards area adjoining downtown which is currently under development primarily contains
3 governmental offices, various retail business and residential dwellings within a ¼ mile radius.
4 The development required rezoning from industrial uses approved under previous zoning
5 categories. In this example, the "neighborhood majority", which presumably does not include
6 property owners, would be able to disenfranchise a new development, upon unannounced
7 standards or criteria. This development represents tens of millions of dollars of investment and
8 jobs, and is now enhancing what was a blighted brownfield site left vacant for decades. The
9 zoning change, which allowed the commercial and residential development of the Kendall
10 Yards parcel, is exactly the type of development that would be subject to the Neighborhood
11 Majority provision. Were the Envision Initiative in effect, at a minimum it would have
12 lengthened project timelines, increased risk, and very likely would have prevented the project
13 from occurring.

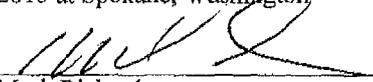
14 8. The Corporate Rights Provision Will Harm the DSP. The Envision Initiative's
15 Corporate Rights provision seeks to strip the DSP of various rights, including protections
16 afforded under the United States and Washington constitutions and under state and federal law.
17 The absence of these important rights will severely affect DSP's ability to carry out its purpose.
18 The scenario mentioned above in article 7 in which the DSP would seek to support the
19 development of large scale projects in Downtown requiring rezoning may expose it to lawsuits
20 that would possess merit under the Neighborhood Majorities provision of the Envision
21 Initiative. Had the Envision Initiative been adopted as law prior to the Kendall Yards zoning
22 change, groups or individuals claiming to represent "neighborhood majorities" and empowered
23 initially to obstruct the legitimate land use decisions of property owners, would be further
24 empowered to harm developers and publically supportive organizations like the DSP since those
25 organizations would apparently be stripped of their rights to defend themselves in a court of law
26 against such lawsuits. Under the threat of such suits, the DSP would be much more reluctant to
27 support property owners businesses which require zoning changes for development in and

1 around Spokane's urban core. The DSP, through the years, has put forward efforts to support
2 high quality developments in and around the city's urban core; which is currently a central
3 tenant of the organization's existence.

4 9. The Labor rights provision will harm the DSP. These provisions create a new
5 class of employee rights which would harm the economic competitiveness of downtown and the
6 city of Spokane. Any corporation considering establishing operations in the city would face the
7 prospect of potential litigation under an entirely new class of "rights" which do not apply to
8 corporations anywhere else in the United States. For instance, the Initiative will expose
9 employers like the DSP to litigation should they take action against employees for posting
10 harmful comments about the DSP or its other employees online and that employee be fired
11 (construed as a violation of the First Amendment), the DSP's ability to defend itself in court.
12 This would have a restricting effect on the labor market, and reduce the ability of organizations
13 in Spokane like the DSP to retain a high-quality employee pool. Because the DSP seeks to
14 enhance the reputation of the urban core of Spokane as an excellent place to do business, the
15 potential reputational damage to the city would harm that element of the DSP's mission.

16
17
18 I declare under penalty of perjury under the laws of the State of Washington that the
19 foregoing is true and correct to the best of my knowledge.

20 Dated this 11th day of July, 2013 at Spokane, Washington

21 
22 Mark Richard

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DECLARATION OF DOWNTOWN SPOKANE PARTNERSHIP - 5
DWT 22188216v2 0043952-000026

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE
COUNTY OF SPOKANE

SPOKANE ENTREPRENEURIAL
CENTER et al

NO: 13-2-02495-5

Plaintiff(s),

AFFIDAVIT PURSUANT TO
GR 17(a) (2)

Vs.
SPOKANE MOVES TO AMEND THE
CONSTITUTION et al

Defendant(s)

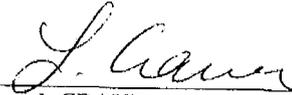
L CRAVER, declares and states:

1. I am employed with EASTERN WASHINGTON ATTORNEY SERVICES., and submit this declaration pursuant to GR 17 (a) (2) as recipient of "DECLARATION OF MARK RICHARD ON BEHALF OF THE DOWNTOWN SPOKANE PARTNERSHIP IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION" received email at gsauerland@comcast.net for filing with the Court in this matter.

2. I have examined the document. The "DECLARATION OF MARK RICHARD ON BEHALF OF THE DOWNTOWN SPOKANE PARTNERSHIP IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION" consists of SLX(06) page(s), including the signature page, and this Declaration page. It is completed and legible.

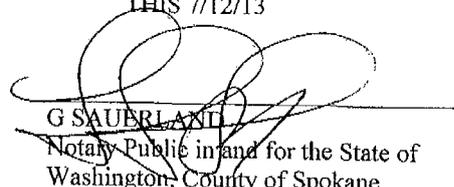
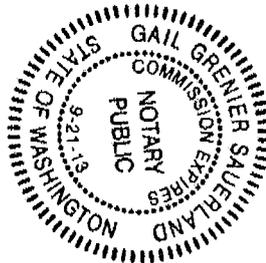
I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED 7/12/13



L CRAVER

SIGNED OR ATTESTED BEFORE ME
THIS 7/12/13



G SAUERLAND
Notary Public in and for the State of
Washington, County of Spokane.
My appointment expires: 09-21-13

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FILED

JUL 12 2013

THOMAS R. FALLQUIST
SPOKANE COUNTY CLERK

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

SPOKANE ENTREPRENEURIAL CENTER,)
et al.,)
)
) Plaintiffs,)
)
 vs.)
)
 SPOKANE MOVES TO AMEND THE)
 CONSTITUTION, *et al.*,)
)
) Defendants.)

No. 13-2-02495-5

DECLARATION OF RICHARD
G. HADLEY ON BEHALF OF
GREATER SPOKANE
INCORPORATED IN SUPPORT
OF PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION

I, Richard G. Hadley, declare as follows:

1. Personal Knowledge. I am over the age of eighteen, am competent to testify, and have personal knowledge of the facts set forth in this Declaration.

2. Greater Spokane. I am the President & CEO of Greater Spokane Incorporated ("Greater Spokane"). Greater Spokane is a nonprofit Washington corporation that is the Spokane region's Chamber of Commerce and Economic Development organization. Greater Spokane's mission is to grow jobs and business investment through programs in economic development, workforce development, public policy, and small business. Greater Spokane is also responsible for the recruitment, retention and expansion of businesses to the Spokane region, and works with community partners and elected officials on workforce and education initiatives to ensure a qualified and skilled workforce for businesses in Spokane County. Greater Spokane is funded through a combination of private and public investment, including 1,200 private-sector member investors and nonprofits; Spokane County; Washington State Department of Commerce; the U.S. Department of Defense and the cities of Spokane, Spokane

DECLARATION OF GREATER SPOKANE INCORPORATED - 1
DWT 22188217v2.0043952-000026

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206.622.3150 main • 206.757.7700 fax

1 Valley, Cheney, Liberty Lake, Airway Heights, Medical Lake and Newport, as well as the
2 Kalispel Tribe of Indians.

3 3. Greater Spokane Regularly Communicates with Elected Officials. Greater
4 Spokane advocates on behalf of the Spokane business community and its members at the local,
5 state, and federal level to ensure a healthy and vibrant business climate in and around the
6 City. In the past 5 years Greater Spokane has helped at least 46 companies relocate, expand,
7 and/or remain in Spokane County. This has resulted in \$127 million in new capital investment,
8 \$32 million in new state and local tax revenue, and at least 3,360 jobs. In the City of Spokane
9 alone, Greater Spokane's efforts have helped create 997 jobs and \$52.6 million in capital
10 investment. These projects have generated at least \$2.4 million in tax revenue for the City of
11 Spokane. Our ability to communicate with elected officials, outside of formal public meetings,
12 is critical to these economic development efforts.

13 4. Economic Development Requires Communications with Elected Officials
14 Outside of Public Forums. Although Greater Spokane representatives frequently speak at City
15 Council meetings, much of Greater Spokane's advocacy efforts necessarily occur outside of
16 public forums. This is because, among other reasons, public forums do not permit in-depth
17 discussions with councilmembers or detailed explanations of members' concerns. Such
18 communications must be conducted through individual and small group meetings. Moreover,
19 many companies Greater Spokane works with cannot disclose their strategic plans and financial
20 situations to the public. This makes the ability to speak with elected officials outside a public
21 forum an important part of any plan to successfully attract and support these companies. Our
22 ability to communicate outside of public meetings benefits the community.

23 5. The Initiatives Will Prevent Greater Spokane From Effectively Advocating On
24 Members' Behalf. Greater Spokane would not exist as an effective business advocate without
25 the ability to meet with elected officials at all levels of government. This is because the
26 outcomes of many Greater Spokane projects depend on bringing business and government
27 together to address land use, utilities, fees and other issues impact the local economy. The

DECLARATION OF GREATER SPOKANE INCORPORATED - 2
DWT 22188217v2 0043952-000026

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Seattle, WA 98101-3045
206 622.3150 main - 206.757.7700 fax

1 Initiatives will sharply circumscribe the ability of Greater Spokane and its member businesses
2 and organizations to communicate with elected officials. Below are several examples detailing
3 the ways in which the Initiatives would harm Greater Spokane and its members:

4 • Communications With State Representatives. Greater Spokane's economic
5 development funding comes primarily from cities in the Spokane area, the State of Washington
6 and the U.S. Department of Defense. Greater Spokane must maintain an ongoing, positive
7 relationship with their representatives who are instrumental in passing legislation that
8 incentivizes business expansion and recruitment. The Initiatives would preclude much of this
9 interaction.

10 • Communications with Airport Board Representatives. Greater Spokane also
11 works with the Spokane International Airport to attract aerospace and other manufacturing
12 facilities that could locate their businesses here. The Initiatives would prohibit Greater Spokane
13 from meeting with elected members of the Airport board.

14 • Annual Meetings and Delegations. Each year Greater Spokane convenes 85-90
15 of its members (including Spokane City Council members and County Commissioners) to meet
16 with state senators, representatives and the Governor to advance regional priorities and
17 initiatives. This annual program is a critical source of funds for projects in Eastern Washington.
18 Similarly, Greater Spokane leads an annual delegation of 45-50 business and civic leaders
19 (including local elected officials) to Washington, D.C. The delegation meets with Washington
20 State representatives and federal agency representatives to advance regional priorities. By
21 circumscribing communications with elected officials in the City of Spokane, the Initiatives
22 would preclude Greater Spokane from continuing these programs in the future.

23 6. The Corporate Rights Provision Will Harm Greater Spokane. The Envision
24 Initiative's Corporate Rights provision seeks to strip Greater Spokane and its member
25 businesses of various rights, including protections afforded under the United States and
26 Washington constitutions and under state and federal law. The absence of these important rights
27 will severely affect Greater Spokane's and its member organizations' ability to enforce their

1 rights and otherwise conduct the activities for which they were created.

2 7. The Neighborhood Majority Provision Will Harm Greater Spokane's Efforts to
3 Assist Companies With Development in the City of Spokane. Greater Spokane promotes the
4 development of residential, commercial, and industrial projects in the City of Spokane. For
5 example, Greater Spokane assists major companies such as Caterpillar, Vivint, and American
6 Tire Distributors with development projects. The existing permitting process is already time
7 consuming and costly. By allowing neighbors to block certain developments, the Neighborhood
8 Majority provision will make an already time and labor-intensive process even more difficult.
9 This will impede Greater Spokane's ability to attract new development to the City, harming
10 Greater Spokane and the community.

11 8. The Neighborhood Majority Provision Will Affect Redevelopment of Business
12 Districts. Greater Spokane and the City of Spokane have worked together to redevelop
13 neighborhood business districts, such as the Hillyard Business District. Greater Spokane is
14 currently evaluating the feasibility of future developments in other neighborhood business
15 districts. The placement of the Neighborhood Majority provision on the ballot will create
16 uncertainty about the prospects for such development, decreasing the likelihood of similar
17 projects in the future.

18 9. The Envision Initiative's Labor Rights Provision Will Harm Greater Spokane.
19 Greater Spokane employs residents in and around the City of Spokane, and its member
20 businesses employ tens of thousands of other residents. The Labor Rights provision in the
21 Envision Initiative will alter all employers' relationships with their employees and impede
22 companies' ability to attract, interact, retain and negotiate with them.

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1 I declare under penalty of perjury under the laws of the State of Washington that the
2 foregoing is true and correct to the best of my knowledge.

3
4 Dated this 8th day of July, 2013 at Spokane, Washington

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7 Richard G. Hadley

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DECLARATION OF GREATER SPOKANE INCORPORATED -- 5
DWT 22188217v2 0043952-000026

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE
COUNTY OF SPOKANE

SPOKANE ENTREPRENEURIAL
CENTER et al

NO: 13-2-02495-5

Plaintiff(s),

AFFIDAVIT PURSUANT TO
GR 17(a) (2)

Vs.
SPOKANE MOVES TO AMEND THE
CONSTITUTION et al

Defendant(s)

L CRAVER, declares and states:

1. I am employed with EASTERN WASHINGTON ATTORNEY SERVICES., and submit this declaration pursuant to GR 17 (a) (2) as recipient of **"DECLARATION OF RICHARD G HADLEY ON BEHALF OF GREATER SPOKANE INCORPORATED IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION"** received email at gsauerland@comcast.net for filing with the Court in this matter.

2. I have examined the document. The **"DECLARATION OF RICHARD G HADLEY ON BEHALF OF GREATER SPOKANE INCORPORATED IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION"** consists of SIX(06) page(s), including the signature page, and this Declaration page. It is completed and legible.

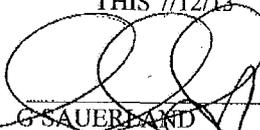
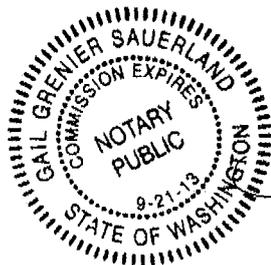
I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED 7/12/13



L CRAVER

SIGNED OR ATTESTED BEFORE ME
THIS 7/12/13



G SAUERLAND
Notary Public in and for the State of
Washington, County of Spokane.
My appointment expires: 09-21-13

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FILED

JUL 12 2013

THOMAS R. FALLQUIST
SPOKANE COUNTY CLERK

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

SPOKANE ENTREPRENEURIAL CENTER,
et al.,

Plaintiffs,

vs.

SPOKANE MOVES TO AMEND THE
CONSTITUTION, *et al.*,

Defendants.

No. 13-2-02495-5

DECLARATION OF NANCY
MCLAUGHLIN IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION

I, Nancy McLaughlin, declare as follows:

1. Personal Knowledge. I am over the age of eighteen, am competent to testify, and have personal knowledge of the facts set forth in this Declaration.

2. Background. I am a resident of the City of Spokane. I am a member of the Spokane City Council but am bringing this lawsuit in my individual capacity, not in my capacity as a member of the Spokane City Council. I am also the co-owner of a residential construction and remodeling business in Spokane.

3. Free Speech is Important to Campaigns for Elected Office. The success of any campaign for elected office in Spokane (and elsewhere) depends on candidates' ability to communicate with all citizens in the City, individuals and businesses alike. This the only way for candidates to understand community members' concerns and for community members to learn about candidates' positions.

DECLARATION OF NANCY MCLAUGHLIN -- 1
DWT 22188229v1 0043952-000026

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1 4. The Initiatives Will Impair My Ability to Campaign for Elected Office. I
2 understand that the Initiatives will restrict the ability of candidates for elected office to freely
3 associate with, communicate with, and accept contributions from members of the Spokane
4 community or others visiting the City of Spokane. In my individual capacity as a potential
5 candidate for elected office in Spokane, I must be able to communicate with community
6 members and businesses in Spokane and raise money to fund campaigns. For example, during
7 campaigns I attend "candidate interviews." Candidate interviews are meetings with local
8 businesses and other organizations during which I answer questions about my positions on
9 various issues that affect the community. By limiting my right to speak with the corporate
10 citizens of Spokane to "open forums," the Initiatives will prevent me from attending such
11 events, conducting an effective political campaign, and from understanding the needs of all
12 citizens in Spokane. By removing protections for political contributions, the Initiatives will also
13 prevent me from raising funds for a political campaign. In my past campaigns, I found that my
14 most effective methods of raising funds were visiting constituents in their office or at their place
15 of business, where I could learn about their concerns and their viewpoint first hand, and explain
16 how those concerns relate to a local government such as the city of Spokane.

17 5. Limitations on Lobbying Will Interfere with My Ability To Seek Input From
18 Spokane's Small Business Community. I am always seeking input and insight from businesses
19 and other organizations into past, present and proposed city initiatives to foster a better, more
20 prosperous economic climate in Spokane. For example, the City occasionally revises its
21 building code ordinances. I have participated in this process in the past, and expect that I will
22 continue to do so. The last time the City revised these ordinances, I met with construction
23 companies and trade organizations to better understand the effect of the proposed changes on
24 Spokane's building industry. I also regularly meet with business owners to discuss difficulties
25 they are having with variances, infrastructure (water, sewer, storm water, etc.), redevelopment,
26 the sign code, and traffic and parking, among other things. These issues can be challenging,
27 time consuming and costly, and may discourage businesses from expanding or staying in the

DECLARATION OF NANCY MCLAUGHLIN - 2
DWT 22188229v1 0043952-000026

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1 City . I frequently help businesses overcome these difficulties. Without this assistance,
2 frustrated businesses are likely to move to another jurisdiction. The Initiatives would
3 criminalize such interactions, limiting much of my contact with constituents to public meetings.
4 Although City Council meetings and other public meetings provide some insight into my
5 constituents' concerns, these forums are not conducive to the in-depth communications
6 necessary to best understand the impact of the decisions that I make. Rather, as discussed
7 above, soliciting input from stakeholders individually or in small groups is the only way to
8 adequately understand the impact a proposed ordinance may have on the community. Isolating
9 me from my constituents would circumscribe my ability to provide thoughtful leadership.

10 6. My Business Will Be Harmed By the Corporate Rights Provision. I am also the
11 co-owner of a small residential construction and remodeling business in Spokane. The
12 Initiatives will prevent my business from making political contributions and communicating
13 with elected officials regarding important political issues. If my business does either of these
14 things, the Initiatives will strip my business of many important protections afforded by the
15 United States and Washington constitutions and other state and federal laws. These protections
16 include, among other things, the right to enforce my business's rights under the contracts it
17 enters into with customers, suppliers, and vendors. The absence of these important rights will
18 severely affect my business's ability to do business in and around the City of Spokane. For
19 example, if my business cannot sue to obtain payment due from a customer for services we
20 provided, my business will, as a practical matter, be unable to collect revenue necessary to pay
21 employees and city, state, and federal taxes, and continue providing services. The absence of
22 these rights in Spokane would be a significant factor in any decision to relocate our business to a
23 neighboring city.

24 7. My Business Will Be Harmed By the Neighborhood Majority Provision.
25 Builders and developers contract with my business for residential construction and remodeling
26 services in and around the City of Spokane. Development issues are complicated and require
27 predictability and fairness. The City Council makes decisions regarding variances from zoning

DECLARATION OF NANCY MCLAUGHLIN - 3
DWT 22188229v1 0043952-000026

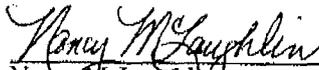
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206.622.3150 main • 206.757.7700 fax

1 regulations with advice and counsel from other city land use agencies. If the Envision Initiative
2 becomes law, however, the existing regulatory structure will be disrupted and all zoning
3 decisions regarding many real estate projects will require the approval of the majority of the
4 residents of any neighborhood. The Neighborhood Majority provision will therefore make it
5 more difficult for builders and developers who use the services of my business to obtain
6 variances from zoning regulations. This will negatively affect the success of my business.

7 8. Payment of City and County Taxes and Fees. As a resident of the City of
8 Spokane, I pay various City and County taxes and fees. I understand that the proceeds from
9 some of these taxes and fees are used for, among other things, funding local elections. If the
10 Court does not enjoin the Initiatives from appearing on the November 5, 2013, ballot, I
11 understand that some portion of the local taxes and fees that I pay will be used to pay for
12 printing Initiative information on voter pamphlets and ballots, running polling stations, and
13 tabulating votes, among other things.

14
15 I declare under penalty of perjury under the laws of the State of Washington that the
16 foregoing is true and correct to the best of my knowledge.

17 Dated this 10th day of July, 2013 at Spokane, Washington

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21 Nancy McLaughlin

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DECLARATION OF NANCY MCLAUGHLIN - 4
DWT 22188229v1 0043952-000026

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Seattle, WA 98101-3045
206.622.3150 main • 206.737.7700 fax

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE
COUNTY OF SPOKANE

SPOKANE ENTREPRENEURIAL
CENTER et al

NO: 13-2-02495-5

Plaintiff(s),

AFFIDAVIT PURSUANT TO
GR 17(a) (2)

Vs.
SPOKANE MOVES TO AMEND THE
CONSTITUTION et al

Defendant(s)

L CRAVER, declares and states:

1. I am employed with EASTERN WASHINGTON ATTORNEY SERVICES., and submit this declaration pursuant to GR 17 (a) (2) as recipient of "DECLARATION OF NANCY MCLAUGHLIN IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION" received email at gsauerland@comcast.net for filing with the Court in this matter.

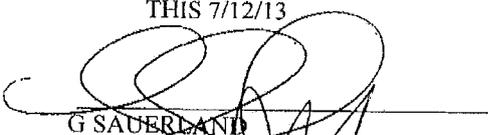
2. I have examined the document. The "DECLARATION OF NANCY MCLAUGHLIN IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION" consists of FIVE(05) page(s), including the signature page, and this Declaration page. It is completed and legible.

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

DATED 7/12/13



L CRAVER
SIGNED OR ATTESTED BEFORE ME
THIS 7/12/13



G SAUERLAND
Notary Public in and for the State of
Washington, County of Spokane.
My appointment expires: 09-21-13



1 and candidates for elected office) and promote to improve the City. Two examples of my
2 advocacy efforts include:

3 • Voting Guides. In 2011 and 2012, I worked extensively with City officials
4 (including city councilmembers) on behalf of BOMA to improve the format and content of the
5 City's voter materials. This project involved meetings with City councilmembers outside of
6 public forms.

7 • Accessible Parks. In the past I have spent significant time and effort engaging
8 local officials on behalf of Spokane Area Rotary Clubs to obtain support for the construction of
9 a playground accessible to disabled children in one of Spokane's city parks. This project
10 involved meetings with City councilmembers outside of public forms.

11 4. The Initiatives' Limitations on Lobbying Will Harm My Efforts to Improve the
12 Community. Advocacy efforts by individual citizens like me are important to the City of
13 Spokane. Only by partnering with our elected officials – both in public meetings and outside of
14 public meetings – can citizens effectively advance projects benefiting our community. The
15 SMAC Initiative, however, would criminalize many of these activities conducted outside of
16 formal City Council meetings, burdening my speech rights, my ability to represent members,
17 and my ability to help promote community development.

18 5. Payment of City and County Taxes and Fees. As a resident of the City of
19 Spokane, I pay various City and County taxes and fees. I understand that the proceeds from
20 some of these taxes and fees are used for, among other things, funding local elections. If the
21 Court does not enjoin the Initiatives from appearing on the November 5, 2013, ballot, I
22 understand that some portion of the local taxes and fees that I pay will be used to pay for
23 printing Initiative information on voter pamphlets and ballots, running polling stations, and
24 tabulating votes, among other things.

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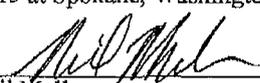
DECLARATION OF NEIL MULLER – 2
DWT 22188227v1 0043952-000026

Davis Wright Tremaine LLP
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Seattle, WA 98101-3045
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

Dated this 8 day of July, 2013 at Spokane, Washington



Neil Muller

DECLARATION OF NEIL MULLER - 3
DWT 22188227v1 0043952-000026

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206.622.3150 main • 206.757.7700 fax

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE
COUNTY OF SPOKANE

SPOKANE ENTREPRENEURIAL
CENTER et al

NO: 13-2-02495-5

Plaintiff(s),

AFFIDAVIT PURSUANT TO
GR 17(a) (2)

Vs.
SPOKANE MOVES TO AMEND THE
CONSTITUTION et al

Defendant(s)

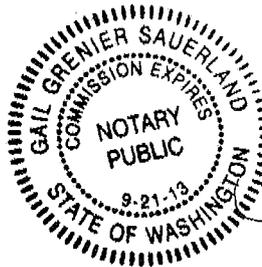
L CRAVER, declares and states:

1. I am employed with EASTERN WASHINGTON ATTORNEY SERVICES., and submit this declaration pursuant to GR 17 (a) (2) as recipient of "DECLARATION OF NEIL MULLER IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION" received email at gsauerland@comcast.net for filing with the Court in this matter.

2. I have examined the document. The "DECLARATION OF NEIL MULLER IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION" consists of FOUR (04) page(s), including the signature page, and this Declaration page. It is completed and legible.

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

DATED 7/12/13



L Craver

L CRAVER

SIGNED OR ATTESTED BEFORE ME
THIS 7/12/13

G Sauerland
G SAUERLAND
Notary Public in and for the State of
Washington, County of Spokane.
My appointment expires: 09-21-13

FILED

JUL 12 2013

THOMAS R. FALLQUIST
SPOKANE COUNTY CLERK

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SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

SPOKANE ENTREPRENEURIAL CENTER,)
et al.,)

Plaintiffs,)

vs.)

SPOKANE MOVES TO AMEND THE)
CONSTITUTION, *et al.*,)

Defendants.)

No. 13202495-5

DECLARATION OF MICHAEL
SENSKE ON BEHALF OF
PEARSON PACKAGING
SYSTEMS IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION

I, Michael Senske, declare as follows:

1. Personal Knowledge. I am over the age of eighteen, am competent to testify, and have personal knowledge of the facts set forth in this Declaration.
2. Pearson Packaging Systems. I am the President and Chief Executive Officer of Pearson Packaging Systems. Pearson Packaging is a Washington corporation located in Spokane. Since 1955, Pearson has provided packaging equipment and assisted customers with the delivery of food, beverage, and personal care goods. Pearson Packaging owns and operates manufacturing and distribution facilities in and around the City of Spokane.
3. The Initiatives' Free Speech Limitations Will Harm Pearson Packaging. Pearson Packaging's employees regularly communicate on the company's behalf with elected officials from the City of Spokane, Spokane County, and the State of Washington. It is important for us to be able to partner with our elected officials to explain issues that affect Pearson and its employees. In particular, Pearson works with elected officials to help them understand the effects proposed legislation may have on local businesses like Pearson. The SMAC Initiative,

DECLARATION OF PEARSON PACKAGING SYSTEMS – 1
DWT 22188225v1 0043952-000026

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1 however, would criminalize such conduct when conducted outside of formal City Council
2 meetings.

3 4. The Envision Initiative's Labor Rights Provision Will Harm Pearson Packaging.
4 Pearson Packaging employs residents in and around the City of Spokane. The Envision
5 Initiative extends certain Bill of Rights protections currently applicable only to government
6 actors to Pearson's relationship with its employees. For example, the Initiative could be used to
7 prevent Pearson from regulating what employees say about the company on social media, how
8 they treat each other, and what they bring to the workplace. I am very concerned that this
9 provision will make it difficult for Pearson to maintain a safe and efficient workplace. In short,
10 the Labor Rights provision in the Envision Initiative will alter Pearson Packaging's relationship
11 with its employees in important ways and impede the company's ability to interact and negotiate
12 with them.

13 5. The Corporate Rights Provision Will Harm Pearson Packaging. The Envision
14 Initiative's Corporate Rights provision seeks to strip Pearson Packaging of various rights,
15 including protections afforded under the United States and Washington constitutions and under
16 state and federal law. These protections include, among other things, the right to enforce
17 Pearson's rights under the contracts it enters into with customers, suppliers, and vendors. The
18 absence of these important rights will severely affect Pearson Packaging's ability to do business
19 in and around the City of Spokane. For example, if Pearson cannot sue to obtain payment due
20 from a customer for equipment Pearson provided, Pearson will, as a practical matter, be unable
21 to collect revenue necessary to pay employees and city, state, and federal taxes, and operate its
22 facilities.

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

Dated this 10th day of July, 2013 at Spokane, Washington



Michael Senske

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE
COUNTY OF SPOKANE

SPOKANE ENTREPRENEURIAL
CENTER et al

NO: 13-2-02495-5

Plaintiff(s),

AFFIDAVIT PURSUANT TO
GR 17(a) (2)

Vs.
SPOKANE MOVES TO AMEND THE
CONSTITUTION et al

Defendant(s)

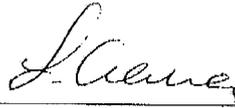
L CRAVER, declares and states:

1. I am employed with EASTERN WASHINGTON ATTORNEY SERVICES., and submit this declaration pursuant to GR 17 (a) (2) as recipient of **"DECLARATION OF MICHAEL SENSKE ON BEHALF OF PEARSON PACKAGING SYSTEMS IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION"** received email at gsauerland@comcast.net for filing with the Court in this matter.

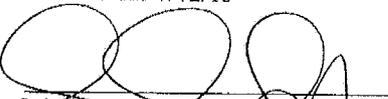
2. I have examined the document. The **"DECLARATION OF MICHAEL SENSKE ON BEHALF OF PEARSON PACKAGING SYSTEMS IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION"** consists of FOUR (04) page(s), including the signature page, and this Declaration page. It is completed and legible.

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

DATED 7/12/13



L CRAVER
SIGNED OR ATTESTED BEFORE ME
THIS 7/12/13



G SAUERLAND
Notary Public in and for the State of
Washington, County of Spokane.
My appointment expires: 09-21-13

FILED

JUL 12 2013

THOMAS R. FALLQUIST
SPOKANE COUNTY CLERK

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SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

SPOKANE ENTREPRENEURIAL CENTER,)
et al.,)
)
) Plaintiffs,)
)
) vs.)
)
) SPOKANE MOVES TO AMEND THE)
) CONSTITUTION, *et al.*,)
)
) Defendants.)

No. 13-2-02495-5

DECLARATION OF TOM
POWER IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION

I, Tom Power, declare as follows:

1. Personal Knowledge. I am over the age of eighteen, am competent to testify, and have personal knowledge of the facts set forth in this Declaration.

2. Real Estate Work. I live in the City of Spokane. I purchase, sell, manage, develop, and invest in commercial real estate in and around Spokane County and the City of Spokane. My work includes, among other things, managing projects that require variances or changes to zoning regulations. For example, businesses in which I have interests are involved with the rehabilitation of historic buildings in the City of Spokane. The transformation of older buildings into practical, functional, and economically viable commercial real estate projects is a significant undertaking. In many cases, these projects require variances from existing zoning regulations or rezoning.

3. Current Zoning Laws are Complex and Require Engagement With Numerous Government Entities. My businesses and I will be harmed if the Envision Initiative is enacted. Zoning laws are already complex. The City Council makes decisions regarding variances from

DECLARATION OF TOM POWER - 1
DWT 22188231v2 0043952-000026

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Seattle, WA 98101-3045
206.622.3150 main • 206.757.7700 fax

1 zoning regulations with advice and counsel from other City land use agencies, thereby requiring
2 regular engagement between businesses and various levels of government. For example, the
3 current process for obtaining changes and or/variances from existing zoning regulations
4 generally requires regular interaction with the Plan Commission, the Design Review Board, the
5 Hearing Examiner, and the City Council. This process of communication and review balances
6 issues that affect the city, the owner, residents, and nearby businesses. It is important that I and
7 my businesses can communicate freely with those involved in the zoning process and can rely
8 on a consistent application of laws by the government entities charged with managing
9 Spokane's growth and development.

10 4. The Envision Initiative has Already Affected the Economics of My Businesses
11 and is Driving Down the Value of Future Projects. If the Envision Initiative is enacted, many
12 zoning decisions regarding real estate projects will require the approval of the majority of the
13 residents of any neighborhood. Simply by circulating a petition, neighborhood residents could
14 block a development that otherwise complies with state and local law and has been approved by
15 the many levels of government involved in zoning variance decisions. The new proposal by
16 Envision creates confusion, will lead to inconsistency with current laws and will greatly
17 increase costs for the projects with which I am involved. For example, opposition by even a few
18 neighbors could derail even the most publicly beneficial projects. The mere prospect that a few
19 individuals could block a project will discourage new development and renovation of existing
20 properties. I am currently engaged in preliminary due diligence on potential new developments
21 in the City. The possibility that the Envision Initiative could become law has already affected
22 my economic analysis of these projects, decreasing the value of the projects and my willingness
23 to pursue them.

24 5. The Envision Initiative Drives Down the Value of Existing Projects. The
25 interests that I have in existing real estate development projects in the City of Spokane are
26 directly affected by the Neighborhood Majority provision. The uncertainty the provision creates
27 will drive down the value of these properties and thus the equity currently held by my

DECLARATION OF TOM POWER - 2
DWT 22188231v2.0043952-000026

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206.622.3150 main · 206.737.7700 fax

1 businesses. If the Envision Initiative is not enjoined from the ballot, it will cause me to pull
2 back from investing in the community.

3 6. My Businesses and I will be Harmed By the Initiatives' Limitation on Free
4 Speech. I am the owner of various corporate entities in the City of Spokane and all of my work
5 in the real estate industry is conducted through corporations and other corporate entities. I have
6 made political contributions to elected officials on the entities' behalf. I have also
7 communicated with elected officials on the entities' behalf to ensure that my representatives in
8 City government understand how various laws affect my business. For example, I have
9 communicated with City elected officials regarding the new Comprehensive Plan, zoning
10 ordinances, rate changes for City utility services, transportation planning, impact fees, City
11 right-of-way acquisitions, Parks Department policy, management of City real properties, and
12 requests for proposals for asset liquidation by the City. These communications help the City –
13 by keeping officials informed of economic development opportunities and needs – and my
14 business – by ensuring a fair and consistent regulatory environment. Similarly, I am friends
15 with many elected officials in Spokane from before they held office and communicate with
16 them regularly. I also receive regularly requests for information and education on issues from
17 elected officials in Spokane. The Initiatives will disrupt these important communications and
18 relationships. They will restrict the exercise of my and my business's free speech rights and
19 subject my relationships and communications to scrutiny by prosecutors. If my business
20 communicates or I communicate on behalf of my business with an elected official outside of a
21 public forum, or one of my businesses is deemed to have violated the Envision Initiative, the
22 Initiatives will strip my businesses of constitutional rights and other protections provided under
23 state and federal laws. My businesses and I would be subject to criminal prosecution for
24 engaging in constitutionally protected activities in Spokane. This threat chills free speech and
25 will reduce my willingness to invest in Spokane or freely associate with members of the
26 community.

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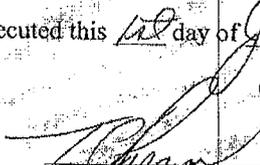
DECLARATION OF TOM POWER – 3
DWT 22188231v2 0043952-000026

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7. Payment of City and County Taxes and Fees. As a resident of the City of Spokane, I pay various City and County taxes and fees. I understand the proceeds from some of these taxes and fees are used for, among other things, funding local elections. If the Court does not enjoin the Initiatives from appearing on the November 5, 2013, ballot, I understand some portion of the local taxes and fees that I pay will be used to pay for printing Initiative information on ballots, mailing ballots, collecting ballots, and tabulating votes, among other things.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct and was executed this 1st day of July, 2013.



Tom Power

DECLARATION OF TOM POWER - 4
DWT 22188231v2 0043952-000026

Davis Wright Tremaine LLP
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Suite 2200
1201 Third Avenue
Seattle, WA, 98101-3045
206.622.3150 main • 206.757.7700 fax

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE
COUNTY OF SPOKANE

SPOKANE ENTREPRENEURIAL
CENTER et al

NO: 13-2-02495-5

Plaintiff(s),

AFFIDAVIT PURSUANT TO
GR 17(a) (2)

Vs.
SPOKANE MOVES TO AMEND THE
CONSTITUTION et al

Defendant(s)

L CRAVER, declares and states:

1. I am employed with EASTERN WASHINGTON ATTORNEY SERVICES., and submit this declaration pursuant to GR 17 (a) (2) as recipient of "DECLARATION OF TOM POWER IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION" received email at gsauerland@comcast.net for filing with the Court in this matter.

2. I have examined the document. The "DECLARATION OF TOM POWER IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION" consists of FIVE (05) page(s), including the signature page, and this Declaration page. It is completed and legible.

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

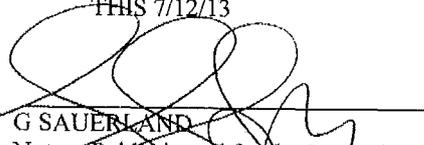
DATED 7/12/13



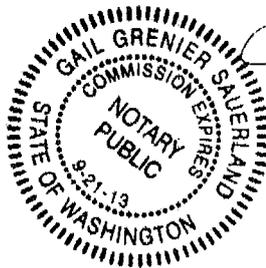
L CRAVER

SIGNED OR ATTESTED BEFORE ME

THIS 7/12/13



G SAUERLAND
Notary Public in and for the State of
Washington, County of Spokane.
My appointment expires: 09-21-13



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FILED

JUL 12 2013

THOMAS R. FALLQUIST
SPOKANE COUNTY CLERK

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

SPOKANE ENTREPRENEURIAL CENTER,)
et al.,)
)
) Plaintiffs,)
)
 vs.)
)
 SPOKANE MOVES TO AMEND THE)
 CONSTITUTION, *et al.*,)
)
) Defendants.)

No. 13202495-5

DECLARATION OF ROB
HIGGINS ON BEHALF
SPOKANE ASSOCIATION OF
REALTORS IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION

I, Rob Higgins, declare as follows:

1. Personal Knowledge. I am over the age of eighteen, am competent to testify, and have personal knowledge of the facts set forth in this Declaration.

2. Spokane Association of Realtors. I am an Executive Vice President of the Spokane Association of Realtors (the "Realtors Association"). The Realtors Association is a nonprofit Washington corporation serving members involved in the commercial and residential real estate industries. The Realtors Association maintains the multiple listing service, provides member education, helps members pursue successful real estate careers, enforces the Realtors Code of Ethics, and engages in advocacy on various public policy issues.

3. The Realtors Association Regularly Engages Elected Officials for the Benefit of the Community. On behalf of its membership, the Realtors Association engages elected officials, (including elected members of the Spokane City government and candidates for elected office) and promotes the interests of its real estate industry members. For example, the Realtors Association has worked with City council members on impact fee ordinances and is

DECLARATION OF SPOKANE ASSOCIATION OF REALTORS - 1
DWT 22188219v1 0043952-000026

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206.622.3150 main - 206.757.7700 fax

1 currently engaged in the legislative process regarding proposed low impact development
2 ordinances.

3 4. The SMAC Initiative's Limitations on Free Speech Will Harm the Realtors
4 Association. Advocacy and lobbying on behalf of the community are key components of the
5 Realtors Association mission. It is important for us to be able to partner with our elected
6 officials advancing projects benefiting our community, including housing availability. Limiting
7 the Realtors Association's contact with elected officials to public forums will prevent the
8 Association from representing its members and sharing its expertise on topics such as land use
9 and housing issues. This will result in ordinances that negatively affect industries, our
10 members, and the community in unanticipated ways. The possibility the Initiative might appear
11 on the November 5, 2013 ballot has already caused the Realtors Association to re-evaluate its
12 advocacy efforts.

13 5. The Corporate Rights Provision Will Harm the Realtors Association. The
14 Envision Initiative's Corporate Rights provision seeks to strip the Realtors Association of
15 various rights, including protections afforded under the United States and Washington
16 constitutions and under state and federal law. For example, if the Initiative becomes law, the
17 Realtors Association will lose the ability to enforce its rights through civil lawsuits. This will
18 severely affect the Realtors Association's ability to carry out a key element of its mission.

19 6. The Neighborhood Majority Provision Will Harm the Realtors Association. The
20 Realtors Association's members are involved with the purchase, and sale of commercial and
21 residential real estate in the City of Spokane. The Realtors Association promotes the interests of
22 its members by advocating for private property rights and encouraging policies that promote the
23 reasonable development of residential, commercial, and industrial projects. Development
24 issues are complicated and require predictability and fairness. The City Council makes
25 decisions regarding variances from zoning regulations with advice and counsel from other city
26 land use agencies. If the Envision Initiative becomes law, however, the existing regulatory
27 structure will be disrupted and all zoning decisions regarding many real estate projects will

DECLARATION OF SPOKANE ASSOCIATION OF REALTORS - 2
DWT 22188219v1 0043952-000026

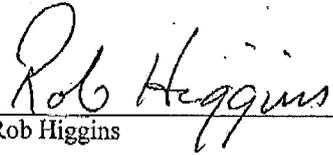
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1 require the approval of the majority of the residents of any neighborhood. The interests the
2 Realtors Association seeks to promote would be directly affected by the Neighborhood Majority
3 provision because the provision would impair builders and owners from obtaining variances
4 from zoning regulations covering their projects, lead to unpredictable and uncertain results, and
5 decrease investment in our community's development. For example, members of the Realtors
6 Association are currently involved in major real estate projects in Spokane. If the
7 Neighborhood Provision is enacted, a group of local residents will likely attempt to block the
8 project. The mere possibility that the provision might be placed on the ballot has created
9 significant uncertainty regarding the feasibility of this development.

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

Dated this 8th day of July, 2013 at Spokane, Washington


Rob Higgins

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE
COUNTY OF SPOKANE

SPOKANE ENTREPRENEURIAL
CENTER et al

NO: 13-2-02495-5

Plaintiff(s),

AFFIDAVIT PURSUANT TO
GR 17(a) (2)

Vs.

SPOKANE MOVES TO AMEND THE
CONSTITUTION et al

Defendant(s)

L CRAVER, declares and states:

1. I am employed with EASTERN WASHINGTON ATTORNEY SERVICES., and submit this declaration pursuant to GR 17 (a) (2) as recipient of **"DECLARATION OF ROB HIGGINS ON BEHALF OF SPOKANE ASSOCIATION OF REALTORS IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION"** received email at gsauerland@comcast.net for filing with the Court in this matter.

2. I have examined the document. The **"DECLARATION OF ROB HIGGINS ON BEHALF OF SPOKANE ASSOCIATION OF REALTORS IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION"** consists of FOUR (04) page(s), including the signature page, and this Declaration page. It is completed and legible.

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

DATED 7/12/13



L CRAVER

SIGNED OR ATTESTED BEFORE ME
THIS 7/12/13



G SAUERLAND
Notary Public in and for the State of
Washington, County of Spokane.
My appointment expires: 09-21-13

1 4. Spokane County Provides Services which Depend On Economic Development.

2 Spokane County provides numerous regional services to all the residents of Spokane County,
3 including residents in the City of Spokane. The regional services include, but are not limited to,
4 Judicial, Prosecution, Public Defense, Law Enforcement, Detention, Assessor, Auditor, Treasurer,
5 and Medical Examiner. These regional services are funded primarily by Spokane County's share
6 of property taxes. Economic development within Spokane County increases the tax base, thus
7 providing additional real property tax revenues.

8 5. Economic Development is a Public Purpose. The Washington State Legislature
9 has recognized the significance of economic development. The Legislature passed legislation,
10 applicable to both counties and cities, making economic development a public purpose.
11 Specifically, with respect to Spokane County, RCW 36.01.085 provides:

12 **RCW 36.01.085 Economic development programs.**

13 It shall be in the public purpose for all counties to engage in economic
14 development programs. In addition, counties may contact with nonprofit
15 corporations in furtherance of this and other acts relating to economic
16 development.

17 6. Facilitating Economic Development is a County Priority Requiring Engagement
18 with Corporations. As a Spokane County Commissioner, I have been designated as Spokane
19 County's representative on an economic development team with other City and County staff as
20 well as community leaders. The purpose of the economic development team is to facilitate
21 economic development within Spokane County to include the City of Spokane thus increasing the
22 tax base and revenues therefrom. Facilitating economic development involves, among other
23 matters, meeting with companies and corporations interested in locating in the region to address
24 their questions regarding development. The economic development team has been successful in
25 attracting large developments including the Caterpillar Logistics, Inc. which constructed a 125,000
26 square foot parts and distribution center.

27 7. The Envision Initiative Harms Spokane County's Economic Development
Efforts. The mere pendency of the Envision Initiative will have a negative impact on Spokane

1 County's economic development efforts between now and the November 5, 2013 election.
2 This is due in part to the uncertainty which the pendency of the Envision Initiative has on
3 development. Developers seek to have certainty in development regulations. This enables
4 them to plan, obtain financing, and vest applications for land use developments. The pendency
5 of the Envision Initiative, particularly the Neighborhood Majority provisions, injects substantial
6 uncertainty into any development process. As such, it will thwart active economic
7 development until its validity is determined. It creates too much speculation in the
8 development process for "major commercial, industrial or residential developments" identified
9 therein. A decrease in economic development in the City of Spokane reduces the County's tax
10 base and harms the County.

11 8. The Initiatives' Free Speech Restrictions Harm Spokane County, which is a
12 Municipal Corporation. Spokane County is a municipal corporation of the State of
13 Washington. It is governed by three (3) County Commissioners. The County Commissioners
14 frequently communicate with the Mayor and other members of the Spokane City Council in
15 carrying out their statutorily imposed obligations. For example, under RCW 70.48.090(4), the
16 Board of County Commissioners operates the Spokane County Detention Facility (Jail and
17 Geiger). The City of Spokane has entered into an interlocal agreement with the County
18 wherein the County houses the City's misdemeanor offenders in the Spokane County Detention
19 Facility. At the present time all three County Commissioners are communicating with Mayor
20 Condon and various City Council members on the City's continued use of the Spokane County
21 Detention Facility to house City offenders. Likewise, the Board of County Commissioners
22 under the Growth Management Act is in the process of revising its Urban Growth Areas. This
23 is a legislative function. In this regard, beyond what occurs in public meetings, various
24 communications have taken place between me and the Mayor as well as other Spokane City
25 Council members regarding Urban Growth Areas. Apparently these communications between
26 members of the Board of County Commissioners, a municipal corporation, and the Mayor and
27

DECLARATION OF SPOKANE COUNTY - 3
DWT 22253936v2 0043952-000026

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1 City Council would run afoul of the SMAC Initiative. It is critical for members of the Board of
2 County Commissioners as the governing body of Spokane County to communicate freely with
3 the Mayor and Spokane City Council on legislative matters such as Growth Management. The
4 threat posed by the Initiatives limiting our speech harms the County and the community.

5 9. The Water Rights Provision Will Harm Spokane County. Spokane County owns
6 and operates a sanitary sewage collection, treatment and disposal system. The treatment
7 facility is commonly referred to as the "Spokane County Regional Water Reclamation
8 Facility." The facility provides wastewater treatment for residents of the City of Spokane
9 Valley, the City of Millwood and adjacent unincorporated urbanized areas within Spokane
10 County. The treatment facility discharges high quality treated effluent into the Spokane River
11 meeting all requirements of a NPDES permit. The rights created by the Envision Initiative's
12 water regulation may impede Spokane County's statutory responsibilities to provide sanitary
13 sewage collection, treatment and disposal services. For example, the Water Rights provision
14 will provide individuals with the ability to challenge the County's discharges of high quality
15 treated effluent into the Spokane River consistent with its NPDES permit. Additionally, future
16 elements of the System will be focused on beneficial uses of reclaimed water, and will require
17 permitting from regulating state and/or federal agencies. One such System element is the
18 wetlands reconstruction project at Saltese Flats. Saltese Flats may eventually receive reclaimed
19 water from the System. This use of reclaimed water will be subject to an extensive regulatory
20 process. The Water Rights provision would enable a City of Spokane resident to challenge the
21 Saltese Flats project outside of the regulatory process thus potentially causing costly delays and
22 increases in rates for customers of the System.

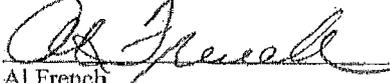
23 10. Post-Election Litigation. The Envision Initiative grants residents of the City of
24 Spokane standing to sue on behalf of various water resources. As discussed above, the County
25 is involved with wastewater collection, treatment, and disposal. The Initiative will therefore
26 subject Spokane County to significant additional litigation arising out of its role with these
27

DECLARATION OF SPOKANE COUNTY - 4
DWT 22253936v2 0043952-000026

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1 responsibilities. For example, Spokane County currently discharges high quality treated
2 effluent into the Spokane River under a permit issued by the Department of Ecology. If the
3 Initiative becomes law, private citizens will be able sue the County for such conduct. The cost
4 of this litigation will be passed on to users of the Spokane County Regional Water Reclamation
5 Facility and will cause an increase in their monthly sewage service rates.

6 I declare under penalty of perjury under the laws of the State of Washington that the
7 foregoing is true and correct and was executed this 5 day of July, 2013.

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9 Al French

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DECLARATION OF SPOKANE COUNTY - 5
DWT 22257936v2 0043952-090026

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE
COUNTY OF SPOKANE

SPOKANE ENTREPRENEURIAL
CENTER et al

NO: 13-2-02495-5

Plaintiff(s),

AFFIDAVIT PURSUANT TO
GR 17(a) (2)

Vs.

SPOKANE MOVES TO AMEND THE
CONSTITUTION et al

Defendant(s)

L CRAVER, declares and states:

1. I am employed with EASTERN WASHINGTON ATTORNEY SERVICES., and submit this declaration pursuant to GR 17 (a) (2) as recipient of **“DECLARATION OF SPOKANE COUNTY IN SUPPORT OF PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION”** received email at gsauerland@comcast.net for filing with the Court in this matter.

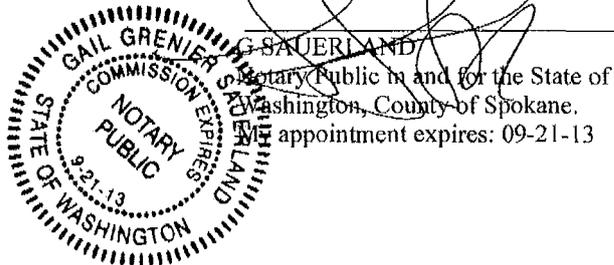
2. I have examined the document. The **“DECLARATION OF SPOKANE COUNTY IN SUPPORT OF PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION”** consists of SIX (06) page(s), including the signature page, and this Declaration page. It is completed and legible.

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

DATED 7/12/13



L CRAVER
SIGNED OR ATTESTED BEFORE ME
THIS 7/12/13



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FILED

JUL 12 2013

THOMAS R. FALLQUIST
SPOKANE COUNTY CLERK

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

SPOKANE ENTREPRENEURIAL CENTER,)
et al.,)
)
) Plaintiffs,)
 vs.)
)
 SPOKANE MOVES TO AMEND THE)
 CONSTITUTION, *et al.*,)
)
) Defendants.)

No. 13202495-5

DECLARATION OF NEIL
MULLER ON BEHALF OF
BUILDING OWNERS AND
MANAGERS ASSOCIATION IN
SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION

I, Neil Muller, declare as follows:

1. Personal Knowledge. I am over the age of eighteen, am competent to testify, and have personal knowledge of the facts set forth in this Declaration.

2. Building Owners and Managers Association. I am a representative of the Spokane Building Owners and Managers Association ("BOMA"). BOMA is a nonprofit Washington corporation located in Spokane. BOMA is an association representing more than 100 individuals and businesses in and around Spokane that own or manage commercial real estate, or are otherwise involved in the commercial real estate industry. BOMA monitors legislative and regulatory developments related to construction, development, and building management, and lobbies elected and appointed officials at the federal, state, and local levels.

3. BOMA Regularly Engages Elected Officials. On behalf of its membership, BOMA engages elected officials, (including elected members of the Spokane City government and candidates for elected office) on issues that affect the commercial real estate industry.

Some recent examples of BOMA's advocacy efforts include:

DECLARATION OF SPOKANE BUILDING OWNERS AND MANAGERS
ASSOCIATION - 1
DWT 22188218v1 0043952-000026

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1 • Development Advocacy. BOMA and many other individuals and organizations
2 recently worked closely with elected officials responsible for developing Spokane's ordinances
3 related to the redevelopment of historic sites. The ordinance that resulted from this process
4 balanced economic development opportunities and property rights with historic preservation
5 interests.

6 • Parking Funds. BOMA is currently working with elected City officials to
7 determine the best use for revenue from City parking meters. Currently, funds collected from
8 parking fees become part of the City's general fund. BOMA and others are working with the
9 City Council to ensure that funds raised from downtown parking are used for the revitalization
10 of the downtown district.

11 • Impact Fee Ordinance. BOMA continuously works with elected City officials on
12 the impact fee ordinances. Impact fees are fees charged to owners and developers to account for
13 the impact of development on city infrastructure. BOMA's advocacy efforts are intended to
14 ensure that impact fees account for infrastructure impact without discouraging new investment
15 and development within the City.

16 • Building Codes. Every three years the City Council adopts revisions to its
17 existing building code. These revisions are undertaken to ensure that the City's building code
18 addresses local issues and is consistent with local, state, and federal building codes. During this
19 process, BOMA provides advice and expertise to City council members regarding the adoption
20 of new requirements, and the revision or elimination of existing requirements.

21 4. The Initiatives' Limitations on Lobbying Will Harm BOMA. Advocacy,
22 education, and lobbying on behalf of the community are key components of BOMA's mission.
23 It is important for us to be able to partner with our elected officials advancing projects like those
24 described above. To accomplish these important projects in Spokane, we necessarily have to be
25 able to communicate freely with elected officials. The projects are complex and require a great
26 deal of discussion and education, much of which occurs outside of formal public meetings.

27 Those communications are essential to advancing projects benefiting our members and the

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ASSOCIATION – 2
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1 community. The SMAC Initiative, however, would criminalize many of our activities
2 conducted outside of formal City Council meetings. The possibility the Initiative might appear
3 on the November 5, 2013 ballot has already caused BOMA to re-evaluate its advocacy efforts.

4 5. The Corporate Rights Provision Will Harm BOMA. The Envision Initiative's
5 Corporate Rights provision seeks to strip BOMA of various rights, including protections
6 afforded under the United States and Washington constitutions and under state and federal law
7 if BOMA allegedly violates the Initiative or any part of Spokane's Charter. The threat of losing
8 rights will chill our activities, hurting our members and the community. For example, if the
9 Initiative becomes law, the Builders Association will lose the ability to enforce its rights through
10 civil lawsuits. This will severely affect the Builders Association's ability to carry out a key
11 element of its mission.

12 6. The Neighborhood Majority Provision Will Harm BOMA. BOMA represents
13 members that own, develop, and manage commercial real estate, or are otherwise involved in
14 the commercial real estate industry. Development issues are complicated and require
15 predictability and fairness. The City Council makes decisions regarding variances from zoning
16 regulations with advice and counsel from other city land use agencies. If the Envision Initiative
17 becomes law, however, the existing regulatory structure will be disrupted and all zoning
18 decisions regarding many real estate projects will require the approval of the majority of the
19 residents of any neighborhood. The interests BOMA seeks to promote would be directly
20 affected by the Neighborhood Majority provision because the provision would impair builders
21 and owners from obtaining variances from zoning regulations covering their projects, lead to
22 unpredictable and uncertain results, and decrease investment in our community's development.

23 7. The Water Rights Provision Will Harm Spokane County. Many BOMA
24 members must address storm water runoff issues from new and existing developments to meet
25 local, state, and federal requirements. Although complicated, this process is predictable—
26 owners and managers can estimate the costs and time associated with the process *before* they
27

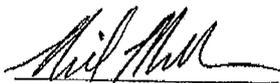
DECLARATION OF SPOKANE BUILDING OWNERS AND MANAGERS
ASSOCIATION - 3
DWT 22188218v1 0043952-000026

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1 invest resources in a project. The Water Rights provision in the Envision Initiative will clothe
2 individuals with the ability to challenge storm water runoff from BOMA members' properties
3 despite their compliance with local, state, and federal requirements. This will make the process
4 less predictable and more costly. This will subject developers and owners to significant
5 litigation risk even though they have complied with all requirements.
6

7 I declare under penalty of perjury under the laws of the State of Washington that the
8 foregoing is true and correct to the best of my knowledge.

9 Dated this 8 day of July, 2013 at Spokane, Washington

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13 Neil Muller
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DECLARATION OF SPOKANE BUILDING OWNERS AND MANAGERS
ASSOCIATION - 4
DWT 22188218v1 0043952-000026

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE
COUNTY OF SPOKANE

SPOKANE ENTREPRENEURIAL
CENTER et al

NO: 13-2-02495-5

Plaintiff(s),

Vs.
SPOKANE MOVES TO AMEND THE
CONSTITUTION et al

Defendant(s)

AFFIDAVIT PURSUANT TO
GR 17(a) (2)

L CRAVER, declares and states:

1. I am employed with EASTERN WASHINGTON ATTORNEY SERVICES., and submit this declaration pursuant to GR 17 (a) (2) as recipient of **“DECLARATION OF NEIL MULLER ON BEHALF OF BUILDING OWNERS AND MANAGERS ASSOCIATION IN SUPPORT OF PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION”** received email at gsauerland@comcast.net for filing with the Court in this matter.

2. I have examined the document. The **“DECLARATION OF NEIL MULLER ON BEHALF OF BUILDING OWNERS AND MANAGERS ASSOCIATION IN SUPPORT OF PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION”** consists of FIVE (05) page(s), including the signature page, and this Declaration page. It is completed and legible.

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

DATED 7/12/13



L CRAVER

SIGNED OR ATTESTED BEFORE ME
THIS 7/12/13



G SAUERLAND
Notary Public in and for the State of
Washington, County of Spokane.
My appointment expires: 09-21-13

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FILED

JUL 12 2013

THOMAS R. FALLQUIST
SPOKANE COUNTY CLERK

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

SPOKANE ENTREPRENEURIAL CENTER,
et al.,

Plaintiffs,

vs.

SPOKANE MOVES TO AMEND THE
CONSTITUTION, *et al.*,

Defendants.

No. 13202495-5

DECLARATION OF MICHAEL
CATHCART ON BEHALF OF
SPOKANE HOME BUILDERS
ASSOCIATION IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION

I, Michael Cathcart, declare as follows:

1. Personal Knowledge. I am over the age of eighteen, am competent to testify, and have personal knowledge of the facts set forth in this Declaration.

2. Spokane Home Builders Association. I am the Director of Government Affairs for the Spokane Home Builders Association (the "Builders Association"). The Builders Association is a nonprofit Washington corporation located in Spokane. The Builders Association represents the interests of nearly 700 individuals and businesses within the Greater Spokane Area and throughout Eastern Washington.

3. A Fair and Predictable Process For Obtaining Zoning Changes and Variances Is Important to the Builders Association and Its Members. The Builders Association and its members are involved in the development of residential, commercial, and industrial projects throughout the City of Spokane. Predictability and reliability in the approval process are important for builders when evaluating whether a project is a sensible investment. Under the current regulatory and legal framework, developers can rely on a high degree of predictability

DECLARATION OF SPOKANE HOME BUILDERS ASSOCIATION – 1
DWT 22188221v1 0043952-000026

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1 and reliability. Nevertheless, navigating the existing regulatory and legal framework requires
2 developers to communicate regularly with elected officials and employees who focus on
3 ensuring a development complies with the law and is in the community's interest. The City
4 Council makes decisions regarding variances from zoning regulations with advice and counsel
5 from other city land use agencies. The process works. Zoning changes determined through the
6 existing process have allowed for the development of important community resources (like the
7 Kendall Yards and Center Court Development) that benefit the City. The Initiatives will
8 interfere and conflict with existing processes, making the process unpredictable and unreliable.
9 The effect of such uncertainty will be to increase costs and decrease incentives for
10 developments that benefit the community.

11 4. The Neighborhood Majority Provision Will Harm the Builders Association and
12 Its Members. If the Envision Initiative is enacted, all zoning decisions regarding many real
13 estate projects will require the approval of the majority of the residents of any neighborhood
14 (who are registered voters and voted in the last general election). A vocal *minority* of the
15 community could block a development of importance to the rest of the City or other members of
16 the community. The Builders Association and its members will be directly affected by the
17 Neighborhood Majority provision because the provision will impair builders and owners from
18 obtaining variances from zoning regulations that cover that their projects. Members seeking
19 approval of a new development will be required to spend time, money, and energy obtaining
20 signatures from 'qualified' neighborhood residents for projects otherwise lawful and approved
21 under the existing complicated regulatory framework for developments. The process not only
22 adds to the costs our members will incur (some of which will be passed on to homebuyers in
23 Spokane in the form of higher home prices), it will decrease the number and type of projects
24 that make sense economically for our members. In addition, it increases uncertainty – which
25 also will reduce projects – by allowing a small group of residents who do not represent the
26 neighborhood or City to block the development of projects that would benefit the community as
27 a whole.

DECLARATION OF SPOKANE HOME BUILDERS ASSOCIATION – 2
DWT 22188221v1 0043952-000026

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1 5. The SMAC Initiative Would Prevent the Builders Association From Providing
2 Support for Candidates and Political Causes. The Builders Association and its members
3 regularly support candidates for elected office who favor pro-small business and pro-housing
4 industry policies through various financial and grassroots means. For example, in the past three
5 years, the Builders Association (through its affiliated political action committee) has supported
6 Spokane Commissioner Shelly O'Quinn, Spokane Commissioner Todd Mielke, Rep. Jeff Holy,
7 Mayor David Condon, City Councilman Mike Fagan, City Councilman Mike Allen, Former
8 Council President and Mayor Dennis Hession, and Councilman Steve Salvatori. The support
9 that the Builders Association's PAC provides is part of an effort to promote affordable housing
10 and sensible development . The Builders Association's contributions are legal under state and
11 federal law but would be criminalized by the SMAC Initiative. The fact that the SMAC
12 Initiative might become law places these important activities in jeopardy.

13 6. The SMAC Initiative Would Prevent the Builders Association From Meeting
14 With Elected Officials. The Builders Association also supports small businesses and the
15 housing industry by directly communicating with elected officials in Spokane. As an industry
16 representative and expert, the Builders Association must remain able to communicate with local
17 decision-makers about new laws and ordinances affecting housing, construction, and
18 development. Among other things, such communication allows elected officials and staff to
19 better understand the intended and unintended consequences of their actions. In many cases,
20 these communications involve one-on-one meetings with elected officials. The SMAC
21 Initiative would preclude such contact, leaving the industry without an effective advocate for
22 affordable housing in Spokane.

23 7. The SMAC Initiative Would Prevent Elected Officials From Attending Builders
24 Association Functions. Each month, the Builders Association hosts a Government Affairs
25 Committee meeting. This meeting informs members about recent developments affecting the
26 industry at the local and state levels. Elected officials from the City of Spokane often attend to
27 gain a better understanding of the concerns of Builders Association members. The SMAC

1 Initiative would prevent elected officials from attending these meetings and would deprive
2 Association members of an important avenue for communicating with their representatives and
3 helping educate elected officials concerning policies that promote affordable housing in
4 Spokane.

5
6 8. The Corporate Rights Provision Will Harm the Builders Association. The
7 Envision Initiative's Corporate Rights provision seeks to strip the Builders Association (and all
8 corporations) of various rights, including protections afforded under the United States and
9 Washington constitutions and under state and federal law. The absence of these important rights
10 will severely affect the Builders Association ability to carry out the activities for which it was
11 formed.

12 I declare under penalty of perjury under the laws of the State of Washington that the
13 foregoing is true and correct to the best of my knowledge.

14 Dated this 5th day of July, 2013 at Spokane, Washington

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18 Michael Cathcart

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE
COUNTY OF SPOKANE

SPOKANE ENTREPRENEURIAL
CENTER et al

NO: 13-2-02495-5

Plaintiff(s),

Vs.
SPOKANE MOVES TO AMEND THE
CONSTITUTION et al

Defendant(s)

AFFIDAVIT PURSUANT TO
GR 17(a) (2)

L CRAVER, declares and states:

1. I am employed with EASTERN WASHINGTON ATTORNEY SERVICES., and submit this declaration pursuant to GR 17 (a) (2) as recipient of "DECLARATION OF MICHAEL CATHCART ON BEHALF OF SPOKANE HOME BUILDERS ASSOCIATION IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION" received email at gsauerland@comcast.net for filing with the Court in this matter.

2. I have examined the document. The "DECLARATION OF MICHAEL CATHCART ON BEHALF OF SPOKANE HOME BUILDERS ASSOCIATION IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION" consists of FIVE (05) page(s), including the signature page, and this Declaration page. It is completed and legible.

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

DATED 7/12/13



L CRAVER

SIGNED OR ATTESTED BEFORE ME
THIS 7/12/13



G SAUERLAND
Notary Public in and for the State of
Washington, County of Spokane.
My appointment expires: 09-21-13

1 be disrupted and all zoning decisions regarding many real estate projects will require the
2 approval of the majority of the residents of any neighborhood. Various real estate development
3 projects with which I am involved would be affected by the Neighborhood Majority provision.
4 For example, one of my businesses is currently preparing to begin construction of a multifamily
5 residential development in the City of Spokane. The parcel on which the development will be
6 located contains challenging terrain and will likely require variances for sidewalks and other
7 access requirements. Under current law, I understand the requirements that my business must
8 satisfy to obtain these variances. If the Neighborhood Majority provision becomes law,
9 however, my ability to obtain the variances will turn on the personal preferences of some
10 number of neighborhood residents. The possibility that the Neighborhood Majority provision
11 might be placed on the November 5, 2013 ballot has thus created uncertainty about the viability
12 of this development.

13 4. My Business Will Be Harmed By the Initiatives' Limitation on Free Speech. I
14 understand that the Initiatives will prevent my business from making political contributions and
15 communicating with elected officials regarding important political issues. If my business does
16 either of these things, I understand that the Initiatives will strip my business of many important
17 protections afforded by the United States and Washington constitutions and other state and
18 federal laws. I also fear that if the Initiative becomes law, the City will be unable to distinguish
19 between personal and business contributions by citizens. Thus my status as a business owner
20 will also jeopardize my ability to make personal contributions to political campaigns.

21 5. Payment of City and County Taxes and Fees. As a resident of the City of
22 Spokane, I pay various City and County taxes and fees. I understand that the proceeds from
23 some of these taxes and fees are used for, among other things, funding local elections. If the
24 Court does not enjoin the Initiatives from appearing on the November 5, 2013, ballot, I
25 understand that some portion of the local taxes and fees that I pay will be used to pay for
26 printing Initiative information on ballots, running polling stations, and mailing and tabulating
27 votes, among other things.

DECLARATION OF WILLIAM BUTLER - 2
DWT 22188226v2 0043952-000026

Davis Wright Tremaine LLP
LAW OFFICES
Suite 2300
1201 Third Avenue
Seattle, WA 98101-3045
206.622.3150 main - 206 757.7700 fax

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

Dated this 5th day of July, 2013 at Spokane, Washington



William Butler

DECLARATION OF WILLIAM BUTLER - 3
DWT 22188226v2 0043952-000026

Davis Wright Tremaine LLP
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Suite 2200
1201 Third Avenue
Seattle, WA 98101-3045
206.622.3350 main • 206.757.7700 fax

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE
COUNTY OF SPOKANE

SPOKANE ENTREPRENEURIAL
CENTER et al

NO: 13-2-02495-5

Plaintiff(s),

AFFIDAVIT PURSUANT TO
GR 17(a) (2)

Vs.
SPOKANE MOVES TO AMEND THE
CONSTITUTION et al

Defendant(s)

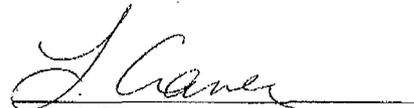
L CRAVER, declares and states:

1. I am employed with EASTERN WASHINGTON ATTORNEY SERVICES., and submit this declaration pursuant to GR 17 (a) (2) as recipient of "DECLARATION OF WILLIAM BUTLER IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION" received email at gsauerland@comcast.net for filing with the Court in this matter.

2. I have examined the document. The "DECLARATION OF WILLIAM BUTLER IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION" consists of FOUR (04) page(s), including the signature page, and this Declaration page. It is completed and legible.

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

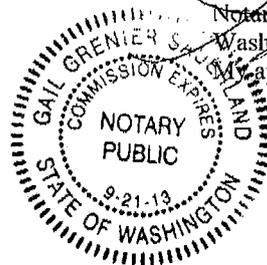
DATED 7/12/13



L CRAVER

SIGNED OR ATTESTED BEFORE ME
THIS 7/12/13


G SAUERLAND
Notary Public in and for the State of
Washington, County of Spokane.
My appointment expires: 09-21-13



FILED

JUL 12 2013

THOMAS R. FALLQUIST
SPOKANE COUNTY CLERK

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SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

SPOKANE ENTREPRENEURIAL CENTER,
et al,

Plaintiffs,

vs.

SPOKANE MOVES TO AMEND THE
CONSTITUTION, *et al.,*

Defendants.

No. 13-2-02495-5

DECLARATION OF MICHAEL
ALLEN IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION

I, Michael Allen, declare as follows:

1. Personal Knowledge. I am over the age of eighteen, am competent to testify, and have personal knowledge of the facts set forth in this Declaration.

2. Background. I am a resident of the City of Spokane. I am a member of the Spokane City Council but am bringing this lawsuit in my individual capacity, not in my capacity as a member of the Spokane City Council. I am also the owner of a small consulting business in Spokane.

3. Free Speech is Important to Campaigns for Elected Office. The success of any campaign for elected office in Spokane (and elsewhere) depends on candidates' ability to communicate with all citizens in the City, individuals and businesses alike. Candidates for elected office must also be able to raise sufficient funds to run their campaigns.

4. The Initiatives Will Impair My Ability to Campaign for Elected Office. The Initiatives will restrict the ability of candidates for elected office to freely associate with, communicate with, and accept contributions from members of the Spokane community or others

DECLARATION OF MICHAEL ALLEN - 1
DWT 22188230v1 0043952-000026

Davis Wright Tremaine LLP
LAW OFFICES
Suite 2200
1201 Third Avenue
Seattle, WA 98101-3045
206.622.3150 main - 206.757.7700 fax

1 visiting the City of Spokane. In my individual capacity, as a potential candidate for elected
2 office in Spokane, I must be able to communicate with important community members and
3 businesses in Spokane and raise money to fund campaigns. By limiting my right to speak with
4 the corporate citizens of Spokane to "open forums," the Initiatives will prevent me from
5 conducting an effective political campaign and from understanding the needs of all citizens in
6 Spokane. By removing protections for political contributions, the Initiatives will conflict with
7 state law and prevent me from raising funds for a political campaign. In my past campaigns, I
8 found that my most effective methods of raising funds were visiting constituents in their offices
9 or at their places of business, where I could learn about their concerns and their viewpoint first
10 hand, and explain how those concerns relate to a local government such as the City of Spokane.
11 Much of my support came from the small business community, and many of those people have
12 no time to attend City Council meetings—most of which are held during business hours.

13 5. Limitations on Lobbying Will Interfere with My Ability To Seek Input From
14 Spokane's Small Business Community. I regularly seek input and insight from businesses and
15 other organizations into past, present and proposed city initiatives to foster a better, more
16 prosperous economic climate in Spokane. Discussions about land use, development, parking
17 policies, municipal fees, and countless other municipal topics affect our business community in
18 significant ways. The input of those most affected by these issues is vital to intelligent decision-
19 making. Isolating me or any other candidate from our constituents would circumscribe my
20 ability to provide thoughtful leadership. Moreover, limiting my right to speak with only with
21 those constituents who have time to show up at City Council meetings during business hours
22 will unfairly penalize small businesses, which, in my experience, cannot afford to take time off
23 for such purposes.

24 6. My Business Will Be Harmed By the Initiatives. I am also the owner of a
25 consulting business in Spokane. The Initiatives will prevent my business from making political
26 contributions and communicating with elected officials regarding important political issues. If
27 my business does either of these things, the Initiatives will strip my business of many important

DECLARATION OF MICHAEL ALLEN – 2
DWT 22188230v1 0043952-000026

Davis Wright Tremaine LLP
LAW OFFICES
Suite 2200
1201 Third Avenue
Seattle, WA 98101-3045
206.622.3150 main • 206.757.7700 fax

1 protections afforded by the United States and Washington constitutions and other state and
2 federal laws. These protections include, among other things, the right to enforce my business's
3 rights under the contracts it enters into with customers, suppliers, and vendors. The absence of
4 these important rights will severely affect my business's ability to do business in and around the
5 City of Spokane. For example, if my business cannot sue to obtain payment due from a
6 customer for equipment we provided, my business will, as a practical matter, be unable to
7 collect revenue necessary to pay employees and city, state, and federal taxes, and operate its
8 facilities.

9 7. The Water Rights Provision Will Harm Me. The Water Rights provision in the
10 Envision Initiative will clothe individuals with the ability to challenge use and discharge of
11 water. As a homeowner in Spokane, the provision will give rise to a risk that I and my family
12 (and other home and business owners) could be sued for home and garden water use and
13 discharge.

14 8. Payment of City and County Taxes and Fees. As a resident of the City of
15 Spokane, I pay various City and County taxes and fees. I understand that the proceeds from
16 some of these taxes and fees are used for, among other things, funding local elections. If the
17 Court does not enjoin the Initiatives from appearing on the November 5, 2013, ballot, some
18 portion of the local taxes and fees that I pay will be used to pay for printing Initiative
19 information on voter pamphlets and ballots, running polling stations, and tabulating votes,
20 among other things.

21 I declare under penalty of perjury under the laws of the State of Washington that the
22 foregoing is true and correct to the best of my knowledge.

23 Dated this 8 day of July, 2013 at Spokane, Washington

24 
25 Michael Allen
26
27

DECLARATION OF MICHAEL ALLEN - 3
DWT 22188230v1 0043952-000026

Davis Wright Tremaine LLP
LAW OFFICES
Suite 22001201 Third Avenue Seattle, WA 98101-3045
206.422.3150 main • 206.757.7700 fax

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE
COUNTY OF SPOKANE

SPOKANE ENTREPRENEURIAL
CENTER et al

NO: 13-2-02495-5

Plaintiff(s),

AFFIDAVIT PURSUANT TO
GR 17(a) (2)

Vs.
SPOKANE MOVES TO AMEND THE
CONSTITUTION et al

Defendant(s)

L CRAVER, declares and states:

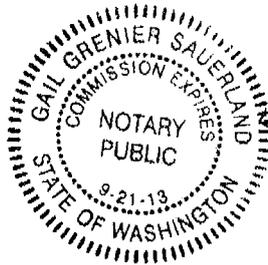
1. I am employed with EASTERN WASHINGTON ATTORNEY SERVICES., and submit this declaration pursuant to GR 17 (a) (2) as recipient of "DECLARATION OF MICHAEL ALLEN IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION" received email at gsauerland@comcast.net for filing with the Court in this matter.

2. I have examined the document. The "DECLARATION OF MICHAEL ALLEN IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION" consists of FOUR (04) page(s), including the signature page, and this Declaration page. It is completed and legible.

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

DATED 7/12/13


L CRAVER
SIGNED OR ATTESTED BEFORE ME
THIS 7/12/13




G SAUERLAND
Notary Public in and for the State of
Washington, County of Spokane.
My appointment expires: 09-21-13

1 of Washington. For example, each year, the Entrepreneurial Center hosts forums that provide a
2 venue through which local candidates can interact with the small businesses. Past and current
3 mayors, councilpersons, and current candidates attend these forums each year. These forums
4 are especially important to the Entrepreneurial Center's members who, in most cases, lack the
5 ability to attend City Council meetings which are held during regular business hours. The
6 SMAC Initiative would criminalize participation in events like this and deprive the
7 Entrepreneurial Center (and its members) of an important avenue for communicating with
8 elected officials. That the Initiative might appear on the November 5, 2013 ballot has already
9 caused the Entrepreneurial Center to re-evaluate its advocacy efforts.

10 4. The SMAC Initiative's Limitation on Electioneering Will Harm the
11 Entrepreneurial Center. The Entrepreneurial Center has, in the past, contributed to political
12 campaigns and candidates that it believes will help foster a better economic climate for
13 Spokane's small business community. The Center plans to continue to make contributions in
14 the future but the SMAC Initiative would prohibit them and subject staff and Board members to
15 criminal penalties for approving or making contributions on behalf of the Center. The SMAC
16 Initiative's electioneering restrictions will harm our members, staff, and organization.

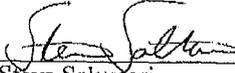
17 5. The Corporate Rights Provision Will Harm the Spokane Entrepreneurial Center.
18 The Envision Initiative's Corporate Rights provision seeks to strip the Spokane Entrepreneurial
19 Center of various rights, including protections afforded under the United States and Washington
20 constitutions and under state and federal law. The absence of these important rights will
21 severely affect Spokane Entrepreneurial Center's ability to continue serving the small business
22 community. For example, if the Center is sued, the Envision Initiative would prevent the
23 organization from effectively defending itself and its interests, which will be subordinate to
24 other persons.

25 6. The Neighborhood Majority Provision Will Harm the Spokane Entrepreneurial
26 Center. The Entrepreneurial Center owns interests in commercial real estate located in
27 downtown Spokane. The Center leases space in these properties to early-stage small businesses

1 on favorable terms in hopes the businesses will grow to become important corporate members
2 of the Spokane community. Development issues are complicated and require predictability and
3 fairness. The City Council makes decisions regarding variances from zoning regulations with
4 advice and counsel from other city land use agencies. If the Envision Initiative becomes law,
5 however, the existing regulatory structure will be disrupted and all zoning decisions regarding
6 many real estate projects will require the approval of the majority of the residents of any
7 neighborhood. For example, the Entrepreneurial Center recently purchased the Buchanan
8 Building, a turn of the century building at 28 W. 3rd Ave. Prior to the Center's involvement, the
9 building had stood vacant for five years and was in need of significant renovation. Now, as a
10 result of the Center's efforts, the building houses 14 small businesses and 32 employees and has
11 become a vibrant part of the downtown business community. Projects like this will not be
12 possible under the Envision Initiative. Neither myself nor the Entrepreneurial Center (nor other
13 business owners) have the time and resources to canvass the neighborhood trying to get 51%
14 approval that would have been necessary to complete this renovation. Indeed, the mere
15 pendency of the Envision Initiative is enough to discourage investment in projects such as this
16 until the validity of the Initiative is resolved.

17
18 I declare under penalty of perjury under the laws of the State of Washington that the
19 foregoing is true and correct to the best of my knowledge.

20 Dated this 5th day of July, 2013 at Spokane, Washington

21
22
23 
24 Steve Salvatori

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DECLARATION OF SPOKANE ENTREPRENEURIAL CENTER -- 3
DWT 22188211v2 0043952-000026

Davis Wright Tremaine LLP
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Suite 2200
1201 Third Avenue
Seattle, WA 98101-3045
206.622.3150 main · 206.757.7700 fax

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE
COUNTY OF SPOKANE

SPOKANE ENTREPRENEURIAL
CENTER et al

NO: 13-2-02495-5

Plaintiff(s),

AFFIDAVIT PURSUANT TO
GR 17(a) (2)

Vs.
SPOKANE MOVES TO AMEND THE
CONSTITUTION et al

Defendant(s)

L CRAVER, declares and states:

1. I am employed with EASTERN WASHINGTON ATTORNEY SERVICES., and submit this declaration pursuant to GR 17 (a) (2) as recipient of "DECLARATION OF STEVE SALVATORI ON BEHALF OF THE SPOKANE ENTREPRENEURIAL CENTER IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION" received email at gsauerland@comcast.net for filing with the Court in this matter.

2. I have examined the document. The "DECLARATION OF STEVE SALVATORI ON BEHALF OF THE SPOKANE ENTREPRENEURIAL CENTER IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION" consists of FOUR (04) page(s), including the signature page, and this Declaration page. It is completed and legible.

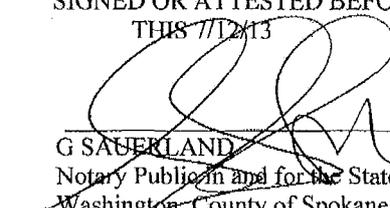
I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED 7/12/13

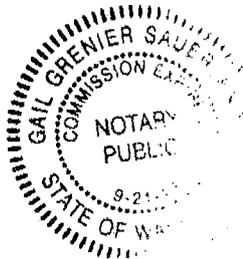


L CRAVER

SIGNED OR ATTESTED BEFORE ME
THIS 7/12/13



G SAUERLAND
Notary Public in and for the State of
Washington, County of Spokane.
My appointment expires: 09-21-13



FILED

JUL 12 2013

THOMAS R. FALLQUIST
SPOKANE COUNTY CLERK

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SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

SPOKANE ENTREPRENEURIAL CENTER,)
et al.,)
)
) Plaintiffs,)
)
) vs.)
)
) SPOKANE MOVES TO AMEND THE)
) CONSTITUTION, *et al.*,)
)
) Defendants.)

No. 13-2-02495-5
DECLARATION OF STEVE
SALVATORI

I, Steve Salvatori, declare as follows:

1. Personal Knowledge. I am over the age of eighteen, am competent to testify, and have personal knowledge of the facts set forth in this Declaration.

2. Background. I am a resident of the City of Spokane. I am a member of the Spokane City Council but am bringing this lawsuit in my individual capacity, not in my capacity as a member of the Spokane City Council. I am also the owner of the Spokane Entrepreneurial Center, LLC a small business incubator with three physical locations in Spokane, and the CEO of Salvatori-Scott, Inc., a manufacturers representative firm doing business on a national basis.

3. Free Speech is Important to Campaigns for Elected Office. The success of any campaign for elected office in Spokane (and elsewhere) depends on candidates' ability to communicate with all citizens in the City, individuals and businesses alike. Candidates for elected office must also be able to raise sufficient funds to run their campaigns.

4. The Initiatives Will Impair My Ability to Campaign for Elected Office. I understand that the Initiatives will restrict the ability of candidates for elected office to freely associate with, communicate with, and accept contributions from members of the Spokane

DECLARATION OF STEVE SALVATORI - 1
DWT 22188228v2 0043952-000026

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Suite 2200
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Seattle, WA 98101-3045
206.622.3150 main - 206.757.7700 fax

1 community or others visiting the City of Spokane. In my individual capacity as a potential
2 candidate for elected office in Spokane, I must be able to communicate with important
3 community members and businesses in Spokane and raise money to fund campaigns. By
4 limiting my right to speak with the corporate citizens of Spokane to "open forums," the
5 Initiatives will prevent me from conducting an effective political campaign and from
6 understanding the needs all citizens in Spokane. By removing protections for political
7 contributions, the Initiatives will prevent me from raising funds for a political campaign. In my
8 past two campaigns (2010 for Spokane County Commissioner and 2011 for Spokane City
9 Council), I found that my most effective methods of raising funds were visiting constituents in
10 their office or at their place of business, where I could learn about their concerns and their
11 viewpoint first hand, and explain how those concerns relate to a local government such as the
12 city of Spokane. Much of my support came from the small business community, and many of
13 those people have no time to attend City Council meetings—most of which are held during
14 business hours.

15 5. Limitations on Lobbying Will Interfere with My Ability To Seek Input From
16 Spokane's Small Business Community. Through my membership in various business groups
17 and associations in Spokane, I constantly seek input and insight into past, present and proposed
18 city initiatives to foster a better, more prosperous economic climate in Spokane. Discussions
19 about parking policy, change of use procedures, permit processes, Business Registration fees,
20 and countless other municipal topics affect our business community in significant ways. The
21 input of those most affected by these issues is vital to intelligent decision making. Isolating me
22 or any other candidate from our constituents would circumscribe my ability to provide
23 thoughtful leadership. Moreover, limiting my right to speak with only with those constituents
24 who have time to show up at City Council meetings during the business hours will unfairly
25 penalize small businesses, which, in my experience, cannot afford to take time off for such
26 purposes.

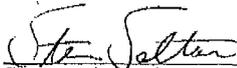
27
DECLARATION OF STEVE SALVATORI – 2
DWT 22188228v2 0043952-000026

Davis Wright Tremaine LLP
LAW OFFICES
Suite 2200
1201 Third Avenue
Seattle, WA 98101-3045
206.622.3150 main • 206.757.7700 fax

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

Dated this 5TH day of July, 2013 at Spokane, Washington



Steve Salvatori

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE
COUNTY OF SPOKANE

SPOKANE ENTREPRENEURIAL
CENTER et al

NO: 13-2-02495-5

Plaintiff(s),

Vs.
SPOKANE MOVES TO AMEND THE
CONSTITUTION et al

Defendant(s)

AFFIDAVIT PURSUANT TO
GR 17(a) (2)

L CRAVER, declares and states:

1. I am employed with EASTERN WASHINGTON ATTORNEY SERVICES., and submit this declaration pursuant to GR 17 (a) (2) as recipient of "DECLARATION OF STEVE SALVATORI" received email at gsauerland@comcast.net for filing with the Court in this matter.

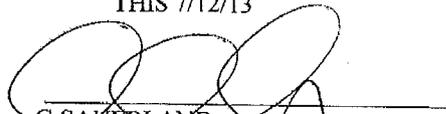
2. I have examined the document. The "DECLARATION OF STEVE SALVATORI" consists of FOUR(4) page(s), including the signature page, and this Declaration page. It is completed and legible.

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

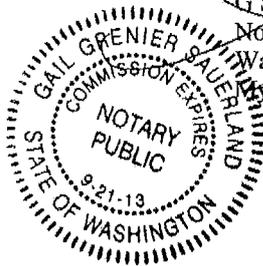
DATED 7/12/13



L CRAVER
SIGNED OR ATTESTED BEFORE ME
THIS 7/12/13



G SAUERLAND
Notary Public in and for the State of
Washington, County of Spokane.
My appointment expires: 09-21-13



FILED

JUL 12 2013

THOMAS R. FALLQUIST
SPOKANE COUNTY CLERK

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SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

SPOKANE ENTREPRENEURIAL CENTER,
et al.,

Plaintiffs,

vs.

SPOKANE MOVES TO AMEND THE
CONSTITUTION, *et al.*,

Defendants.

No. 13202495-5

DECLARATION OF KATE
MCCASLIN ON BEHALF OF THE
INLAND PACIFIC CHAPTER OF
THE ASSOCIATED BUILDERS
AND CONTRACTORS IN
SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION

I, Kate McCaslin, declare as follows:

1. Personal Knowledge. I am over the age of eighteen, am competent to testify, and have personal knowledge of the facts set forth in this Declaration.

2. Associated Builders and Contractors. I am the President and CEO of The Inland Pacific Chapter of Associated Builders & Contractors ("Associated Builders"). Associated Builders is a nonprofit Washington corporation located in Spokane Valley, Washington. Associated Builders represents over 220 companies involved in the commercial and industrial construction industry in Washington and Idaho, including companies in Spokane, Washington.

3. Associated Builders Regularly Engages Elected Officials for the Benefit of the Community. On behalf of its membership, Associated Builders engages elected officials at the city, state, and federal level, (including elected members of the Spokane City government and candidates for elected office) on issues ranging from contractor registration to employment and collective bargaining. For example, Associated Builders has engaged City Council members

DECLARATION OF THE INLAND PACIFIC CHAPTER OF ASSOCIATED
BUILDERS & CONTRACTORS -- 1
DWT 22188223v1 0043952-000026

Davis Wright Tremaine LLP
LAW OFFICES
Suite 2200
1201 Third Avenue
Seattle, WA 98101-3045
206.622.3150 main • 206.757.7700 fax

1 responsible for drafting new rules governing contractor registration. During these meetings,
2 Associated Builders provided City Council members with expertise and insight regarding the
3 proposed ordinance's effect on contractors, as well as suggestions for ways to improve the
4 ordinance. Employees and lobbyists from Associated Builders also regularly advocate at the
5 state level for improvements to statutes and regulations governing workers compensation
6 programs. Most of Associate Builders' advocacy efforts involve subjects that cannot be
7 adequately conveyed at a public forum such as City Council meetings. Rather, these subjects
8 require in-depth discussions that are best conducted through small, in-person meetings.

9 4. The Initiatives' Limitations on Lobbying Will Harm Associated Builders and Its
10 Public Advocacy Efforts. As described above, advocacy and lobbying on behalf of members
11 are key components of Associated Builders' mission. It is important for us to be able to partner
12 with our elected officials advancing projects benefiting our community. The SMAC Initiative
13 would, however, criminalize all of advocacy activities conducted outside of public forums. That
14 the Initiative might appear on the November 5, 2013 ballot has already caused the Associated
15 Builders to re-evaluate its advocacy efforts.

16 5. The Corporate Rights Provision Will Harm Associated Builders. The Envision
17 Initiative's Corporate Rights provision seeks to strip Associated Builders of various rights,
18 including protections afforded under the United States and Washington constitutions and under
19 state and federal law. For example, the Initiative may strip corporations like Associated
20 Builders of the right to enter into contracts and bring civil lawsuits on the organization's behalf.
21 The absence of these important rights will severely affect Associated Builders and its member
22 organizations' ability to enforce their rights and otherwise conduct the activities for which they
23 were created.

24 6. The Neighborhood Majority Provision Will Harm Associated Builders and Its
25 Members. Associated Builders and its members are involved the development of residential,
26 commercial, and industrial projects in the City of Spokane. Among other things, Associate
27 Builders promotes policies that allow for thoughtful development of residential, commercial,

DECLARATION OF THE INLAND PACIFIC CHAPTER OF ASSOCIATED
BUILDERS & CONTRACTORS - 2
DWT 22188223v1 0043952-000026

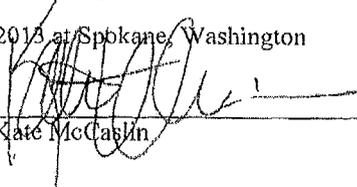
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1 and industrial projects. Development issues are complicated and require predictability and
2 fairness. The City Council makes decisions regarding variances from zoning regulations with
3 advice and counsel from other city land use agencies. If the Envision Initiative becomes law,
4 however, the existing regulatory structure will be disrupted and all zoning decisions regarding
5 many real estate projects will require the approval of the majority of the residents of any
6 neighborhood. The construction industry interests Associated Builders seeks to promote
7 would be directly affected by the Neighborhood Majority provision because the provision would
8 impair contractors, developers, and owners from obtaining variances from zoning regulations
9 covering their projects, lead to unpredictable and uncertain results, and decrease investment in
10 our community's development.

11 7. The Labor Rights Provision Will Harm Associated Builders. Associated
12 Builders promotes sensible policies regarding employee-employer relations. Many of
13 Associated Builders' members are employers or otherwise deal regularly with employment
14 and/or collective bargaining issues on the job site. The Labor Rights provision in the Envision
15 Initiative will harm Associated Builders and its members by attempting to extend certain Bill of
16 Rights protections currently applicable only to government actors to private employers. For
17 example, the Initiative could be used to prevent private employers from limiting job site access,
18 regulating what employees say about the company on social media, how they treat each other,
19 and what they bring to the workplace. As a result, the Initiative will make it difficult for
20 Associated Builders' members to maintain orderly and productive work environments.

21
22 I declare under penalty of perjury under the laws of the State of Washington that the
23 foregoing is true and correct to the best of my knowledge.

24 Dated this 9th day of July, 2013 at Spokane, Washington

25 
26 _____
27 Kate McCaslin

DECLARATION OF THE INLAND PACIFIC CHAPTER OF ASSOCIATED
BUILDERS & CONTRACTORS - 3
DWT 22188223v1 0043952-000026

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE
COUNTY OF SPOKANE

SPOKANE ENTREPRENEURIAL
CENTER et al

NO: 13-2-02495-5

Plaintiff(s),

Vs.
SPOKANE MOVES TO AMEND THE
CONSTITUTION et al

AFFIDAVIT PURSUANT TO
GR 17(a) (2)

Defendant(s)

L CRAVER, declares and states:

1. I am employed with EASTERN WASHINGTON ATTORNEY SERVICES., and submit this declaration pursuant to GR 17 (a) (2) as recipient of "DECLARATION OF KATE MCCASLIN ON BEHALF OF THE INLAND PACIFIC CHAPTER OF THE ASSOCIATED BUILDERS AND CONTRACTORS IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION" received email at gsauerland@comcast.net for filing with the Court in this matter.

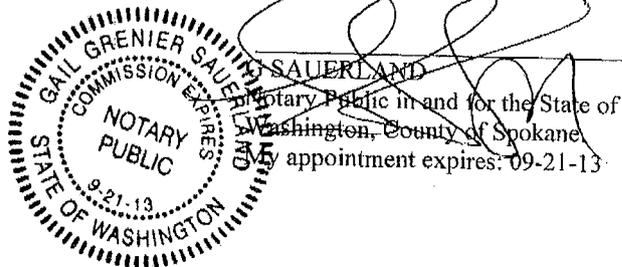
2. I have examined the document. The "DECLARATION OF KATE MCCASLIN ON BEHALF OF THE INLAND PACIFIC CHAPTER OF THE ASSOCIATED BUILDERS AND CONTRACTORS IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION" consists of FOUR(04) page(s), including the signature page, and this Declaration page. It is completed and legible.

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

DATED 7/12/13


L CRAVER

SIGNED OR ATTESTED BEFORE ME
THIS 7/12/13



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The Honorable Maryann C. Moreno

FILED

AUG 02 2013

THOMAS R. FALLQUIST
SPOKANE COUNTY CLERK

SUPERIOR COURT OF THE STATE OF WASHINGTON
SPOKANE COUNTY

SPOKANE ENTREPRENEURIAL CENTER,)
SPOKANE COUNTY, DOWNTOWN)
SPOKANE PARTNERSHIP, GREATER)
SPOKANE INCORPORATED, THE)
SPOKANE BUILDING OWNERS AND)
MANAGERS ASSOCIATION, SPOKANE)
ASSOCIATION OF REALTORS, THE)
SPOKANE HOME BUILDERS)
ASSOCIATION, THE INLAND PACIFIC)
CHAPTER OF ASSOCIATED BUILDERS)
AND CONTRACTORS, AVISTA)
CORPORATION, PEARSON PACKAGING)
SYSTEMS, WILLIAM BUTLER, NEIL)
MULLER, STEVE SALVATORI, NANCY)
MCLAUGHLIN, MICHAEL ALLEN, and TOM)
POWER,)

Plaintiffs,

v.

SPOKANE MOVES TO AMEND THE)
CONSTITUTION, ENVISION SPOKANE,)
VICKY DALTON, SPOKANE COUNTY)
AUDITOR, in her official capacity, and THE)
CITY OF SPOKANE,)

Defendants.

No. 13-2-02495-5

PLAINTIFFS' MOTION FOR
DECLARATORY JUDGMENT
AND SUPPORTING
MEMORANDUM OF
AUTHORITIES

**Noted for Consideration:
Friday, August 23, 2013**

PLFS.' MOT. FOR DECL. J.
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TABLE OF CONTENTS

1

2 I. INTRODUCTION 1

3 II. BACKGROUND 2

4 III. ARGUMENT 4

5 A. Washington Courts Routinely Enter Declaratory Judgments Addressing

6 the Scope of Local Initiatives and Declaring Them Invalid 4

7 B. Plaintiffs Satisfy the Procedural Requirements to Obtain Declaratory

8 Relief. 4

9 1. A Justiciable Controversy Exists. 4

10 2. Plaintiffs Have Standing 5

11 a. Plaintiffs Fall Within the Zone of Interests the Initiatives

12 Seek to Regulate. 6

13 (1) The SMAC Initiative Seeks to Regulate Plaintiffs’

14 Free Speech Rights. 6

15 (2) The Envision Initiative Seeks to Regulate

16 Plaintiffs’ Land and Water Use Interests,

17 Employment Interests, and Constitutional Rights. 7

18 b. Plaintiffs Have Demonstrated Injury. 8

19 c. Plaintiffs also Have Standing Under the Public

20 Importance Doctrine. 11

21 C. The Court Should Declare the Initiatives Invalid Because They Exceed

22 the Initiative Power. 11

23 1. The SMAC Initiative Exceeds the Local Initiative Power. 12

24 a. The SMAC Initiative Seeks to Legislate in Areas Beyond

25 the Local Initiative Power. 13

26 b. The SMAC Initiative Intrudes on Administrative Affairs

27 by Seeking to Regulate Campaign Finance. 15

c. The Court Cannot Sever the Offending Provisions

Without Defeating the SMAC Initiative’s Purpose. 15

2. The Envision Initiative Exceeds the Local Initiative Power. 16

a. Initiatives Seeking to Enact Similar Types of Laws Have

Uniformly Been Rejected as Exceeding the Initiative

Power. 16

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b. The Envision Initiative Improperly Seeks to Legislate in Areas Beyond the Local Initiative Power..... 17

(1) The Envision Initiative Improperly Attempts to Amend and Conflicts with Federal and State Law..... 18

c. The Envision Initiative Improperly Intrudes on Administrative Affairs..... 20

d. The Envision Initiative Interferes with Powers Delegated to Local Legislative Bodies..... 21

3. The Court Cannot Sever the Offending Sections Without Defeating the Envision Initiative's Purpose..... 22

D. Invalid Initiatives Should Not Appear on Ballots..... 23

E. A Declaration Invalidating the Initiatives and Declaring That They Should Not Appear on the Ballot Will Finally Determine the Issues..... 24

IV. CONCLUSION..... 25

1
2
3
4
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Page(s)

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159 Wn.2d 165 (2006)..... 16, 20, 21, 22

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163 Wn. App. 427 (2011).....*passim*

Angle v. Miller,
673 F.3d 1122 (9th Cir. 2012)..... 23

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558 U.S. 340 (2010) (collecting U.S. Supreme Court cases)..... 2, 13, 14

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No. 691520 (Wn. Ct. App. Sept. 21, 2012)..... 1

City of Longview v. Wallin,
301 P.3d 45 (Wn. Ct. App., 2013).....*passim*

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2013 WL 709828 (Wn. Ct. App. Feb. 25, 2013)..... 1

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145 Wn. App. 869 (2008), *aff'd* 170 Wn.2d 1 (2010)..... 17

City of Port Angeles v. Our Water-Our Choice,
170 Wn.2d 1 (2010)..... 15, 21

City of Seattle v. Yes for Seattle,
122 Wn. App. 382 (2004).....*passim*

City of Sequim v. Malkasian,
157 Wn.2d 251 (2006)..... 5

City of Spokane v. Coon,
3 Wn.2d 243 (1940)..... 19

Coppernoll v. Reed,
155 Wn.2d 290 (2005)..... 23, 24

Eyman v. McGehee,
173 Wn. App. 684 (2013)..... 1

1	<i>Ford v. Logan,</i> 79 Wn.2d 147 (1971).....	<i>passim</i>
2	<i>Kilb v. First Student Transp., LLC,</i> 157 Wn. App. 280 (2010).....	18
3		
4	<i>Leonard v. City of Bothell,</i> 87 Wn.2d 847 (1976).....	20, 21
5		
6	<i>Lince v. City of Bremerton,</i> 25 Wn. App. 309 (1980).....	16, 22
7		
8	<i>Mukilteo Citizens for Simple Gov't v. City of Mukilteo,</i> 174 Wn.2d 41 (2012).....	6, 10, 21
9		
10	<i>NCAA v. Tarkanian,</i> 488 U.S. 179 (1988).....	18
11		
12	<i>Osborn v. Grant Cnty. By & Through Grant Cnty. Comm'rs,</i> 130 Wn.2d 615 (1996).....	25
13		
14	<i>Patella v. City of Vancouver,</i> No. 13-2-01866-1, Mem. of Op. (Clark Cnty. Super. Ct. July 31, 2013)	1
15		
16	<i>Philadelphia II v. Gregoire,</i> 128 Wn.2d 707 (1996).....	15, 17, 18, 19
17		
18	<i>Powell v. McCormack,</i> 395 U.S. 486 (1969).....	4
19		
20	<i>Pub. Util. Comm'n of D.C. v. Pollack,</i> 343 U.S. 451 (1952).....	18
21		
22	<i>Pub. Util. Dist. No. 1, of Pend Oreille Cnty. v. State, Dep't of Ecology,</i> 146 Wn.2d 778 (2002).....	19
23		
24	<i>Sanders Cnty. Republican Cent. Committee v. Bullock,</i> 698 F.3d 741 (9th Cir. 2012).....	9
25		
26	<i>Save Our Park v. Bd. of Clallam Cnty. Comm'rs,</i> 74 Wn. App. 637 (1994).....	12, 22
27		
	<i>Seattle Bldg. & Constr. Trades Council v. City of Seattle,</i> 94 Wn.2d 740 (1980).....	<i>passim</i>
	<i>Walker v. Munro,</i> 124 Wn.2d 402 (1994).....	9
	<i>Wash. Ass'n for Substance Abuse & Violence Prevention v. State,</i> 174 Wn.2d 642 (2012).....	10

PLFS.' MOT. FOR DECL. J. - iv
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1	<i>Wash. Grange v. WA Republican Party,</i>	
	552 U.S. 442 (2008)	23
2	Statutes	
3	29 U.S.C. §§ 151-69	18
4	33 U.S.C. § 1362(7).....	19
5	42 U.S.C. § 300f <i>et seq.</i>	19
6	RCW 7.24.010	1, 24
7	RCW 7.24.020	6
8	RCW 35.22.200	12
9	RCW 35.63.110	22
10	RCW 36.70A.210(2)	22
11	RCW 36.70A <i>et seq.</i>	22
12	RCW 41.56 <i>et seq.</i>	18
13	RCW 42.17A.005(31)	14
14	RCW 42.17A.005(35)	14
15	RCW 42.17A <i>et seq.</i>	15
16	Other Authorities	
17	Spokane Charter Article IX, §§ 81-82.....	12
18	Spokane City Charter Article I, § 2	19
19	WAC 390-17-310	15
20	Wash. Const. Article XI, § 10	12, 17
21	Wash. Const. Article XI, § 11	19
22	Wash. State Const. Article XII, § 5	14
23		
24		
25		
26		
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1 I. INTRODUCTION

2 A coalition of Spokane voters, elected officials, nonprofit corporations, and local
3 businesses ask the Court to protect their rights by declaring that the SMAC and Envision
4 initiatives are beyond the scope of the local initiative power and may not appear on the ballot.

5 Under the Uniform Declaratory Judgment Act, this Court has the “power to declare
6 rights, status and other legal relations.” RCW 7.24.010. That power includes declaring the
7 status of a local initiative as beyond the scope of the local initiative power and the right of the
8 Auditor to refrain from placing invalid measures on the ballot. *See, e.g., Seattle Bldg. &*
9 *Constr. Trades Council v. City of Seattle*, 94 Wn.2d 740, 746 (1980) (affirming declaratory
10 judgment for private plaintiffs declaring local initiative exceeded initiative power); *Ford v.*
11 *Logan*, 79 Wn.2d 147, 151 (1971) (affirming declaratory judgment for private plaintiffs
12 declaring local initiative exceeded initiative power); *Am. Traffic Solutions, Inc. v. City of*
13 *Bellingham*, 163 Wn. App. 427, 432-33 (2011) (reversing denial of declaratory judgment for
14 private plaintiff and declaring local initiative exceeded initiative power); *City of Seattle v. Yes*
15 *for Seattle*, 122 Wn. App. 382, 386 (2004) (affirming declaratory judgment “striking [initiative]
16 from the ballot”). Washington courts routinely exercise this power in pre-election initiative
17 challenges like this one. Indeed, *at least five times in the last year alone*, Washington courts
18 have found a local initiative exceeds the local initiative power.¹ The Court should similarly
19 find the SMAC and Envision initiatives exceed the local initiative power.

20 The local initiatives in this case make serious attacks on Plaintiffs’ rights and interests.
21 The initiatives attempt to repeal or amend the United States and Washington constitutions;

22
23 ¹ For example, on July 31, 2013 – just two days before Plaintiffs filed this motion – the Clark
24 County Superior Court determined that a proposed local initiative prohibiting the use of
25 resources to promote light rail in Vancouver should not appear on the ballot because it
26 exceeded the initiative power by interfering with administrative matters and powers delegated
27 to the local legislative authority. *See Patella v. City of Vancouver*, No. 13-2-01866-1, Mem. of
Op. (Clark Cnty. Super. Ct. July 31, 2013); *see also City of Longview v. Wallin*, 301 P.3d 45
(Wn. Ct. App., 2013); *Eyman v. McGehee*, 173 Wn. App. 684 (2013); *City of Monroe v. Wash.*
Campaign for Liberty, 2013 WL 709828 (Wn. Ct. App. Feb. 25, 2013); *City of Bellingham v.*
Whatcom County, No. 691520 (Wn. Ct. App. Sept. 21, 2012).

1 create new inalienable and fundamental constitutional rights; interfere with administrative
2 matters; usurp authority delegated exclusively to local and county legislative authorities; and/or
3 criminalize constitutionally protected speech. But the law protects Plaintiffs from such abuse of
4 the initiative power. The local initiative power is limited in scope and does not authorize using
5 local legislation to amend the constitution, enact laws conflicting with superior law, or
6 otherwise intrude on administrative matters or matters delegated to the City or County's
7 legislative authority. The Court should grant declaratory relief because a justiciable
8 controversy exists and Plaintiffs have established their standing to pursue relief to protect
9 against injuries caused by the initiatives. Accordingly, the Court should enter a declaratory
10 judgment, declaring that the SMAC and Envision initiatives are beyond the scope of the
11 initiative power and, because they are invalid, the County Auditor may not place the measures
12 on the ballot.

13 II. BACKGROUND

14 SMAC seeks to use the local initiative power "to overturn the *Citizens United* case, and
15 restore human voter supremacy in the political sphere." SMAC Reply to Mot. to Dismiss at 8-9
16 [Dkt. 69]. It attempts to do this by stripping "corporations" of their constitutional rights to free
17 speech, political expression, and government petition.² See Compl. ¶¶ 26-27 & Ex. A; Plfs.'
18 Opp. to Mot. to Strike at 5-6 [Dkt. 61]; Plfs.' Mot. for Prelim. Inj. at 4-5 [Dkt. 43].
19 Specifically, the SMAC initiative denies non- and for-profit corporations, and any "individuals
20 purporting to communicate on behalf of the corporation," the constitutional right to
21 communicate with elected officials within Spokane (whether local, state, or federal), and to
22 contribute to or expend money in connection with elections (whether local, state, or federal)
23 within Spokane. See Compl. ¶ 26 & Ex. A; Plfs.' Opp. to Mot. to Strike at 5-6; Plfs.' Mot. for
24 Prelim. Inj. at 4-6.

25
26 ² Plaintiffs have described the relevant facts in detail in their Opposition to Envision's Special
27 Motion to Strike and Plaintiffs' Motion for Preliminary Injunction. Rather than repeat the facts
and arguments in detail again, Plaintiffs rely on their previously filed papers, and recite the
facts and arguments in summary form here.

1 The initiative imposes criminal punishments for violating these prohibitions, and
2 deprives corporations that exercise free speech of their constitutional and statutory rights under
3 federal and state law. *See* Compl. ¶¶ 26-27 & Ex. A; Plfs.' Opp. to Mot. to Strike at 5-6; Plfs.'
4 Mot. for Prelim. Inj. at 4-6. In fact, the SMAC initiative goes beyond eliminating the First
5 Amendment rights of non- and for-profit corporations and individuals speaking on their behalf
6 to explicitly deprive those corporations and individuals of their right to defend themselves
7 under the Fifth Amendment and "corresponding sections" of the Washington Constitution.
8 SMAC admitted its initiative likely "will be struck down," and acknowledged the "strength of
9 plaintiffs'" arguments. SMAC Mot. to Dismiss at 6-7 [Dkt. 49].

10 The Envision initiative likewise attempts to use the local initiative power to strip
11 corporations that violate its provisions of their constitutional and statutory protections. Compl.
12 ¶ 32 & Ex. B § 1, Fourth; Plfs.' Opp. to Mot. to Strike at 6; Plfs.' Mot. for Prelim. Inj. at 6-8.
13 In addition, the Envision initiative seeks to (1) revise or amend the City of Spokane's zoning
14 code and implementation; (2) regulate and give fundamental rights to waterways governed by
15 federal and state law (i.e., the Spokane River and the Spokane Valley-Rathdrum Prairie
16 Aquifer); and (3) circumvent or expand federal and state labor laws. *See* Compl. ¶ 31 & Ex. B
17 § 1, First, Second, Third; Plfs.' Opp. to Mot. to Strike at 6; Plfs.' Mot. for Prelim. Inj. at 6-8.
18 According to Envision, its initiative "is the culmination of several years of discourse and debate
19 in the public forum." Envision Answer at 2:10-11 [Dkt. 18]; *see also* Envision Mem. in
20 Support of Special Mot. to Strike at 7:5-6 [Dkt. 15] ("Envision Spokane has engaged in
21 extensive public participation in petitioning for change within the City of Spokane.").

22 The County Auditor faces a deadline of September 4, 2013, to send ballot measures to
23 the printer. Dalton Answer at 4 n.2 [Dkt. 11]; Dalton Response to Mots. at 4-5 [Dkt. 58]. An
24 order from this Court before September 4 will ensure the Auditor has direction, before the
25 printing deadline, on whether the initiatives are invalid and should not appear on the ballot.
26 Dalton Answer at 4 n.2 & 9-10 ¶¶ 2-3; Dalton Response to Mots. at 4-5.

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III. ARGUMENT

A. Washington Courts Routinely Enter Declaratory Judgments Addressing the Scope of Local Initiatives and Declaring Them Invalid.

Washington courts regularly grant the relief Plaintiffs seek – a declaratory judgment determining, pre-election, that an initiative exceeds the scope of the initiative power. *See, e.g., Am. Traffic Solutions*, 163 Wn. App. at 433-34 (reversing denial of declaratory judgment for private company challenging local initiative as exceeding initiative power); *Ford*, 79 Wn.2d at 157 (affirming declaration for private taxpayer challenging local initiative as exceeding initiative power); *Seattle Bldg. & Constr. Trades Council*, 94 Wn.2d at 747-49 (affirming declaration for private trade association challenging local initiative as exceeding initiative power). Declaratory relief is proper in pre-election initiative challenges even when plaintiffs do not meet the test for injunctive relief. *See Am. Traffic Solutions*, 163 Wn. App. at 432-33, 435-435 (reversing denial of declaratory judgment because initiative exceeded initiative power, but affirming denial of injunction on standing grounds); *see also Powell v. McCormack*, 395 U.S. 486, 499 (1969) (court may grant declaratory judgment even though it does not issue injunctive relief). That is because the standard for declaratory relief is more liberal than for injunctive relief. *See Am. Traffic Solutions*, 163 Wn. App. at 432-33, 435.

B. Plaintiffs Satisfy the Procedural Requirements to Obtain Declaratory Relief.

When a justiciable controversy exists and Plaintiffs have standing – both of which the Court has already found in this case – declaratory relief is proper. *See Am. Traffic Solutions*, 163 Wn. App. at 432-33.

1. A Justiciable Controversy Exists.

The Court already recognized in denying SMAC's Motion to Dismiss that "Plaintiffs' claims are justiciable because Plaintiffs allege the initiatives at issue exceed the scope of the local initiative power." Order Denying SMAC's Mot. to Dismiss at 2 [Dkt. 72]. The Court's conclusion is well supported by the law and facts.

The fundamental question in this case is whether the subject matters of the Envision and

1 SMAC initiatives are proper for direct legislation. No post-election event can change the
2 answer to the question whether the measures are or are not within the scope of the initiative
3 power.

4 [Pre-election] [s]ubject matter challenges do not raise concerns
5 regarding justiciability because postelection events will not
6 further sharpen the issue (i.e., the subject of the proposed
measure is either proper for direct legislation or it is not).

7 *Am. Traffic Solutions*, 163 Wn. App. at 432 (quoting *Coppernoll v. Reed*, 155 Wn.2d 290, 299
8 (2005)); see also *City of Sequim v. Malkasian*, 157 Wn.2d 251, 255, 260 (2006) (reaffirming
9 same). As a result, Plaintiffs' pre-election claims are justiciable.

10 Although well-established authority makes clear that cases involving pre-election
11 challenges do not raise justiciability concerns, even if such challenges did, this case plainly
12 reflects a present, justiciable, dispute: (1) the Auditor believes she must place the initiatives on
13 the ballot absent an order from this Court directing otherwise, Dalton Answer ¶¶ 5.6, 5.9; (2)
14 Plaintiffs claim the subjects of the initiatives improperly exceed the scope of the local initiative
15 power; and (3) the initiative sponsors are vigorously defending the validity of the initiatives.
16 See *City of Longview v. Wallin*, 301 P.3d 45, 53-54 (2013) (even before signatures were
17 validated on initiative petition, a justiciable controversy existed between sponsors supporting
18 initiative and City attacking initiative). Moreover, as the parties' voluminous filings and the
19 sponsors' passionate oral arguments confirm, the parties have "genuine and opposing
20 interests." *Id.* at 53. Simply, as the Court already determined, there is a justiciable dispute.

21 2. Plaintiffs Have Standing.

22 As with justiciability, the Court has already determined the private Plaintiffs and
23 Plaintiff Spokane County "have standing to seek declaratory [relief]" in this case. Order
24 Denying SMAC's Mot. to Dismiss at 2 [Dkt. 72]. The law and facts well support the Court's
25 standing determination.

26 In addressing pre-election initiative challenges, Washington courts generally use the test
27 for standing that applies to challenging a statute or ordinance. A plaintiff has standing to

1 pursue pre-election initiative declaratory relief if it demonstrates “(1) that it falls within the
2 zone of interests that a statute or ordinance protects or regulates and (2) that it has or will suffer
3 an injury in fact, economic or otherwise, from the proposed action.” *Am. Traffic Solutions*, 163
4 Wn. App. at 432-33.³ In addition, even if standing is otherwise questionable, courts proceed
5 with declaratory relief under the public importance standing doctrine because pre-election
6 initiative challenges involve “significant and continuing matters of public importance that merit
7 judicial resolution.” *See id.* at 433; *Wallin*, 301 P.3d at 55. Whether the Court relies on
8 Plaintiffs’ overwhelming and uncontroverted evidence of standing or the public importance
9 doctrine, Plaintiffs have standing here to obtain declaratory relief.⁴

10 **a. Plaintiffs Fall Within the Zone of Interests the Initiatives**
11 **Seek to Regulate.**

12 The Private Plaintiffs and Plaintiff Spokane County fall within the zone of interests the
13 initiatives seek to regulate.

14 **(1) The SMAC Initiative Seeks to Regulate Plaintiffs’**
15 **Free Speech Rights.**

16 The SMAC initiative seeks to prohibit non- and for-profit corporations and their
17 representatives from communicating with elected officials, and to criminalize any such political
18 speech. *See* Compl., Ex. A. Plaintiffs are individuals (voters and elected officials), Spokane
19 County, and non-profit and for-profit corporations and associations who filed this lawsuit to
20 protect their federal and state constitutional free speech rights, and to prevent the criminalizing
21 and chilling of political expression. *See* Compl. ¶¶ 7-22 [Dkt. 1].

22 Plaintiff Spokane County seeks to protect its statutory right and obligation to

23 ³ *See also* RCW 7.24.020 (“A person . . . whose rights, status or other legal relations are
24 affected by a statute [or] municipal ordinance . . . may have determined any question of
construction or validity arising under the . . . statute [or] ordinance . . . and obtain a declaration
of rights, status or other legal relations thereunder.”)

25 ⁴ In addition to the individual Plaintiffs, Plaintiff associations have standing on behalf of their
26 members. “An organization has standing to bring suit on behalf of its members when: (a) its
27 members would otherwise have standing to sue in their own right; (b) the interests it seeks to
protect are germane to the organization’s purpose; and (c) neither the claim asserted nor the
relief requested requires the participation of individual members in the lawsuit.” *Mukilteo*
Citizens for Simple Gov’t v. City of Mukilteo, 174 Wn.2d 41, 46 (2012) (citation and internal
quotation marks omitted).

1 communicate one-on-one with non-profit corporations “to engage in economic development
2 programs.” French Decl. ¶ 3 (quoting RCW 36.01.085) [Dkt. 33]. The County also must work
3 directly with elected officials on issues that affect County resources and duties, such as the
4 Spokane County Detention Facility and the County’s obligation under the Growth Management
5 Act to revise its Urban Growth Areas. *Id.* ¶ 4.

6 Plaintiff associations and business owners seek to protect their rights to communicate
7 freely with elected officials about issues relevant to attracting and maintaining vibrant
8 businesses in Spokane, *see* Hadley Decl. ¶¶ 3-5 [Dkt. 27]; Richard Decl. ¶ 4 [Dkt. 26]; BOMA
9 Decl. ¶ 3 [Dkt. 35]; Power Decl. ¶ 6 [Dkt. 31]; and to fulfilling their missions, programs, and
10 contractual obligations, *see* Cathcart Decl. ¶ 5 [Dkt. 36]; McCaslin Decl. ¶¶ 3-4 [Dkt. 41];
11 Avista Decl. ¶ 5 [Dkt. 25]. Plaintiff business owners who contribute to important political
12 issues will also lose other constitutional rights, such as their right to sue to enforce contracts
13 despite the initiatives and their right to defend against lawsuits brought against them for
14 violating the initiatives. *See* Allen Decl. ¶ 6 [Dkt. 38]; McLaughlin ¶ 6 [Dkt. 28].

15 Plaintiff City Council members desire to protect their right to communicate with non-
16 and for-profit corporations, and their representatives, to effectively campaign and represent
17 their constituents. *See* McLaughlin Decl. ¶¶ 4-5; Allen Decl. ¶¶ 4-5; Salvatori Decl. ¶¶ 3-5
18 [Dkt. 39].

19 **(2) The Envision Initiative Seeks to Regulate Plaintiffs’**
20 **Land and Water Use Interests, Employment Interests,**
21 **and Constitutional Rights.**

22 The Envision initiative seeks to regulate zoning, river rights, employment relationships,
23 and corporate rights, each of which affects Plaintiffs’ interests.

24 Plaintiff business associations’ and owners’ abilities to continue or launch development
25 projects will be regulated by the zoning provision, which purports to overturn the process for
26 obtaining zoning variances. *See* Spokane Entrepreneurial Center Decl. ¶ 6 [Dkt. 40]; Butler
27 Decl. ¶ 3 [Dkt. 37]; Higgins Decl. ¶ 6 [Dkt. 32]; Cathcart Decl. ¶¶ 3-4; Power Decl. ¶¶ 3-5;
Avista Decl. ¶ 10; Richard Decl. ¶ 8.

1 The initiative's river rights provision will impair the present sanitary sewage collection,
2 treatment, and disposal system operations of Plaintiff Spokane County, and the hydroelectric
3 power operations of Plaintiff Avista. *See* French Decl. ¶ 5; Avista Decl. ¶¶ 11-12 (river rights
4 provision would threaten Avista's ability to operate and generate hydroelectric power for the
5 City and other cities and counties in eastern Washington).

6 The workplace provision will prevent Plaintiffs from enforcing workplace policies and
7 from communicating effectively with their employees. *See, e.g.,* McCaslin Decl. ¶ 7; Hadley
8 Decl. ¶ 9; Senske Decl. ¶ 4 [Dkt. 30].

9 **b. Plaintiffs Have Demonstrated Injury.**

10 In *American Traffic Solutions*, the Court of Appeals recognized a private plaintiff had
11 standing to pursue a pre-election declaratory judgment because *if enacted*, the initiative would
12 require terminating or modifying plaintiff's contract with the city. *Am. Traffic Solutions*, 163
13 Wn. App. at 433. The Court of Appeals determined the prospect of injury to American Traffic
14 Solutions upon enactment was insufficient to obtain injunctive relief, but sufficed to obtain
15 declaratory relief. *See id.* at 433-34. While the parties here dispute whether Plaintiffs are
16 suffering pre-election injuries, there can be no reasonable question that Plaintiffs have
17 demonstrated they will suffer injuries if the SMAC and initiatives are enacted. Plaintiffs thus
18 meet the standard under *American Traffic Solutions* of proving they "will suffer an injury in
19 fact, economic or otherwise, from the proposed action." *Id.* at 432-33. Indeed, the injuries
20 identified by Plaintiffs in this case are far more substantial than the pecuniary interests
21 identified in *American Traffic Solutions* and, therefore, more than satisfy the injury element for
22 obtaining declaratory relief in this case.

23 The post-election injuries will be immediate and irreparable. As Plaintiffs described in
24 detail with their previously filed papers and declarations, the SMAC and Envision initiatives
25 impair Plaintiffs' constitutional rights to free speech, political expression, and government
26 petition under the First Amendment. The Washington Supreme Court has acknowledged that
27 "[i]n the First Amendment context, a '*chilling effect*' on *First Amendment rights is a*

1 *recognized present harm*, not a future speculative harm.” *Walker v. Munro*, 124 Wn.2d 402,
2 416 (1994) (emphasis added). Indeed, “a long line of precedent establish[es] that ‘[t]he loss of
3 First Amendment freedoms, for even minimal periods of time, unquestionably constitutes
4 irreparable injury.’” *Sanders Cnty. Republican Cent. Committee v. Bullock*, 698 F.3d 741, 748
5 (9th Cir. 2012) (enjoining statute barring political parties from endorsing or making
6 expenditures to judicial candidates) (citation and internal quotation marks omitted).

7 Each initiative in this case purports to go into effect as soon as the Auditor certifies the
8 election, which occurs after ballots (predominantly arriving in the mail) are received and
9 counted over a three-week period. Even if Plaintiffs were allowed immediately to file a
10 lawsuit,⁵ Plaintiffs would endure a period of injury to their constitutional rights while waiting
11 for relief. As the Ninth Circuit explained, injury to political speech for a “delay of even a day
12 or two may be intolerable.” *Sanders Cnty. Republican Cent. Committee*, 698 F.3d at 748.

13 All Plaintiffs have established the SMAC and Envision initiatives injure their First
14 Amendment rights of free speech and government petition by either outright prohibiting
15 political expression (in the case of the SMAC initiative), or by depriving corporations that
16 violate the initiatives of their speech rights (in the case of both initiatives). *See, e.g.*, Salvatori
17 Decl. ¶¶ 3-5; McCaslin Decl. ¶¶ 3-4; French Decl. ¶ 4; Spokane Entrepreneurial Center Decl.
18 ¶¶ 3-5; Cathcart Decl. ¶¶ 5-7; Power Decl. ¶ 6; Butler Decl. ¶ 4; BOMA Decl. ¶¶ 3-4; Higgins
19 Decl. ¶ 4; McLaughlin Decl. ¶¶ 3-5; Allen Decl. ¶¶ 3-4; Hadley Decl. ¶¶ 2-5; Avista Decl. ¶¶ 5-
20 9; Richard Decl. ¶¶ 4-6; Senske Decl. ¶ 3; Muller Decl. ¶¶ 3-4.

21 Spokane County fears it cannot communicate directly with elected officials in the City
22 to fulfill its statutory obligations under the Growth Management Act, and to regulate use of its
23 resources, chilling its speech and forcing it to violate its statutory duties. French Decl. ¶ 4.

24 Similarly, the initiatives chill the speech of Plaintiff City Councilmembers, who must

25 ⁵ Under the SMAC initiative and for any corporation violating the Envision initiative, ,
26 corporations would no longer have the rights of persons, which presumably would deprive
27 them of standing to even file a lawsuit post-enactment. That apparent and absurd consequence
of the initiatives is another compelling reason that a pre-election declaratory judgment is
necessary to protect the rights of Plaintiffs.

1 communicate with non- and for-profit corporations to effectively campaign and represent their
2 constituents but cannot do so without risking criminal sanctions and deprivation of their rights
3 to enforce their contracts and defend against lawsuits brought under the initiatives. *See*
4 McLaughlin Decl. ¶¶ 4-5; Allen Decl. ¶¶ 4-5; Salvatori Decl. ¶¶ 3-5.

5 And the initiatives chill the speech of Plaintiff corporations and small business owners,
6 who will lose the ability to enforce their present contracts, or even to defend their rights in
7 court, if they contribute to community issues. *See* Allen Decl. ¶ 6; McLaughlin ¶ 6; Power
8 Decl. ¶ 6; Butler Decl. ¶ 4; Avista Decl. ¶¶ 3-9; Spokane Entrepreneurial Center Decl. ¶ 4;
9 Richard Decl. ¶¶ 6, 8; Senske Decl. ¶ 5.

10 Plaintiff non-profit associations will similarly lose their ability to communicate freely to
11 help educate and inform elected officials on matters benefitting the Spokane community.⁶ The
12 initiatives chill their free speech and political expression. *See* Hadley Decl. ¶ 2; Higgins Decl.
13 ¶¶ 3-4; Muller Decl. ¶ 3; Cathcart Decl. ¶¶ 5-6; McCaslin Decl. ¶ 3.

14 In addition to the free speech injuries both initiatives cause, the Envision initiative
15 harms Plaintiffs in additional ways. For instance, Plaintiffs have shown the zoning provision
16 prevents Plaintiffs from completing pending development projects by upending the already

17
18 ⁶ Greater Spokane Incorporated, Downtown Spokane Partnership, Inland Pacific Chapter of the
19 Associated Builders and Contractors, Spokane Home Builders Association, Building Owners
20 and Managers Association, Greater Spokane Incorporated, and Spokane Association of
21 Realtors have associational standing because: (1) their members have standing to sue in their
22 own right, as they consist of Spokane residents, eligible to vote; (2) the First Amendment and
23 free speech interests they seek to protect are germane to their organizational purposes of
24 advocating development and other projects that benefit the community, and of attracting
25 companies and jobs to the community, *see* Hadley Decl. ¶ 2; Higgins Decl. ¶¶ 3-4; BOMA
26 Decl. ¶ 3; Cathcart Decl. ¶¶ 5-6; McCaslin Decl. ¶ 3; Richard Decl. ¶¶ 4-6; and (3) the relief
27 requested – declaring that the Envision and SMAC initiatives are invalid and may not appear
on the ballot – does not require the individual members to participate. *See Mukilteo Citizens
for Simple Gov't*, 174 Wn.2d at 46 (association had standing to bring pre-election initiative
challenge where members had standing to sue in their own right because they consisted of
“Mukilteo residents who are eligible to vote,” the interest association sought to protect was
germane to its purpose, and invalidating local initiative does not require member participation);
Wash. Ass'n for Substance Abuse & Violence Prevention v. State, 174 Wn.2d 642, 653 (2012)
(association had standing to challenge enacted initiative because “its goals of preventing
substance abuse could reasonably be impacted” by initiative).

1 complex process for obtaining zoning variances. *See, e.g.*, Salvatori Decl. ¶ 6; Cathcart Decl.
2 ¶¶ 3-4; Power Decl. ¶¶ 3-5; Butler Decl. ¶ 3; Higgins Decl. ¶ 6; McLaughlin Decl. ¶ 6; Hadley
3 Decl. ¶ 8; Spokane Entrepreneurial Center ¶ 6; Avista Decl. ¶ 10; Richard Decl. ¶ 8. In
4 addition, the river rights provision threatens Plaintiff Spokane County's sanitary sewage
5 collection, treatment, and disposal operations, French Decl. ¶ 5, and Avista's hydroelectric
6 power operations, Avista Decl. ¶¶ 11-12. And the workplace provision will prevent Plaintiffs
7 from enforcing their workplace policies and from communicating effectively with their
8 employees. *See, e.g.*, McCaslin Decl. ¶ 7; Hadley Decl. ¶ 9; Senske Decl. ¶ 4.

9 **c. Plaintiffs also Have Standing Under the Public Importance**
10 **Doctrine.**

11 Plaintiffs meet the traditional requirements for standing, but the public importance
12 standing doctrine further supports this Court's previous standing determination. Under that
13 doctrine, courts apply the standing requirements liberally to cases that "involve significant and
14 continuing matters of public importance that merit judicial resolution." *Am. Traffic Solutions*,
15 163 Wn. App. at 433 (citing *Farris v. Munro*, 99 Wn.2d 326, 330 (1983); *Wash. Natural Gas*
16 *Co. v. Pub. Util. Dist. No. 1*, 77 Wn.2d 94, 96 (1969)). This doctrine applies to pre-election
17 challenges to the scope of local initiatives because such challenges necessarily involve
18 significant and continuing matters of public importance. *See Wallin*, 301 P.3d at 55
19 ("Moreover, even if Longview did not have clear standing, we would address its [pre-election
20 initiative challenge] claims because they 'involve significant and continuing matters of public
21 importance that merit judicial resolution.'"); *Am. Traffic Solutions*, 163 Wn. App. at 433
22 ("Moreover, even if the question of ATS's standing were debatable, we would still address the
23 [pre-election initiative challenge] issues in this appeal, because they involve significant and
24 continuing matters of public importance that merit judicial resolution.").

25 **C. The Court Should Declare the Initiatives Invalid Because They Exceed the**
26 **Initiative Power.**

27 In denying Envision's Special Motion to Strike, the Court determined Plaintiffs
"presented clear and convincing evidence of a 'probability of prevailing' on their claims,"

FILED

AUG 13 2013

THOMAS R FALLQUIST
SPOKANE COUNTY CLERK

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

SPOKANE ENTREPRENEURIAL
CENTER, *et al.*,

Plaintiffs,

v.

SPOKANE MOVES TO AMEND THE
CONSTITUTION, ENVISION SPOKANE,
VICKY DALTON, SPOKANE COUNTY
AUDITOR, in her official capacity, THE
CITY OF SPOKANE,

Defendants.

No. 13-2-02495-5

DEFENDANT CITY OF
SPOKANE'S RESPONSE TO
PLAINTIFFS' MOTION FOR
DECLARATORY JUDGMENT

**Noted for Consideration:
Friday, August 23, 2013 @ 9:30
A.M.**

The City of Spokane files this Response in order to apprise the Court of the City's position on the Plaintiffs' requested relief.

The City does not take any position on the merits of Plaintiffs' request for declaratory relief. Rather, this Response explains the City's position on what should occur *if* this Court declares either (or both) the Envision and SMAC initiatives invalid because they are outside the scope of the local initiative power. The City's position is that *if* this Court declares the initiatives invalid the Court should also provide clear guidance to the Spokane County Auditor that the initiative(s) should not be placed on the November 5, 2013 ballot for two primary reasons.

DEFENDANT CITY OF SPOKANE'S RESPONSE
TO PLAINTIFFS' MOTION FOR DECLARATORY
JUDGMENT - 1

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1 Costs of Election. Elections cost money and there will be additional costs to City
2 taxpayers if an invalid initiative is placed on the ballot. If the Court declares the
3 initiatives invalid, the City will unnecessarily spend taxpayers' dollars on an election that
4 is without any legal force or effect. *See, e.g., Philadelphia II v. Gregoire*, 128 Wn.2d 707,
5 718 (Wash. 1996) (noting pre-election review of statewide initiative was proper "to
6 prevent public expense on measures that are not authorized by the constitution"); *City of*
7 *Longview v. Wallin*, 301 P.3d 45, 55 (Wn. App. Div. 2 2013) ("We have recognized that
8 requiring a city to place an invalid initiative on the ballot would result in an undue
9 financial burden on local government."); *Save Our Park v. Hordyk*, 71 Wn. App. 84, 92,
10 856 P.2d 734 (Div. 2 1993) (recognizing "public funds should not be expended needlessly
11 to place an initiative that violates the county code on the ballot."); *State ex rel. Brant v.*
12 *Beermann*, 350 N.W.2d 18, 22 (Neb. 1984) ("Government should be spared the
13 burdensome cost of election machinery as a straw vote on the electorate's opinions,
14 sentiments, or attitudes on public opinions.").¹ Consequently, as a cost-saving measure, if
15 this Court declares either (or both) of the initiatives invalid, the City requests that the
16 Court issue a clear declaratory judgment to the Spokane County Auditor that either (or
17 both) of the initiatives need not appear on the November 5, 2013 ballot.

18 Integrity of Initiative Process. Placing an invalid initiative on the ballot and
19 having the voters vote on such an initiative undermines the integrity of the local initiative
20 process, by turning the process into a vehicle requiring an election on what amounts to
21 nothing more than a nonbinding expression of public opinion.

22 *First*, it will likely create voter confusion. Not every individual who votes on the
23 invalid initiatives will necessarily understand that what they are voting for will have no
24

25 ¹ As a courtesy to the Court and the parties, along with this Response the City is filing
Appendix A, which contains all of the out-of-state and federal authorities cited herein.

DEFENDANT CITY OF SPOKANE'S RESPONSE
TO PLAINTIFFS' MOTION FOR DECLARATORY
JUDGMENT - 2

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1 legal force and effect. *AFL-CIO v. Eu*, 686 P.2d 609, 615 (Cal. 1984) (“The presence of
2 an invalid measure on the ballot steals attention, time and money from numerous valid
3 propositions on the same ballot. It will confuse some voters and frustrate others, and an
4 ultimate decision that the measure is invalid, coming after the voters have voted in favor
5 of the measure, tends to denigrate the legitimate use of the initiative procedure.”).

6 *Second*, despite previous claim by the initiative sponsors, the local initiative
7 power² is not a forum in which every individual or group has the legal right to place
8 before the voters any initiative that meets the procedural requirements of the City Charter.
9 *See, e.g., Philadelphia II*, 128 Wn.2d at 718 (rejecting notion that once procedural
10 requirements are met initiative must be placed on the ballot); *Walltn*, 301 P.3d at 57
11 (noting “advisory vote portion is beyond the scope of the local initiative power.”) & *id.* at
12 60 (“It appears, then, that Wallin asserts a First Amendment right to have any initiative,
13 regardless of whether it is outside the scope of the initiative power, placed on the ballot.
14 But he has failed to articulate a basis in law for this right when the protected political
15 speech, obtaining signatures for the petition, was not impaired here.”); *see also Angle v.*
16 *Miller*, 673 F.3d 1122, 1133 (9th Cir. 2012) (“There is no First Amendment right to place
17 an initiative on the ballot.”); *City of Riverside v. Stansbury*, 66 Cal.Rptr.3d 862, 870 (Cal.
18 App. 2007) (“In taking this position, Stansbury overlooks the fact there is no
19 constitutional right to place an *invalid* initiative on the ballot.”) (emphasis in original);
20 *City of San Diego v. Dunkl*, 103 Cal.Rptr.2d 269, 276-77 (Cal. App. 2001) (“There is no
21 threat to proponents’ constitutional rights under the First Amendment or the California
22 Constitution [because] there is no value in putting before the people a measure which they
23 have no power to enact.”) (quotation omitted); *In re Initiative Petition No. 364*, 930 P.2d
24

25 ² The local initiative derives from State statutes and the City Charter, not from the State
Constitution. *City of Port Angeles v. Our Water-Our Choice*, 170 Wn.2d 1, 8 (2010).

DEFENDANT CITY OF SPOKANE’S RESPONSE
TO PLAINTIFFS’ MOTION FOR DECLARATORY
JUDGMENT - 3

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1 186, 193 (Ok. 1996) (“The people have no reserved authority to propose nonbinding
2 resolutions by the initiative process.”); *Beerman*, 350 N.W.2d at 21-22 (Neb. 1984) (“a
3 measure seeking an advisory vote of the electorate or a nonbinding expression of public
4 opinion on a question is not a proper subject for the initiative.”) (citing and discussing
5 cases). Put simply, no one’s constitutional rights will be implicated, let alone harmed, by
6 not placing an invalid initiative on the ballot.

7 The local initiative power is designed to pass laws, not to serve as a forum for
8 political expression or as a method of taking a public opinion poll. *See, e.g., Wash. State*
9 *Grange v. Wash. State Republican Party*, 552 U.S. 442, 453 n.7 (2008) (“Ballots serve
10 primarily to elect candidates, not as forums for political expression.”) (quotation omitted).

11 As Judge Posner aptly explained:

12 The submission of binding questions to the electorate--the initiative, as in
13 this case, or the referendum--is a technique of direct, as distinct from
14 representative, democracy. It allows the people to vote directly for a law
15 rather than indirectly by voting for the lawmaker. We do not think that by
16 opting for a measure of direct democracy a state obliges itself to allow the
17 ballot also to be used as a means for pure advocacy. Such an obligation
18 would have no basis in the logic of the First Amendment. Direct
19 democracy is not an interference with the marketplace of ideas; it therefore
20 does not put the state under an obligation to compensate for such
21 interference by taking measures to promote or enlarge that marketplace, as
22 by allowing the ballot to be used to take official polls on controversial
23 issues of public policy.

24 [* * *] But the ballot in DuPage County, Illinois is in fact not a vehicle for
25 communicating messages; it is a vehicle only for putting candidates and
laws to the electorate to vote up or down.

Georges v. Carney, 691 F.2d 297, 300-01 (7th Cir. 1982) (Posner, J.). The local initiative
power belongs to every citizen in Spokane, not just those groups or individuals seeking
placement of initiatives on the ballot. The integrity of the local initiative process is
therefore important to the public writ large. Using the local initiative process to have the
citizens vote on nonbinding expressions of public opinion is not only not allowed by the

DEFENDANT CITY OF SPOKANE'S RESPONSE
TO PLAINTIFFS' MOTION FOR DECLARATORY
JUDGMENT - 4

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1 City Charter,³ its runs contrary to the underlying purpose of the initiative process--which
2 is to pass binding laws. Consequently, the local initiative power is enhanced, not hurt, by
3 protecting the initiative process from futile elections.

4 For these reasons, *if* this Court determines that either (or both) of the initiatives are
5 invalid, the City respectfully requests that the Court issue a declaratory judgment
6 declaring that the Spokane County Auditor is under no legal compulsion to place the
7 invalid initiative(s) on the ballot.

8 DATED this 13th day of August, 2013.

9 K&L GATES LLP

10
11 By 

12 Michael Ryan, WSBA # 32091
13 Thaddeus O'Sullivan, WSBA # 37204
14 Special Counsel to the City of Spokane

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Attorneys for the City of Spokane

³ The City Charter specifically refers to "proposed legislation or measure in the form of a proposed ordinance." Spokane City Charter, § 82 A.

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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of August, 2013, I caused a true and correct copy of the foregoing DEFENDANT CITY OF SPOKANE'S RESPONSE TO PLAINTIFFS' MOTION FOR DECLARATORY JUDGMENT to be delivered to the parties below and in the manner noted:

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Craig A. Gannett	[]	Via Overnight
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Amend (SMAC)			

DEFENDANT CITY OF SPOKANE'S RESPONSE TO PLAINTIFFS' MOTION FOR DECLARATORY JUDGMENT - 6

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Pamela S. Miller, Legal Assistant

DEFENDANT CITY OF SPOKANE'S RESPONSE
TO PLAINTIFFS' MOTION FOR DECLARATORY
JUDGMENT - 7

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The Honorable Maryann C. Moreno

FILED

AUG 19 2013

**THOMAS R FALLQUIST
SPOKANE COUNTY CLERK**

**SUPERIOR COURT OF THE STATE OF WASHINGTON
SPOKANE COUNTY**

SPOKANE ENTREPRENEURIAL CENTER,
SPOKANE COUNTY, DOWNTOWN
SPOKANE PARTNERSHIP, GREATER
SPOKANE INCORPORATED, THE
SPOKANE BUILDING OWNERS AND
MANAGERS ASSOCIATION, SPOKANE
ASSOCIATION OF REALTORS, THE
SPOKANE HOME BUILDERS
ASSOCIATION, THE INLAND PACIFIC
CHAPTER OF ASSOCIATED BUILDERS
AND CONTRACTORS, AVISTA
CORPORATION, PEARSON PACKAGING
SYSTEMS, WILLIAM BUTLER, NEIL
MULLER, STEVE SALVATORI, NANCY
MCLAUGHLIN, MICHAEL ALLEN, and TOM
POWER,

Plaintiffs,

v.

SPOKANE MOVES TO AMEND THE
CONSTITUTION, ENVISION SPOKANE,
VICKY DALTON, SPOKANE COUNTY
AUDITOR, in her official capacity, and THE
CITY OF SPOKANE,

Defendants.

No. 13-02-02495-5

PLAINTIFFS' REPLY TO
ENVISION'S OPPOSITION TO
MOTION FOR DECLARATORY
JUDGMENT

Noted on Motion Calendar:
Friday, August 23, 2013

PLFS.' REPLY TO ENVISION'S
OPP. TO MOT. FOR DECL. J.
DWT 22426358v2 0043952-000026

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TABLE OF CONTENTS

1

2 I. INTRODUCTION 1

3 II. BRIEF BACKGROUND..... 1

4 III. ARGUMENT 2

5 A. The Court Should Grant Plaintiffs’ Motion for Declaratory Judgment

6 Because a Justiciable Controversy Exists and Plaintiffs Have Standing. 2

7 1. Plaintiffs Have Shown a Justiciable Controversy Exists..... 3

8 2. Plaintiffs Have Standing to Pursue Declaratory Relief. 4

9 B. The Court Should Declare the Initiatives Invalid and Unfit for the Ballot. 7

10 1. Plaintiffs Have Established that the Initiatives Are Invalid. 7

11 a. The Zoning Provision Is Administrative in Nature and

12 Involves Powers Delegated to Local Legislative Bodies. 7

13 (1) The Zoning Provision Is Administrative in Nature. 7

14 (2) The Zoning Provision Involves Areas Delegated to

15 Local Legislative Bodies. 8

16 b. The River and Aquifer Provision Conflicts with Federal

17 and State Law, Is Administrative in Nature, and Involves

18 Powers Delegated to Local Legislative Bodies. 12

19 (1) The River and Aquifer Rights Provision Conflicts

20 with Federal and State Law. 12

21 (2) The River and Aquifer Rights Provision Is

22 Administrative in Nature. 14

23 (3) The River and Aquifer Provision Involves Areas

24 Exclusively Delegated to Local Legislative

25 Bodies. 15

26 c. The Workplace Provision Conflicts with Federal and

27 State Law. 16

d. The Personhood Provision Conflicts with Federal and

State Law. 17

2. The Court Cannot Sever the Offending Provisions. 18

3. The Court Should Declare Envision’s Initiative Unfit to Appear

on the Ballot. 19

PLFS.’ REPLY TO ENVISION’S
 OPP. TO MOT. FOR DECL. J. - i
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C. The Court Should Reject Envision’s Other Arguments. 20

1. Pre-Election Review of the Scope of Local Initiatives Is Both
Permissible and Appropriate. 20

2. The First Amendment Does Not Guarantee Envision the Right to
Have Its Invalid Initiative on the Ballot. 22

3. The City’s Police Powers Do Not Give It Jurisdiction to Overturn
or Modify Federal or State Law, and Do Not Expand the
Initiative Power. 25

IV. CONCLUSION 27

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
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21
22
23
24
25
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27

Page(s)

Cases

1000 Friends of Wash. v. McFarland,
159 Wn.2d 165 (2007).....*passim*

Adult Entm't Ctr. v. Pierce Cnty.,
57 Wn. App. 435 (1990)..... 18

Alderwood Assocs. v. Wash. Env't'l Council,
96 Wn.2d 230 (1981)..... 22

Am. Traffic Solutions, Inc. v. City of Bellingham,
163 Wn. App. 427 (2011).....*passim*

Angle v. Miller,
673 F.3d 1122 (9th Cir. 2012)..... 22

Bidwell v. City of Bellevue,
65 Wn. App. 43 (1992)..... 22

Brown v. Cle Elum,
145 Wash. 588 (1927) 13, 14

City of Bellingham v. Whatcom Cnty.,
No. 691520 (Wn. Ct. App. Sept. 21, 2012)..... 4, 23

City of Longview v. Wallin,
174 Wn. App. 763, 301 P.3d 45 (2013).....*passim*

City of Monroe v. Wash. Campaign for Liberty,
2013 WL 709828 (Wn. Ct. App. Feb. 25, 2013)..... 4, 23

City of Port Angeles v. Our Water-Our Choice,
145 Wn. App. 869 (2008)..... 25, 26

City of Port Angeles v. Our Water-Our Choice,
170 Wn.2d 1 (2010)..... 8, 15, 26

City of San Diego v. Dunkl,
86 Cal. App. 4th 384 (2001)..... 23

City of Seattle v. Yes for Seattle,
122 Wn. App. 382 (2004)..... 15, 19, 23, 26

PLFS.' REPLY TO ENVISION'S
OPP. TO MOT. FOR DECL. J. - iii
DWT 22426358v2 0043952-000026

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1	<i>City of Wenatchee v. We the People Wenatchee,</i> No. 11-2-00221-1 (Chelan Cnty. Super. Ct. May 20, 2011).....	23
2	<i>Coppernoll v. Reed,</i>	
3	155 Wn.2d 290 (2005).....	3, 4, 20
4	<i>Eyman v. McGehee,</i>	
5	173 Wn. App. 684 (2013).....	4, 23
6	<i>Ford v. Logan,</i>	
7	79 Wn.2d 147 (1971).....	6, 17, 21, 23
8	<i>Georges v. Carney,</i>	
9	691 F.2d 297 (7th Cir. 1982).....	22, 23, 24
10	<i>In re Dobbs' Adoption,</i>	
11	12 Wn. App. 676 (1975).....	18
12	<i>In re Initiative Petition No. 364,</i>	
13	930 P.2d 186 (Okla. 1996).....	19
14	<i>King Cnty. v. Taxpayers for King Cnty.,</i>	
15	133 Wn.2d 584 (1997).....	21
16	<i>League of Educ. Voters v. State,</i>	
17	176 Wn.2d 808 (2013).....	5
18	<i>Lenci v. City of Seattle,</i>	
19	63 Wn.2d 664 (1964).....	16
20	<i>Leonard v. City of Bothell,</i>	
21	87 Wn.2d 847 (1976).....	9
22	<i>Lince v. Bremerton,</i>	
23	25 Wn. App. 309 (1980).....	9, 10
24	<i>Meyer v. Grant,</i>	
25	486 U.S. 414 (1988).....	22
26	<i>Mukilteo Citizens for Simple Gov't v. City of Mukilteo,</i>	
27	174 Wn.2d 41 (2012).....	6
	<i>Navlet v. Port of Seattle,</i>	
	164 Wn.2d 818 (2008).....	16
	<i>Osborn v. Grant Cnty. By & Through Grant Cnty. Comm'rs,</i>	
	130 Wn.2d 615 (1996).....	19

PLFS.' REPLY TO ENVISION'S
 OPP. TO MOT. FOR DECL. J. - iv
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1	<i>Patella v. City of Vancouver,</i> No. 13-2-01866-1 (Clark Cnty. Super. Ct. July 31, 2013)	4, 23
2	<i>Philadelphia II v. Gregoire,</i>	
3	128 Wn.2d 707 (1996).....	17, 21
4	<i>Protect Marriage III v. Orr,</i>	
5	463 F.3d 604 (7th Cir. 2006)	24
6	<i>Sanders Cnty. Republican Cent. Committee v. Bullock,</i>	
7	698 F.3d 741 (9th Cir. 2012)	5
8	<i>Save Our State Park v. Bd. of Clallam Cnty. Comm'rs,</i>	
9	74 Wn. App. 637 (1994).....	9, 11, 26
10	<i>Seattle Bldg. & Constr. Trades Council v. City of Seattle,</i>	
11	94 Wn.2d 740 (1980).....	6, 20, 21, 23
12	<i>State ex rel. Close v. Meehan,</i>	
13	49 Wn.2d 426 (1956).....	22
14	<i>State ex rel. Ennis v. Super. Ct.,</i>	
15	153 Wash. 139 (1929)	16
16	<i>State ex rel. O'Connell v. Kramer,</i>	
17	73 Wn.2d 85 (1968).....	21
18	<i>Walker v. Munro,</i>	
19	124 Wn.2d 402 (1994).....	5
20	<i>Wash. Grange v. Wash. State Republican Party,</i>	
21	552 U.S. 442 (2008)	22
22	<i>Wash. State Coalition for the Homeless v. Dep't of Social & Health Servs.,</i>	
23	133 Wn.2d 894 (1997).....	19
24	Statutes	
25	29 U.S.C. §§ 151-169	17
26	RCW 7.24.010	19
27	RCW 7.24.120	19
	RCW 35.63.080	9
	RCW 35.63.100	9
	RCW 36.70.320	9

PLFS.' REPLY TO ENVISION'S
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 DWT 22426358v2 0043952-000026

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1	RCW 36.70.410.....	9
2	RCW 36.70.750.....	9
3	RCW 36.70A.030(7).....	10
4	RCW 36.70A.040.....	9
5	RCW 36.70A.040(3)(a).....	9
6	RCW 36.70A.130(1)(a).....	9
7	RCW 36.70A.210.....	9
8	RCW 36.70A.210(2).....	9
9	RCW 41.56 <i>et seq.</i>	17
10	Other Authorities	
11	Philip A. Trautman, <i>Legislative Control of Municipal Corporations in Washington,</i>	
12	38 WASH. L. REV. 743 (1963).....	16
13	Wash. Const. art. XII, § 5.....	17
14	Washington Const. art. XI, § 11.....	13, 14, 26
15	Washington Const. art. XI, § 16.....	14
16		
17		
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I. INTRODUCTION

In their Motion for Declaratory Judgment, Plaintiffs established that a justiciable controversy exists, they have standing to pursue declaratory relief, and SMAC's and Envision's initiatives exceed the scope of the local initiative power. Instead of addressing Plaintiffs' authorities demonstrating Plaintiffs are entitled to a declaratory judgment, Envision primarily argues: (1) the Court is powerless to rule on the validity of the initiative because the election has not occurred yet and because of some claimed First Amendment right to have the initiative appear on the ballot; and (2) the initiative may be permitted under the City's broad police powers or because it creates new rights. Envision's arguments avoid the key issues and are contrary to Washington law.

This Court plainly has the power to rule on the validity of the initiative pre-election, as Washington courts have done routinely, and there is no First Amendment right for initiatives to appear on the ballot. Washington courts have also *uniformly* rejected the argument that a city's general police powers bring improper local initiatives within the initiative power. And despite Envision's efforts to characterize its initiative as creating new rights, the initiative attempts to change Spokane's zoning and water laws, revealing the initiative is administrative in nature and involves areas delegated to the City Council and County Commissioners. Because Plaintiffs meet the requirements for declaratory relief and have shown the initiatives attempt to legislate in areas beyond the City's jurisdiction, are administrative in nature, and involve responsibilities delegated to local legislative bodies, the Court should declare the initiatives invalid and unfit to appear on the ballot.

II. BRIEF BACKGROUND

Plaintiffs are small business owners, elected officials, Spokane County, and groups of Spokane citizens, some of whom, like Envision, have decided to associate as non- or for-profit corporations.¹ Plaintiffs are dedicated to the City of Spokane, striving to improve its parks,

¹ Envision is a Washington corporation. See http://www.sos.wa.gov/corps/search_results.aspx?search_type=simple&criteria=all&name_typ

1 amenities, economic vibrancy, job opportunities, and workplace protections. *See, e.g.*, Richard
2 Decl. ¶ 4 [Dkt. 26]; McCaslin Decl. ¶ 3 [Dkt. 41]; Cathcart Decl. ¶ 5 [Dkt. 36]; Muller Decl.
3 ¶ 3 [Dkt. 29]; Hadley Decl. ¶ 3 [Dkt. 27]; French Decl. ¶¶ 3-5 [Dkt. 33]; Spokane
4 Entrepreneurial Center Decl. ¶ 6 [Dkt. 39]; BOMA Decl. ¶ 3 [Dkt. 35]; Pls.' Opp. to SMAC's
5 Special Mot. to Strike at 1-2.

6 Envision's initiative seeks to use the local initiative power to strip Plaintiffs of their
7 constitutionally protected rights, as well as to burden Plaintiffs' development activities, water
8 use, and employee relations. Compl., Ex. B [Dkt. 1]. Plaintiffs filed this lawsuit to protect
9 their constitutional rights and to prevent an invalid, local initiative from attempting to change
10 state and local zoning requirements, and federal and state water and workplace laws.

11 Although Envision spends six pages complaining that others have disagreed with its
12 various petitions, it acknowledges it has three times obtained the signatures it needed to get
13 initiatives on the ballot, and has submitted all three of its initiatives to the City. *See* Envision's
14 Opp. to Mot. for Decl. J. ("Envision Opp.") at 2, 4-5 [Dkt. 89]. Envision thus effectively
15 admits Plaintiffs have never prevented it from engaging in the protected activity of drafting
16 initiatives, gathering signatures, submitting initiatives to the City, or advocating on behalf of
17 those initiatives. *See id.*; *see also* Envision's Special Mot. to Strike at 3-7 [Dkt. 15] (describing
18 six years of advocacy working to get initiative on ballot and admitting it "engaged in extensive
19 public participation"). It is Envision, through its invalid initiative, which seeks to attack
20 protected activities.

21 III. ARGUMENT

22 A. The Court Should Grant Plaintiffs' Motion for Declaratory Judgment 23 Because a Justiciable Controversy Exists and Plaintiffs Have Standing.

24 Envision agrees that a court should grant declaratory relief where a justiciable
25 controversy exists and plaintiff has standing. Envision Opp. at 8. Plaintiffs have demonstrated
26 both, and the Court should grant their request for declaratory judgment.

27 [e=contains&name=envision+spokane&ubi=](#) (last visited Aug. 14, 2013).

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1. Plaintiffs Have Shown a Justiciable Controversy Exists.

A justiciable controversy exists because Plaintiffs assert the subjects of the initiatives exceed the scope of the local initiative power, and SMAC and Envision disagree. Plfs.' Mot. for Decl. J. at 4-5; Order Denying SMAC's Mot. to Dismiss at 2 [Dkt. 72]. Envision's own case law makes this point. See Envision Opp. at 9:4 (citing *Coppernoll v. Reed*, 155 Wn.2d 290, 299 (2005) (even for state-wide initiatives, "[s]ubject matter challenges do not raise concerns regarding justiciability because postelection events will not further sharpen the issue")). This case is justiciable because the parties dispute the validity of the initiative, and nothing about the election will change its validity. See *Coppernoll*, 155 Wn.2d at 299.

In *City of Longview v. Wallin*, 174 Wn. App. 763, 301 P.3d 45, 53-54 (2013), on which Envision also relies, see Envision Opp. at 8:7-8, the court found justiciable a pre-election challenge to the subject of a local initiative even though the sponsors had not yet collected sufficient valid signatures to support the petition. A justiciable controversy existed because the city sued to block the initiative and the sponsors defended it, demonstrating "at least the 'mature seeds' of a dispute." *Wallin*, 301 P.3d at 54. The degree with which SMAC and Envision have litigated this case shows this action presents even more "mature seeds" of a dispute. See Envision's Special Mot. to Strike [Dkt. 15]; Envision's Mot. to Strike [Dkt. 52]; SMAC's Mot. to Dismiss [Dkt. 49]; SMAC's Special Mot. to Strike [Dkt. 83]. Indeed, Envision devotes 38 pages to disputing the validity of its initiative. See Envision's Opp. to Mot. for Decl. J.

Ignoring well-established Washington case law, Envision contends that granting Plaintiffs' motion would open the floodgates not only to pre-election initiative litigation, but also to litigation over the validity of ordinances generally. See Envision Opp. at 8:11-9:6 & n.7. Envision's slippery slope argument lacks legal basis. "It is well established ... that a preelection challenge to the *scope* of the initiative power is both permissible and appropriate." *Wallin*, 301 P.3d at 52 (quoting *Am. Traffic Solutions, Inc. v. City of Bellingham*, 163 Wn. App.

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1 427, 432 (2011)); *Coppernoll*, 155 Wn.2d at 299 (“[W]e have allowed limited preelection
2 review ... where the subject matter of the initiative was not proper for direct legislation.”).²
3 Plaintiffs bring precisely this type of authorized and circumscribed challenge to a local
4 initiative.

5 **2. Plaintiffs Have Standing to Pursue Declaratory Relief.**

6 Plaintiffs have standing to pursue declaratory relief because they fall within the zone of
7 interests the Envision initiative seeks to regulate and have shown sufficient injury. *See* Plfs.’
8 Mot. for Decl. J. at 5-10; *see also* Plfs.’ Mot. for Prelim. Inj. at 30-31; Plfs.’ Opp. to Envision’s
9 Special Mot. to Strike at 16-20. The Court should, as it already has, conclude Plaintiffs “have
10 standing to seek declaratory [relief].” Order Denying SMAC’s Mot. to Dismiss at 2.

11 Envision does not dispute that Plaintiffs fall within the zone of interests its initiative
12 seeks to regulate, thereby conceding this prong of the standing analysis satisfied. *See* Envision
13 Opp. at 9-12. Nor does Envision dispute that the association Plaintiffs meet the requirements
14 for associational standing. *See id.* Instead, Envision argues only that Plaintiffs have not shown
15 present injury. *Id.* But present injury is not the test in the context of pre-election subject matter
16 challenges to local initiatives. *See Am. Traffic Solutions*, 163 Wn. App. at 432-33. Instead,
17 Plaintiffs need only show they “[have] or will suffer an injury in fact, economic or otherwise,
18 from the proposed action.” *Id.* (private plaintiff had standing to pursue pre-election declaratory
19 relief because if local initiative were enacted, plaintiff’s contractual interests would suffer).³

20 Here, Plaintiffs have demonstrated that each of the Envision initiative’s provisions
21

22
23 ² In four other cases in the past year, Washington courts reviewed the subjects of local
24 initiatives pre-election. *See Patella v. City of Vancouver*, No. 13-2-01866-1, Mem. of Op.
25 (Clark Cnty. Super. Ct. July 31, 2013); *Eyman v. McGehee*, 173 Wn. App. 684 (2013); *City of*
Monroe v. Wash. Campaign for Liberty, 2013 WL 709828 (Wn. Ct. App. Feb. 25, 2013); *City*
of Bellingham v. Whatcom County, No. 691520 (Wn. Ct. App. Sept. 21, 2012).

26 ³ Plaintiffs do not, as Envision appears to suggest, rely solely on their status as taxpayers. *See*
27 *Envision Opp.* at 10 n.8; *Allen Decl.* ¶¶ 3-5; *McLaughlin* ¶¶ 3-5; *Muller Decl.* ¶ 3.

1 cause harm to at least one Plaintiff.⁴ For instance, Envision's zoning provision disrupts
2 Plaintiffs' development projects. *See, e.g.*, Salvatori Decl. ¶ 6; Cathcart Decl. ¶¶ 3-4; Power
3 Decl. ¶¶ 3-5; Butler Decl. ¶ 3; Higgins Decl. ¶ 6; McLaughlin Decl. ¶ 6; Hadley Decl. ¶ 8;
4 Spokane Entrepreneurial Center ¶ 6; Avista Decl. ¶ 10; Richard Decl. ¶ 8. The river and
5 aquifer rights provision harms Plaintiff Spokane County's sanitary sewage collection,
6 treatment, and disposal operations, French Decl. ¶ 5, and Avista's hydroelectric power
7 operations, Avista Decl. ¶¶ 11-12. And the workplace provision will prevent Plaintiffs from
8 enforcing their workplace policies and from communicating effectively with their employees.
9 *See, e.g.*, McCaslin Decl. ¶ 7; Hadley Decl. ¶ 9; Senske Decl. ¶ 4.

10 In response, Envision says nothing about Plaintiffs' allegations of harm based on the
11 river and aquifer rights provision, effectively admitting their sufficiency. *See* Envision Opp. at
12 9-11. And in disputing Plaintiffs' demonstrations of harm based on the zoning and workplace
13 provisions, Envision argues only that these harms are post-election harms. *Id.* But again, post-
14 election harms suffice to grant declaratory relief in the context of pre-election challenges to the
15 subject of *local* initiatives. *See Am. Traffic Solutions*, 163 Wn. App. at 432-33.

16 Envision also ignores the evidence that its initiative has a chilling effect on Plaintiffs'
17 First Amendment rights because the initiative deprives corporations that violate its provisions
18 of their constitutional rights. *See* French Decl. ¶ 8; Hadley Decl. ¶¶ 3-5; Richard Decl. ¶ 4;
19 BOMA Decl. ¶ 3; Power Decl. ¶ 6; Cathcart Decl. ¶¶ 5-7; McCaslin Decl. ¶¶ 3-4; Avista Decl.
20 ¶¶ 3-9; Allen Decl. ¶¶ 3-5; McLaughlin ¶¶ 3-5; Salvatori Decl. ¶¶ 3-5; Higgins Decl. ¶¶ 3-4;
21 Muller Decl. ¶¶ 3-4. These allegations establish "*a recognized present harm*, not a future
22 speculative harm." *Walker v. Munro*, 124 Wn.2d 402, 416 (1994) (emphasis added); *see also*
23 *Sanders Cnty. Republican Cent. Committee v. Bullock*, 698 F.3d 741, 748 (9th Cir. 2012) ("[A]
24 long line of precedent establish[es] that '[t]he loss of First Amendment freedoms, for even

25 ⁴ Only one Plaintiff needs to have standing for this case to proceed. *See League of Educ.*
26 *Voters v. State*, 176 Wn.2d 808, 818 n.3 (2013) (citing *Bowsher v. Synar*, 478 U.S. 714, 721
27 (1986)).

1 minimal periods of time, unquestionably constitutes irreparable injury.’’). Indeed, if enacted,
2 the initiatives will go into effect immediately, chilling Plaintiffs’ speech before any court has
3 the opportunity to act to protect Plaintiffs. In arguing Plaintiffs have not shown injury,
4 Envision ignores these allegations. Envision Opp. at 9-12.

5 Unable to undermine Plaintiffs’ harm showing, Envision falls again on a slippery slope
6 argument, contending that allowing Plaintiffs to proceed in this case would be tantamount to
7 eliminating the harm requirement for declaratory relief actions generally. Envision Opp. at 11.
8 Envision apparently would have this Court believe no private plaintiff can ever pursue pre-
9 election declaratory relief. *Id.* But the fact Washington courts have routinely granted pre-
10 election declaratory judgments in favor of private plaintiffs proves otherwise. *See, e.g., Seattle*
11 *Bldg. & Constr. Trades Council v. City of Seattle*, 94 Wn.2d 740, 746 (1980) (affirming
12 declaratory judgment for private trade association); *Ford v. Logan*, 79 Wn.2d 147, 151 (1971)
13 (affirming declaratory judgment for taxpayer); *Am. Traffic Solutions*, 163 Wn. App. at 432-33
14 (reversing denial of declaratory judgment for company). *See also Mukilteo Citizens for Simple*
15 *Gov’t v. City of Mukilteo*, 174 Wn.2d 41, 46, 53 (2012) (residential association had standing to
16 challenge local initiative pre-election; reversing, post-election, denial of declaratory judgment).

17 Even if the Court were to agree with Envision, the public importance doctrine supports
18 finding standing in this case – a proposition Envision does not dispute. *See* Plfs.’ Mot. for
19 Decl. J. at 11; Envision Opp. at 12 n.11. This case “involve[s] significant and continuing
20 matters of public importance that merit judicial resolution” – i.e., the constitutional rights of
21 Spokane citizens, as well as Spokane’s zoning requirements and water uses. *Am. Traffic*
22 *Solutions*, 163 Wn. App. at 433 (citing *Farris v. Munro*, 99 Wn.2d 326, 330 (1983); *Wash.*
23 *Natural Gas Co. v. Pub. Util. Dist. No. 1*, 77 Wn.2d 94, 96 (1969)). Washington courts have
24 frequently applied this doctrine to pre-election challenges to the scope of local initiatives, and
25 this Court should do so here if it finds Plaintiffs’ showing of harm insufficient. *See Am. Traffic*
26 *Solutions*, 163 Wn. App. at 433; *Wallin*, 301 P.3d at 55. Regardless of the test used, Plaintiffs

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OPP. TO MOT. FOR DECL. J. - 6
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1 have standing.

2 **B. The Court Should Declare the Initiatives Invalid and Unfit for the Ballot.**

3 **1. Plaintiffs Have Established that the Initiatives Are Invalid.**

4 Envision's initiative exceeds the scope of the local initiative power because: (1) the
5 zoning section is administrative in nature and interferes with powers delegated to local
6 legislative bodies, Plfs.' Mot. for Decl. J. at 20-21; (2) the river and aquifer rights section
7 conflicts with federal and state law, is administrative in nature, and interferes with powers
8 delegated to local legislative bodies, Plfs.' Mot. for Decl. J. at 18-21; (3) the workplace
9 provision conflicts with federal and state law, Plfs.' Mot. for Decl. J. at 18-19; and (4) the
10 personhood provision conflicts with federal and state law, Plfs.' Mot. for Decl. J. at 18.⁵
11 Envision agrees initiatives that are administrative in nature or that involve areas delegated to
12 local legislative bodies exceed the scope of the local initiative power. Envision Opp. at 17-18.

13 **a. The Zoning Provision Is Administrative in Nature and**
14 **Involves Powers Delegated to Local Legislative Bodies.**

15 **(1) The Zoning Provision Is Administrative in Nature.**

16 Initiatives that seek to amend a city or county's zoning code or plan are administrative
17 in nature because they merely implement the code or plan, rather than announce new policy.
18 Plfs.' Mot. for Decl. J. at 20-21 (citing *Leonard v. City of Bothell*, 87 Wn.2d 847, 850-51
19 (1976) (referendum seeking to rezone property and modify comprehensive plan to reflect
20 anticipated land-use change was administrative)); Plfs.' Mot. for Prelim. Inj. at 24); *see also*
21 Envision Opp. at 32 (citing *Durocher v. King Cnty.*, 80 Wn.2d 139, 152-53 (1972) (council's
22 grant of "unclassified use permit" was administrative and not subject to referendum)).
23 Envision does not dispute that initiatives seeking to carry out pre-existing law are
24 administrative in nature. Envision Opp. at 31-32. As Plaintiffs have shown, the Envision

25 ⁵ Plaintiffs have also shown the SMAC initiative exceeds the local initiative power. *See* Plfs.'
26 Mot. for Prelim. Inj. at 11-18; Plfs.' Mot. for Decl. J. at 12-15. Plaintiffs will reply to any
27 opposition SMAC files separately.

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FILED

AUG 26 2013

THOMAS R. FALLQUIST
SPOKANE COUNTY CLERK

**SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE**

SPOKANE ENTREPRENEURIAL CENTER,
SPOKANE COUNTY, DOWNTOWN
SPOKANE PARTNERSHIP, GREATER
SPOKANE INCORPORATED, THE
SPOKANE BUILDING OWNERS AND
MANAGERS ASSOCIATION, SPOKANE
ASSOCIATION OF REALTORS, THE
SPOKANE HOMEBUILDERS
ASSOCIATION, THE INLAND PACIFIC
CHAPTER OF ASSOCIATED BUILDERS
AND CONTRACTORS, AVISTA
CORPORATION, PEARSON PACKAGING
SYSTEMS, WILLIAM BUTLER, NEIL
MULLER, STEVE SALVATORI, NANCY
MCLAUGHLIN, MICHAEL ALLEN, and
TOM POWER,

Plaintiffs,

vs.

SPOKANE MOVES TO AMEND THE
CONSTITUTION, ENVISION SPOKANE,
VICKY DALTON, SPOKANE COUNTY
AUDITOR, in her official capacity, THE CITY
OF SPOKANE,

Defendants.

No. 13-202495-5

NOTICE OF APPEAL TO THE COURT OF
APPEALS, DIVISION III

COMES NOW, Defendant Envision Spokane, represented by and through its undersigned
attorney, and seeks emergency review by Division III of the Washington State Court of Appeals
of the Order Granting Declaratory Judgment expected to be entered in this matter in Spokane

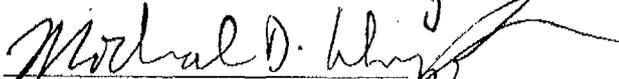
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1 County Superior Court on August 27, 2013. The Order is based on the oral rulings of Judge
2 Moreno entered on the record of the hearing that took place at 9:30am on August 23rd, 2013.
3 Pursuant to RAP 5.3(a) a copy of Superior Court's orders will be submitted to the Court of
4 Appeals immediately upon filing with the Superior Court Clerk by the prevailing Plaintiff.

5 DATED this 26th day of August, 2013.

6 
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8 Attorney for Defendant Envision Spokane

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25 NOTICE OF APPEAL TO THE COURT OF
APPEALS, DIVISION III - 2

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th day of August, 2013, I caused to be served a true and correct copy of the foregoing document to the following:

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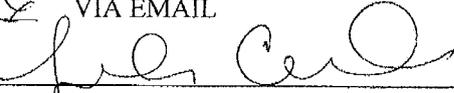
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SUPERIOR COURT OF THE STATE OF WASHINGTON
SPOKANE COUNTY

SPOKANE ENTREPRENEURIAL CENTER,
SPOKANE COUNTY, DOWNTOWN
SPOKANE PARTNERSHIP, GREATER
SPOKANE INCORPORATED, THE
SPOKANE BUILDING OWNERS AND
MANAGERS ASSOCIATION, SPOKANE
ASSOCIATION OF REALTORS, THE
SPOKANE HOME BUILDERS
ASSOCIATION, THE INLAND PACIFIC
CHAPTER OF ASSOCIATED BUILDERS
AND CONTRACTORS, AVISTA
CORPORATION, PEARSON PACKAGING
SYSTEMS, WILLIAM BUTLER, NEIL
MULLER, STEVE SALVATORI, NANCY
MCLAUGHLIN, MICHAEL ALLEN, and TOM
POWER,

Plaintiffs,

v.

SPOKANE MOVES TO AMEND THE
CONSTITUTION, ENVISION SPOKANE,
VICKY DALTON, SPOKANE COUNTY
AUDITOR, in her official capacity, and THE
CITY OF SPOKANE,

Defendants.

No. 13-02-02495-5

[PROPOSED] ORDER
GRANTING PLAINTIFFS'
MOTION FOR DECLARATORY
JUDGMENT

THIS MATTER came before the Court upon the Plaintiffs' Motion for Declaratory Judgment, noted for consideration on August 23, 2013. The Court has considered Plaintiffs' Motion and Memorandum of Authorities in Support of Plaintiffs' Motion, the declarations and exhibits in Support of Plaintiffs' Motion for Preliminary Injunction, Plaintiffs' Replies in

ORDER GRANTING PLFS.' MOT. FOR DEC. J. - 1
DWT 22365188v2 0043952-000026

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1 Support of Their Motion for Declaratory Judgment, Envision Spokane's and Spokane Moves to
2 Amend the Constitution's oppositions to Plaintiffs' Motion for Declaratory Judgment, the City
3 of Spokane's response to Plaintiffs' Motion for Declaratory Judgment, the Auditor's response
4 to Plaintiffs' Motion for Declaratory Judgment, the parties' arguments, and all papers and
5 pleadings on file. The Court now finds as follows:

6 1. A justiciable controversy exists. There is an actual, present, and existing dispute
7 between parties with genuine and opposing interests that are direct and substantial.
8 Postelection events will not further sharpen the issue whether Initiative 2013-3 and Initiative
9 2013-4 (the "SMAC and Envision initiatives") are within the scope of the local initiative
10 power.

11 2. Plaintiffs have standing. Plaintiffs fall within the zone of interests the initiatives
12 seek to regulate and have demonstrated sufficient injury, and this case involves significant and
13 continuing issues of public importance that merit judicial resolution.

14 3. The Envision initiative exceeds the local initiative power and is invalid.

15 a. The zoning provision exceeds the local initiative power because it is
16 administrative in nature and involves powers delegated under RCW
17 Title 35 to the legislative bodies of municipalities. Zoning is an
18 administrative function. The Envision initiative's zoning provision is
19 administrative because it would change or hinder a pre-existing
20 zoning code.

21 b. The water provision exceeds the local initiative power because it
22 conflicts with federal and state law, and is administrative in nature.
23 The provision seeks to regulate bodies of water that are subject to the
24 Clean Water Act, Washington's water code, and the Growth
25 Management Act. The water provision would add requirements to
26 these pre-existing regulations, and would interfere with pre-existing
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regulations. The water provision therefore conflicts with federal and state law and is outside the scope of the local initiative power. The provision is also administrative because it seeks to change or hinder pre-existing water regulations. The water provision is also outside the scope of the local initiative power because it attempts to impose rights on Spokane residents regarding water outside the state of Washington, and it attempts to create new constitutional rights. The City of Spokane lacks jurisdiction to enact such legislation.

c. The workplace provision exceeds the local initiative power because it attempts to expand constitutional protections, which is beyond the City of Spokane's jurisdiction to enact. The provision also conflicts with federal and state labor laws by attempting to redefine and expand labor rights in the City of Spokane.

d. The corporate rights provision exceeds the local initiative power because it attempts to change the rights of corporations under federal and state law. The provision therefore conflicts with federal and state law, and is outside the scope of the initiative power.

4. The SMAC initiative exceeds the local initiative power and is invalid.

a. The SMAC initiative exceeds the local initiative power because its prohibitions on campaign contributions and lobbying conflict with federal and state law. The First Amendment and *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010), protect the right of corporations to engage in political speech. The local initiative power does not include the ability to limit U.S. Supreme Court precedent. The initiative also conflicts with Washington's campaign disclosure law, which defines a "person" as including corporations.

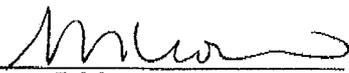
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b. The SMAC initiative exceeds the local initiative power because it attempts to strip corporations of their First and Fifth Amendment rights, which would conflict with U.S. Supreme Court precedent.

5. The Envision and SMAC initiatives are not severable because all provisions of both initiatives are invalid.

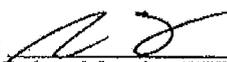
Now, therefore, it is hereby ORDERED that Plaintiffs' Motion for Declaratory Judgment is GRANTED. The Court DECLARES that the Envision and SMAC initiatives are invalid as outside the scope of the local initiative power. The Court further DECLARES that neither initiative shall appear on the November 5, 2013 ballot, and directs the Auditor not to include them on that ballot. Final judgment shall be entered in favor of Plaintiffs in accordance with this Order.

DATED this 29 day of Aug, 2013.


Maryann C. Moreno
Superior Court Judge

Presented by:

Davis Wright Tremaine LLP
Attorneys for Plaintiffs

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ORDER GRANTING PLFS.' MOT. FOR DEC. J. - 4
DWT 22365188v2 0043952-000026

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Approved as to form:

Terrence V. Sawyer
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The Constitution

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ORDER GRANTING PLFS.' MOT. FOR DEC. J. - 5
DWT 22365188v2 0043952-000026

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SEP -3 2013

The Court of Appeals
of the
State of Washington
Division III

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

SPOKANE ENTREPRENEURIAL)
 CENTER, et al,)
)
 Respondents,)
)
 v.)
)
 ENVISION SPOKANE,)
)
 Appellant,)
)
 and)
)
 SPOKANE MOVES TO AMEND THE)
 CONSTITUTION, VICKY DALTON,)
 SPOKANE COUNTY AUDITOR, in her)
 official capacity,)
)
 Defendants,)
)
 and)
)
 THE CITY OF SPOKANE,)
)
 Respondents.)

COMMISSIONER'S RULING
NO. 31887-7-III

Envision Spokane moves on an emergency basis for a stay of a Spokane County Superior Court order granting a motion for declaratory judgment and ordering the

No. 31887-7-III

auditor not to include Envision Spokane's initiative on the ballot. Envision asserts that a debatable issue exists in that the court erred in removing the initiative from the ballot because only the City of Spokane has standing to do so and that failure to issue a stay will result in irreparable significant injury to Envision with no actual or substantial injury to the respondents.

RAP 8.1 provides the criteria for whether this Court should grant or deny motions to stay enforcement of trial court decisions. Any party to an appeal has the right to stay a trial court decision affecting money or property by posting a bond, the amount of which is determined by the trial court. But in "other civil cases," a stay of the trial court decision is discretionary with the appellate court. RAP 8.1(b) and RAP 8.1(b)(3). RAP 8.1(b)(3) requires this Court "in other civil cases" to evaluate whether the moving party can demonstrate that debatable issues are presented on appeal and "compare the injury that would be suffered by the moving party if a stay were not imposed with the injury that would be suffered by the nonmoving party if a stay were imposed."

Envision Spokane does not challenge the trial court's decision with regard to the validity of the initiatives, but rather contends that debatable issues presented on appeal revolve around the determination that the named respondents could bring a declaratory judgment action. Envision Spokane, relying on *American Traffic Solutions, Inc. v. City of Bellingham*, 163 Wn. App. 427, 260 P.3d 245 (2011), asserts that private parties do not have standing to challenge the placement of initiatives on the ballot.

Case law provides that in order for a party bringing a declaratory judgment action to have standing, they must be within the zone of interests to be protected or regulated by the statute or ordinance and they will "suffer an injury in fact, economic or otherwise, from the proposed action." *Nelson v. Appleway Chevrolet, Inc.*, 160 Wn. 2d 173, 186, 157 P.3d 847 (2007).

Contrary to Envision Spokane's argument, the court in *American Traffic Solutions*, 163 Wn. App. at 433, held that the private party bringing the declaratory action clearly had standing to challenge the proposed action." Other cases illustrate that a private party can bring a declaratory action challenging an initiative. See *Seattle Bldg. & Constr. Trade Council v. City of Seattle*, 94 Wn.2d 740, 745, 620 P.2d 82 (1980) (court affirmed declaratory judgment in favor of a trade association which sought to enjoin an initiative from appearing on the ballot); *Ruano v. Spellman*, 81 Wn.2d 820, 829, 505 P.2d 447 (1973) (private intervenor's request to enjoin initiative from appearing on the ballot affirmed); *Ford v. Logan*, 79 Wn.2d 147, 148, 157, 483 P.2d 1247 (1971) (decision granting taxpayer's declaratory judgment and enjoining initiative from appearing on the ballot affirmed).

Envision Spokane also argues, relying on *Kucera v. Department of Transportation*, 140 Wn. 2d 200, 995 P. 2d 63 (2000) and *American Traffic Solutions*, *supra*, that the respondents lack standing because they fail to show they will suffer actual and substantial injury if the initiative is placed on the ballot and the harms they list would occur post-election.

First, the requirements for standing in a declaratory judgment action are more liberally applied where the controversy raises an issue of significant public importance that merits judicial resolution. *City of Longview*, 174 Wn. App. at 778; *American Traffic Solutions, Inc.*, 163 Wn. App. at 433. Here, the trial court determined and Envision Spokane does not dispute that the controversy before the court raised an issue of significant public importance.

Second, the private party in *American Traffic Solutions* merely had a contractual interest in challenging the proposed initiative. Here, the respondents have stronger interests. As pointed out in their response, placing the initiative on the ballot and enacting it would have a chilling effect on their constitutional rights. *Walker v. Munro*, 124 Wn.2d 402, 416, 879 P.2d (1994).

Finally, it is clear from the language of *American Traffic Solutions*, 163 Wn. App. at 432-33, that the party bringing a declaratory judgment action must demonstrate "that it has or **will suffer** an injury in fact, economic or otherwise, from the proposed action." (emphasis added). Thus, the injury does not have to occur immediately.

Here, the trial court concluded that the respondents had standing because they demonstrated sufficient injury and that the controversy raised an issue of significant public importance. It cannot be said that the trial court abused its discretion.

But even assuming a debatable issue is raised in this appeal, Envision Spokane has not demonstrated as required by RAP 8.1(b)(3)(ii) any significant injury it would suffer if a stay were not granted in comparison to the injury the respondents would

APPENDIX F

NO. 318877

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III

ENVISION SPOKANE,

Appellant,

v.

SPOKANE ENTREPRENEURIAL CENTER, SPOKANE COUNTY,
DOWNTOWN SPOKANE PARTNERSHIP, GREATER SPOKANE
INCORPORATED, THE SPOKANE BUILDING OWNERS AND
MANAGERS ASSOCIATION, SPOKANE ASSOCIATION OF
REALTORS, THE SPOKANE HOME BUILDERS ASSOCIATION,
THE INLAND PACIFIC CHAPTER OF ASSOCIATED BUILDERS
AND CONTRACTORS, AVISTA CORPORATION, PEARSON
PACKAGING SYSTEMS, WILLIAM BUTLER, NEIL MULLER,
STEVE SALVATORI, NANCY MCLAUGHLIN, MICHAEL ALLEN,
and TOM POWER

Respondents.

RESPONDENTS' MOTION FOR RECONSIDERATION

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TABLE OF CONTENTS

	Page(s)
I. IDENTITY OF PERSON FILING THE MOTION.....	1
II. STATEMENT OF RELIEF SOUGHT	1
III. GROUNDS FOR RELIEF AND ARGUMENT.....	2
A. The Court Should Reconsider Its Opinion Because its Novel Standing Doctrine Conflicts With the UDJA and Washington Supreme Court Authority	3
1. The Opinion Improperly Modifies the Statutory Standing Requirement in Washington’s Uniform Declaratory Judgment Act	4
2. The Opinion Conflicts With Washington Supreme Court Decisions Interpreting the UDJA	5
3. The Opinion Conflicts with Four Washington Supreme Court Decisions that Reached the Merits of Private Challenges to Local Initiatives	8
B. The Court Should Reconsider Its Opinion Because it Misapprehends Several Fundamental Legal Issues	13
1. The Opinion Improperly Conflates State and Local Initiatives, and Incorrectly Applies the More Rigorous Constitutional Protections Given to State Initiatives to This Case	13
2. The Opinion Relies on the Political Question Doctrine, Which Is Inapposite to the Question of Statutory Interpretation Facing the Court.....	15
3. The Opinion Overlooks Key Precedents Defining the Public Importance Doctrine	17

C.	The Court Should Reconsider Its Opinion Because it Overlooks or Misapprehends Material Issues of Fact.....	19
1.	Respondents Meet the Court’s Mistakenly Narrow Conception of the Public Interest Exception Because Community Bills of Rights are Common.....	19
2.	Respondents Raised the Issue of Standing to Challenge the Corporate Rights Provision Below	21
3.	The Court Overlooked Spokane County’s Status as a Public Entity and Its Interest in Elections.....	23
4.	The City’s Role as an Interested Non-Party Is Relevant to the Standing Analysis	24
D.	The Court Should Reconsider its Opinion Because the Remedy it Grants is Premature	24
IV.	CONCLUSION.....	25

TABLE OF AUTHORITIES

	Page(s)
Federal Cases	
<i>Baker v. Carr</i> , 369 U.S. 186, 82 S. Ct. 691 (1962).....	15, 16
<i>Cent. Green Co. v. United States</i> , 531 U.S. 425 (2001).....	9
<i>Japan Whaling Ass'n v. Am. Cetacean Soc.</i> , 478 U.S. 221, 106 S. Ct. 2860 (1986).....	16
State Cases	
<i>1000 Friends of Washington v. McFarland</i> , 159 Wn.2d 165, 149 P.3d 616 (2006).....	8, 11
<i>Allen v. Benton County</i> , Case No. 12-10594 (Benton County (Ore.) Circuit Court, 2013).....	20
<i>American Traffic Solutions, Inc. v. City of Bellingham</i> , 163 Wn. App. 427, 260 P.3d 245 (2011).....	9, 17, 18
<i>Baker v. Owen</i> , 165 Wn.2d 706, 206 P.3d 310 (2009).....	16
<i>City of Bellingham v. Whatcom County</i> , No. 691520 (Wn. Ct. App. Sept. 21, 2012)	14, 20
<i>City of Longview v. Wallin</i> , 174 Wn. App. 763, 301 P.3d 45 (Wn. Ct. App., 2013).....	14
<i>City of Monroe v. Wash. Campaign for Liberty</i> , 2013 WL 709828 (Wn. Ct. App. Feb. 25, 2013)	14
<i>Coppernoll v. Reed</i> , 155 Wn.2d 290 119 P.3d 318 (2005).....	13, 14, 15

<i>Eyman v. McGehee</i> , 173 Wn. App. 684, 294 P.3d 847 (2013).....	14
<i>Ford v. Logan</i> , 79 Wn.2d 147, 483 P.2d 1247 (1971).....	8, 11, 12, 14
<i>Futurewise v. Reed</i> , 161 Wn.2d 407, 166 P.3d 708 (2007).....	13, 14
<i>Grant Cnty. Fire Prot. Dist. No. 5 v. City of Moses Lake</i> , 150 Wn.2d 791, 83 P.3d 419 (2004).....	5, 6, 7, 8
<i>Lake v. Woodcreek Homeowner's Ass'n</i> , 169 Wn.2d 516, 243 P.3d 1283 (2010).....	4
<i>Mukilteo Citizens for Simple Government v. City of Mukilteo</i> , 174 Wn.2d 41, 272 P.3d 227 (2012).....	8, 9, 10, 11
<i>Patella v. City of Vancouver</i> , No. 13-2-01866-1, Mem. of Op. (Clark Cnty. Super. Ct. July 31, 2013).....	14
<i>Reerslev v. Betschart</i> , Case No. 16-13-19628 (Lane County (Ore.) Circuit Court, 2014).....	20
<i>Snohomish Cnty. Bd. of Equalization v. Washington State Dep't of Revenue</i> , 80 Wn.2d 262, 493 P.2d 1012 (1972).....	5
<i>State v. Johnson</i> , 338 P.3d 278 (2014).....	1
<i>State v. Watson</i> , 155 Wn.2d 574, 122 P.3d 903 (2005).....	17
<i>Unruh v. Cacchiotti</i> , 172 Wn.2d 98, 257 P.3d 631 (2011).....	5
<i>Washington Association for Substance Abuse & Violence Prevention v. State</i> , 174 Wn.2d 642, 278 P.3d 632 (2012).....	6

<i>Washington Natural Gas Co. v. Pub. Util. Dist. No. 1 of Snohomish Cnty.</i> , 77 Wn.2d 94, 459 P.2d 633 (1969).....	18, 19
---	--------

State Statutes

RCW 29A.04.216.....	23
RCW 35.22.200	14, 16
Uniform Declaratory Judgment Act, RCW 7.24.010 <i>et seq</i>	<i>passim</i>

Rules

RAP 10.1(h)	3
RAP 10.4(c)	12
RAP 12.4.....	1
RAP 14.4(a)	1
RAP 14.5.....	1

Constitutional Provisions

Washington Constitution, Article II, § 1.....	13
Washington Constitution, Article XI, § 10	16

Other Authorities

Brief of Appellant, <i>Seattle Bldg. and Constr. Trades Council v. Seattle</i>	8
Brief of Respondent, <i>Seattle Bldg. and Constr. Trades Council v. Seattle</i>	8
Mike Prager, <u>Council Revamps Initiative Process</u> , The Spokesman-Review (Spokane, WA), May 1, 2012	25
Prospective Petition 15-1, Columbia County (Ore.), 2015.....	20

Reply Brief of Appellant, *Mukilteo Citizens v. City of Mukilteo*, 2010 WL 6234480 (Wash.)10

Spokane Charter art. IX, §§ 81-8214

“Welcome to the Spokane River,” Washington Department of Ecology21

“Where We Work,” Community Environmental Legal Defense Fund20

I. IDENTITY OF PERSON FILING THE MOTION

Pursuant to RAP 12.4, Respondents – a coalition of Spokane voters, elected officials, non-profit corporations, local businesses, and Spokane County¹ – move for reconsideration of the Court’s January 29, 2015 unpublished² opinion (the “Opinion”).

II. STATEMENT OF RELIEF SOUGHT

On standing grounds, the Court reversed the trial court’s entry of a declaratory judgment declaring Appellant’s proposed local initiative was beyond the scope of the local initiative power. The Court directed the City of Spokane to place the initiative on the next available ballot.³

Respondents respectfully believe the Opinion overlooks or misapprehends controlling law and material facts and should be reconsidered:

First, the Court announces a new – and substantially heightened – standing doctrine for private plaintiffs challenging local initiative before an election. The new standing doctrine conflicts with Washington’s Uniform Declaratory Judgment Act (“UDJA”) and is inconsistent with decades of Washington Supreme Court and Courts of Appeal decisions

¹ The complete list of Respondents is reflected in the caption. All facts concerning Respondents in this motion are based on the record as it existed at the time of the declaratory judgment.

² Respondents are filing contemporaneously a Motion for Publication which Respondents suggest the Court address after reviewing this Motion for Reconsideration.

³ On February 9, 2015, Appellants filed a cost bill with this Court. Because the filing of this Motion to Reconsider prevents issuance of the mandate, the cost bill is premature and inoperative. *See* RAP 14.4(a), (requiring parties to file a cost bill “within 10 days *after* the filing of an appellate court decision terminating review.”) (emphasis added); *State v. Johnson*, 338 P.3d 278 (2014). *See also* RAP 14.5 (permitting objection to cost bill within 10 days after service of the cost bill on a party).

concerning standing generally and in the specific context of pre-election challenges to local initiatives.

Second, in developing a new standing doctrine, the Court misapprehends the governing law, including by relying on cases interpreting pre-election challenges to statewide rather than local initiatives, applying the inapposite political question doctrine, and misapplying the public importance exception.

Third, the Court's decision overlooks or misapprehends material facts, including the prevalence of similar initiatives, Respondents' discussion of the initiative's Corporate Rights provision in the trial court, Spokane County's interests, and the City of Spokane's stated interests.

Fourth, the Court's proposed remedy is premature because it is unclear whether the remedy is authorized by law. If the Court does not reconsider its standing determination, the Court should remand with direction for the trial court to investigate appropriate remedies.

III. GROUNDS FOR RELIEF AND ARGUMENT

The Court announces a new rule of law conflicting with both the text of the UDJA and Washington Supreme Court authority. Pre-election challenges to local initiatives have been occurring for generations in Washington yet Respondents are unaware of any Washington court ever using the test the Court created in its Opinion. The Court should reconsider its departure from well-settled and uniform Washington standing principles. At a minimum, the Court should direct the parties to

file supplemental briefing on standing in accordance with RAP 10.1(h) or remand to supplement the record on standing and address remedies.⁴

A. The Court Should Reconsider Its Opinion Because its Novel Standing Doctrine Conflicts With the UDJA and Washington Supreme Court Authority

The Court departs from settled law and announces a new ambiguous rule governing standing for private parties seeking pre-election declaratory judgments concerning whether a proposed local initiative is within the scope of the local initiative power. The Court's new test creates uncertainty in the law where none previously existed.⁵ The Court's Opinion departs from the traditional standing analysis under Washington's Uniform Declaratory Judgment Act, and substantially increases what a plaintiff must show to bring a pre-election challenge to a local initiative.

⁴ In the Opinion, the Court noted standing was a peripheral issue on appeal conceded by Appellant. Opinion at 6-7. This Motion highlights the need for a full and fair opportunity to brief the standing issue before reaching a conclusion.

⁵ Even within the Opinion, the Court's formulation of the rule is inconsistent leading to uncertainty about the Court's test. The Court set forth three variations of the rule. First, the Opinion indicates Respondents lack standing because they were "not so clearly situated in the center of the zone of interests, nor as certainly to suffer immediate harm from the adoption of the initiative, that they have demonstrated standing to pursue this action." Opinion at 16-17 (emphasis added). Next, it describes its new test as requiring that, "the party must establish both that it is in the center of the zone of interests affected by the initiative *and* that the certainly of immediate specific harm to that party is such that a post-election lawsuit is not a practical remedy for the party." Opinion at 17-18 (italics in original, underlining added). Finally, it concludes that "[t]here needed to be a showing that the respondents would truly be affected by the initiative and that the harm from the initiative would require immediate court intervention." Opinion at 18-19 (emphasis added). It is unclear whether the Court's new rule requires a showing that a private party is "in the center of the zone of interests," "clearly situated in the center of the zone of interests," or "truly affected by" an initiative. Similarly, it is unclear whether the new rule requires a showing of "immediate harm," "immediate specific harm," or harm that would "require immediate court intervention." Regardless, none of those formulations is found in or consistent with existing law.

See Opinion at 6 (describing the rule as “a heightened showing of standing”). Because these changes in the law conflict with the language of the statute and controlling authority, the Court should reconsider.

1. The Opinion Improperly Modifies the Statutory Standing Requirement in Washington’s Uniform Declaratory Judgment Act

The Court has erroneously raised the bar for standing above the requirements set forth in the UDJA. The UDJA provides that courts may “declare rights, status and other legal relations whether or not further relief is or could be claimed.” RCW 7.24.010.⁶ Because it is a “remedial” statute, the UDJA “is to be liberally construed and administered.” RCW 7.24.120. Although the plain language of the UDJA merely requires that a person’s rights, status, or legal relations be “affected” by a statute or ordinance in question, RCW 7.24.020, the Opinion requires Respondents show that the effect is “clear,” “certain,” “immediate,” and irreparable absent pre-election intervention. Opinion at 16-19. This new heightened rule is inconsistent with both the statute’s plain language and its mandated liberal interpretation. *See Lake v. Woodcreek Homeowner’s Ass’n*, 169 Wn.2d 516, 527, 243 P.3d 1283, 1288 (2010) (holding that, when construing a statute, “we must not add words where the legislature has chosen not to include them, and we must construe statutes such that all of the language is given effect.”) (internal quotation omitted).

⁶ *See also* RCW 7.24.020, making plain a party may obtain a declaratory judgment concerning a statute or municipal ordinance.

The Opinion's additions to the statutory standard also conflict with the purpose of the UDJA: to permit parties facing questions of law to receive a determination of their rights before an inaccurate answer to the question could give rise to potential harms. *Snohomish Cnty. Bd. of Equalization v. Washington State Dep't of Revenue*, 80 Wn.2d 262, 264-65, 493 P.2d 1012, 1013-14 (1972) (“Without a decision of this court, [plaintiffs] were placed in a position of making a determination of a difficult question of constitutional law with the possibility of facing both civil and criminal penalties if they made the wrong choice. One of the purposes of declaratory judgment laws is to give relief from such situations.”). Thus, the UDJA contains a low standing requirement to permit parties to gain relief in advance of such situations, and the heightened standing requirement announced in the Opinion is especially inapt in this situation. *See Unruh v. Cacchiotti*, 172 Wn.2d 98, 114, 257 P.3d 631, 638 (2011) (rejecting a party's statutory interpretation argument that ran counter to the “unstated but apparent purpose” of a statute).

2. The Opinion Conflicts With Washington Supreme Court Decisions Interpreting the UDJA

As the Opinion recognized but did not follow, the Washington Supreme Court has repeatedly used a clear two-part test for determining when a person may sue for a declaratory judgment. First, the party must show that the “interest sought to be protected is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question.” *Grant Cnty. Fire Prot. Dist. No. 5 v. City of*

Moses Lake, 150 Wn.2d 791, 802, 83 P.3d 419, 423 (2004). Second, the party must show an “injury in fact, economic or otherwise.” *Id.* This standard has been applied to a wide range of cases, including highly politicized actions, and none of those cases support the proposition that the subject matter of the case changes the requirements for standing under the UDJA.

In *Grant County*, plaintiffs challenged the method for annexation of non-incorporated land into existing municipal entities. *Id.* at 797-98. The only “injury in fact” the Supreme Court noted was the possibility residents of the areas proposed for annexation might “face different tax rates following annexation.” *Id.* at 802. In *Washington Association for Substance Abuse & Violence Prevention v. State*, a group of plaintiffs filed a post-election challenge to the constitutionality of a statewide initiative permitting private liquor sales in Washington, and the Supreme Court applied the same loose standing requirements to find that an anti-substance abuse organization had standing to sue for declaratory relief. 174 Wn.2d 642, 653, 278 P.3d 632, 639 (2012) (“WASAVP’s goal of preventing substance abuse and violence places it within the zone of interests of I-1183, which broadly impacts the State’s regulation of alcohol. . . . [WASAVP’s] goals of preventing substance abuse could reasonably be impacted by I-1183’s restructuring of Washington’s regulation of liquor . . . [and] the increase in liquor availability would injure WASAVP’s goals.”). In each case, harm was more speculative than in this case. The

residents in *Grant County* would be harmed only if the municipalities subsequently determined and enforced an increased level of taxation, and WASAVP's harm turned on as-yet-unproven assertions that privatized liquor sales would increase the availability of alcohol and the rate of substance abuse. Nonetheless, the Court found that both groups had standing to pursue declaratory judgments.

There is no precedent supporting the application of any different interpretation of the UDJA in this case than the Supreme Court has applied in all other UDJA cases but this Court's Opinion specifically rejects the Supreme Court's established test in favor of its own new, ambiguous, and more burdensome rule. Opinion at 12. This Court's opinion about what the law should be, however, must be constrained by the Supreme Court's statements about what the law is. The Court's decision to replace the "arguably within the zone of interest" test repeatedly applied by the Supreme Court, *see, e.g., Grant County*, 150 Wn.2d at 802, with its own heightened standard of "clearly situated in the center of the zone of interests," Opinion at 16 (emphasis added), is an improper expansion of the Court of Appeals' jurisprudential role.⁷

The Court's analysis of the injury prong is also erroneous, and conflicts with Supreme Court precedent. The Court held that, "Until the

⁷ The Opinion appropriately recognizes that, "Liberally construed, the fact that both Spokane County and Avista use the Spokane River might 'arguably' put them 'within the zone of interests' of the Environmental Rights provision since it addresses the same river." Opinion at 11. Thus, when the Court applies the correct standard, it recognizes Respondents have standing.

initiative passes, any harm to the respondents is necessarily speculative, and would depend upon someone trying to use the initiative against them.” Opinion at 13. That is not an accurate statement of the law, however. Rather, the Supreme Court has repeatedly permitted declaratory judgment actions that seek to prevent harm from the future application of a statute or ordinance. *See, e.g., Grant County*, 150 Wn.2d at 802-03 (“the property owners satisfy the requirements of actual injury for the “injury in fact” test because they face different tax rates following annexation.”); *Mukilteo Citizens for Simple Government v. City of Mukilteo*, 174 Wn.2d 41, 46, 272 P.3d 227, 230-31 (2012) (finding pre-election standing for a private group challenging a local initiative). The Court should reconsider its departure from controlling precedent.

3. The Opinion Conflicts with Four Washington Supreme Court Decisions that Reached the Merits of Private Challenges to Local Initiatives

The Opinion also conflicts with at least four decisions of the Washington Supreme Court that specifically addressed the merits of a declaratory judgment action filed by private challengers to a local initiative. *See Mukilteo Citizens*, 174 Wn.2d 41, *1000 Friends of Washington v. McFarland*, 159 Wn.2d 165, 170, 149 P.3d 616, 619 (2006), *Seattle Bldg. and Constr. Trades Council v. Seattle*, 94 Wn.2d 740, 620 P.2d 82 (1980), and *Ford v. Logan*, 79 Wn.2d 147, 483 P.2d

1247 (1971).⁸ None of those decisions applied the rule announced in the Opinion. Further, it is not clear that any of the plaintiffs in those suits could have survived the Court's new standard, yet in each of those cases the Supreme Court provided pre-election relief to private party plaintiffs. Moreover, in at least two of those cases, there is no question standing was squarely an issue raised by the parties yet the Supreme Court still provided pre-election relief to private parties.

The only one of the Supreme Court decisions analyzed in the Opinion is *Mukilteo Citizens*. Opinion at 13-14. The Opinion correctly quotes the Supreme Court's holding that the plaintiff had associational standing on behalf of its members because "it consists of Mukilteo residents who are eligible to vote." *Id.* at 14; *Mukilteo Citizens*, 174 Wn.2d at 46. However, this Court overlooks this binding statement of law because it "did not believe" that the Supreme Court was "conferring standing to challenge an initiative on any person who could vote on the initiative." Opinion at 14. Respectfully, the Supreme Court's statement concerning standing was essential to the Supreme Court's holding, and is therefore not dicta that can be cast aside by this Court. *See, e.g., Cent. Green Co. v. United States*, 531 U.S. 425, 431 (2001) (defining dicta as

⁸ Division One has also applied the standard UDJA test to determine that a private plaintiff had standing to file a pre-election challenge to a local initiative. *See, e.g., American Traffic Solutions, Inc. v. City of Bellingham*, 163 Wn. App. 427, 432-33, 260 P.3d 245, 247-48 (2011). Although the Opinion distinguishes Respondents from the plaintiff in *American Traffic* on factual grounds, it does not explain its departure from the legal standard set forth by Division 1. Opinion at 12-13.

statements “not essential to our disposition of any of the issues contested in” the case). Absent personal standing, associational standing is impossible. *Mukilteo Citizens*, 174 Wn.2d at 46. The only reason the Supreme Court provided as the basis for the plaintiff association’s standing was its composition of eligible voters. *Id.* Therefore, the holding that a citizen of a locality who is eligible to vote on a local initiative has standing to file a pre-election challenge to those initiatives was essential to the Supreme Court’s holding, and must be followed.⁹

To the extent this Court questioned whether standing was an issue raised with the Supreme Court, the briefing in *Mukilteo Citizens* removes any doubt. Appellants’ Supreme Court reply brief spent more than four pages explaining precisely how it met every element of the UDJA’s standing test and the public interest exception. *See* Appellant’s Reply Brief, *Mukilteo Citizens v. City of Mukilteo*, 2010 WL 6234480 (Wash.), at *5-9 (arguing that the private group meets the zone of interests test because it wishes to ensure that “its elected representatives . . . do not act unlawfully” and that “there is a strong public interest in determining

⁹ Further, if the Supreme Court had applied the test announced in this Court’s Opinion, the *Mukilteo Citizens* plaintiffs would have failed the test and would not have obtained relief on the merits. The City of Mukilteo placed an initiative on the ballot barring the City from installing automated traffic cameras without voter approval, and limiting the amount of fines such systems could charge. *Id.* at 44-45. The members of the plaintiff group were simply “Mukilteo residents.” *Id.* at 45. As such, their injury was generalized and speculative – to hypothesize, it could be a general decrease in traffic safety absent effective red-light enforcement, a speculative chance that lack of enforcement may cause an accident involving a group member, or a potential impact of traffic-violation revenues on tax rates. These potential injuries are far more remote than the harms facing Respondents in this case highlighting the difference between the standing rule applied by the Supreme Court and the heightened rule announced by this Court.

whether the Initiative is outside the scope of the local initiative power.”). With the issue squarely before it, the Supreme Court plainly held a private association (with lesser interests than Respondents here) had standing to challenge a local initiative pre-election.

Mukilteo Citizens is not an aberration. The Supreme Court also reached the merits of declaratory judgment actions filed by private plaintiffs against proposed local initiatives in *Seattle Building*, *Ford*, and *1000 Friends*. *Seattle Building*, 94 Wn.2d at 750 (affirming declaratory judgment obtained by a private group stating that a Seattle initiative was beyond the scope of the local initiative power), *Ford*, 79 Wn.2d at 157 (same regarding a King County initiative; noting constraints on the local initiative power that do not apply to state-wide initiatives); *1000 Friends*, 159 Wn.2d at 170 (affirming the grant of a declaratory judgment finding a local initiative to be outside the scope of the local initiative power in a suit jointly prosecuted by a group of private citizens and King County without discussing the standing of the private group).

As in *Mukilteo Citizens*, briefing in the *Seattle Building* case presented to the Supreme Court the issue of standing and the availability of pre-election relief to a private party challenging a proposed local initiative. In its *Seattle Building* Supreme Court brief, the (defendant) City argued that a (plaintiff) private association did not have standing to challenge a proposed local initiative pre-election. The City argued that any injury suffered by its members as taxpayers was not sufficiently

burdensome and that “neither the complaint nor any supplemental material shows any injury to the persons or property rights of the plaintiffs from holding the election.” Appendix A at 3.¹⁰ In response, the association cited *Ford* and argued that the availability of a pre-election injunction “is so well established as to be beyond challenge.” *Id.* at 12-13. Moreover, the association argued that the Supreme Court should at least affirm the declaratory judgment on the merits, noting the interest in judicial economy, even if there was no basis for an injunction. *Id.* at 11-12. Thus, the issue of standing was squarely before the Supreme Court in *Seattle Building* when the Supreme Court affirmed entry of a pre-election declaratory judgment for a private plaintiff on the merits.

Thus, in four cases, the Supreme Court has granted relief on the merits in pre-election challenges to local initiatives made by private parties and has never rejected the claims on standing grounds. Although one may reasonably assume the Supreme Court considered justiciability issues in all of those cases, the briefing from at least two of those cases removes any doubt standing was an issue the parties raised. This Court should reconsider its departure from Supreme Court precedent.

¹⁰ Pursuant to RAP 10.4(c), Respondents attach as Appendix A to this Motion a true and correct copy of the relevant portions of the Supreme Court briefing in *Seattle Building*. Respondents obtained the briefing from the University of Washington School of Law Gallagher Law Library archives. Unfortunately, the archives did not contain the Supreme Court briefing in *Ford*.

B. The Court Should Reconsider Its Opinion Because it Misapprehends Several Fundamental Legal Issues

The Court's new rule is in conflict with the Uniform Declaratory Judgment Act and the decisions of the Washington Supreme Court in part because it overlooks or misapprehends at least three points of law. First, the Opinion inappropriately conflates state and local initiatives. Second, it appears to apply the inapposite political question doctrine. Third, it misinterprets the public importance exception. Reconsidering any of these errors would permit the Court to reach the correct decision and determine Respondents have standing.

1. The Opinion Improperly Conflates State and Local Initiatives, and Incorrectly Applies the More Rigorous Constitutional Protections Given to State Initiatives to This Case

The Opinion substantially relies on two cases that address challenges to statewide initiatives, and inappropriately applies their holdings to Respondents' challenge to the local initiative in this case. *See* Opinion at 7-10, 15 (repeatedly citing and quoting *Coppernoll v. Reed*, 155 Wn.2d 290 119 P.3d 318 (2005) and *Futurewise v. Reed*, 161 Wn.2d 407, 166 P.3d 708 (2007)). However, the statewide initiative power and the local initiative power are not the same, and the conclusions drawn in those cases concerning statewide initiatives are not applicable to this one.

Statewide initiatives are authorized by the Washington Constitution. Const. art. II, § 1. As such, statewide initiatives have "constitutional preeminence." *Coppernoll*, 155 Wn.2d at 297. In contrast,

the local initiative power is created by statute. RCW 35.22.200 (“The charter [of a city] may provide for direct legislation by the people through the initiative and referendum upon any matter within the scope of the powers, functions, or duties of the city.”). Its scope is defined by local charter which recognizes it may only be exercised “in accordance with the general laws of the state.” *See, e.g.*, Spokane Charter art. IX, §§ 81-82.

The Supreme Court’s discussions of prudential concerns in *Coppernoll* and *Futurewise* relates to the need for courts to avoid rendering unnecessary opinions that could infringe on the constitution’s delegation of the statewide legislative power to the people. *Coppernoll*, 155 Wn.2d at 297; *Futurewise*, 161 Wn.2d at 410-11. However, local initiatives do not involve a power arising under the constitution and do not implicate constitutional delegations of power. They exist as a statutory grant by the legislature and courts routinely examine pre-election whether a local initiative is beyond the scope of the local initiative power.¹¹ The Supreme Court, in *Coppernoll*, recognized this distinction. 155 Wn.2d at 299 (contrasting the “more limited powers of initiative under city or county charters” with the broad, constitutionally-authorized statewide initiative power); *see also Ford*, 79 Wn.2d at 157 (contrasting the local

¹¹ Indeed, in the year before the trial court acted in this case, there were at least five pre-election challenges to local initiatives in Washington. *See Patella v. City of Vancouver*, No. 13-2-01866-1, Mem. of Op. (Clark Cnty. Super. Ct. July 31, 2013); *City of Longview v. Wallin*, 174 Wn. App. 763, 301 P.3d 45 (Wn. Ct. App., 2013); *Eyman v. McGehee*, 173 Wn. App. 684, 294 P.3d 847 (2013); *City of Monroe v. Wash. Campaign for Liberty*, 2013 WL 709828 (Wn. Ct. App. Feb. 25, 2013); *City of Bellingham v. Whatcom County*, No. 691520 (Wn. Ct. App. Sept. 21, 2012).

initiative power with the statewide initiative power). The Opinion, however, overlooks the distinction and, contrary to the Supreme Court's directive, reflects a reluctance to address the subject matter of a local initiative pre-election. The Supreme Court was clear, however:

Subject matter challenges do not raise concerns regarding justiciability because postelection events will not further sharpen the issue (i.e., the subject of the proposed measure is either proper for direct legislation or it is not).

Coppernoll, 155 Wn.2d at 299.

Mistakenly relying on analyses of statewide initiative cases, this Court's Opinion conflicts with the Supreme Court's plain holding that pre-election challenges to local initiatives do not raise justiciability concerns.

2. The Opinion Relies on the Political Question Doctrine, Which Is Inapposite to the Question of Statutory Interpretation Facing the Court

On two occasions the Opinion alludes to the need for courts to avoid issuing decisions on "political questions." Opinion at 8, 18. But this case does not involve political questions. It involves a routine determination of whether a proposed local initiative is beyond the scope of the local initiative power – an issue repeatedly analyzed in the same fashion by numerous published decisions.

As the United States Supreme Court explained more than 45 years ago, "the mere fact that the suit seeks protection of a political right does not mean it presents a political question. Such an objection is little more than a play upon words." *Baker v. Carr*, 369 U.S. 186, 209, 82 S. Ct. 691,

706 (1962) (internal quotation marks omitted). *See also Japan Whaling Ass'n v. Am. Cetacean Soc.*, 478 U.S. 221, 230, 106 S. Ct. 2860, 2866 (1986) (“not every matter touching on politics is a political question . . . under the Constitution, one of the Judiciary’s characteristic roles is to interpret statutes, and we cannot shirk this responsibility merely because our decision may have significant political overtones.”).

Washington law is the same. In *Baker v. Owen*, Washington’s Supreme Court adopted the *Baker v. Carr* standard for determining when a case raises a non-justiciable political question. 165 Wn.2d 706, 718-19, 206 P.3d 310, 316-17 (2009). It held that, where there is a “textually demonstrable constitutional commitment of the issue to a coordinate political department” or resolving the suit would be impossible without expressing lack of the respect due coordinate branches of government,” courts should not get involved in order to protect the “institutional integrity” of the judiciary. *Id.* (quoting *Baker v. Carr*, 369 U.S. at 217).

There is no such issue in this case. Rather than a constitutionally-charged issue of separation of powers between coordinate branches of government, Respondents are asking the court to determine whether a proposed action by a subordinate governmental entity – a local government – is within the powers granted to it by the state in RCW 35.22.200 and Article XI, § 10 of the Washington Constitution. *See* Part III.B.1, above. Courts have repeatedly and routinely made similar determinations without any harm to any institutional integrity, *see* Part

III.A.2, above. The political question doctrine does not apply and should not be a basis for applying a heightened standing rule in this case.

3. The Opinion Overlooks Key Precedents Defining the Public Importance Doctrine

In addition to concluding that Respondents lack standing under the UDJA, the Court also held that the public importance exception to Washington's general standing doctrine does not apply. Opinion at 15-16. However, in doing so the Court overlooked or misapprehended key precedents that define the scope of the public importance standing doctrine.

First, the Court speculates that *American Traffic Solutions, Inc. v. City of Bellingham*, 163 Wn. App. 427, 433, 260 P.3d 245, 248 (2011) relied on the fact that red traffic challenges had proliferated across the state as a reason to apply the public importance doctrine. Opinion at 15-16. Not so. The Court of Appeals in *American Traffic* stated only that “the issues . . . involve significant and continuing matters of public importance that merit judicial resolution.” 163 Wn. App. at 433. Nowhere in that opinion did Division One add a statewide geographical requirement to the public importance doctrine. Neither has the Supreme Court. *State v. Watson*, 155 Wn.2d 574, 577, 122 P.3d 903, 904 (2005) (“This case presents a prime example of an issue of substantial public interest. . . [it] has the potential to affect every sentencing proceeding in Pierce County.”).

The public importance exception is substantially broader than the Court applies in the Opinion. For example, in *Washington Natural Gas Co. v. Pub. Util. Dist. No. 1 of Snohomish Cnty.*, 77 Wn.2d 94, 96, 459 P.2d 633, 634-35 (1969), the Supreme Court held that a private party had standing under the public interest exception to challenge a public entity's grant of inducements to buy power to homeowners in certain developments in Snohomish County. Relying on the doctrine to find standing in a case involving specific developments in one county, the Supreme Court stated:

Where a controversy is of serious public importance and immediately affects substantial segments of the population and its outcome will have a direct bearing on the commerce, finance, labor, industry or agriculture generally, questions of standing to maintain an action should be given less rigid and more liberal answer.

Id.

The issues raised in this case meet every portion of the test set out in *Washington Natural Gas* and applied in *American Traffic*. The issue is “significant and continuing” as it has repeatedly arisen in Spokane elections and addresses substantial issues of constitutional rights and economic development. It will directly affect the “substantial segment of the population” that lives in Washington’s second-largest city, as well as the additional Washington (and Idaho) citizens for whom Spokane is an essential economic, social, cultural, and civic base. *See also* Part III.C.1, below. And as the declarations of the various Respondents and the plain language of the proposed initiative make clear, the initiative would have

significant repercussions for “commerce, finance, labor, industry, [and] agriculture.” *Wash. Nat’l Gas*, 77 Wn.2d at 96.

The Court’s decision implies that a traffic violation in Bellingham is of more substantial public importance than questions concerning the constitutional rights of everyone living or working across eastern Washington and northern Idaho. Plainly that is not the case and the issues raised in the Envision initiative (the so-called “Community Bill of Rights”) are matters of substantial public importance.

C. The Court Should Reconsider Its Opinion Because it Overlooks or Misapprehends Material Issues of Fact

The Court also overlooked or misapprehended issues of material fact. Most importantly, the Court relies on a misconception about the prevalence of similar “Community Bills of Rights”; wrongly states that Respondents did not raise their standing to challenge the Corporate Rights provision in the proceedings below; fails to analyze the interests of Spokane County as a public entity; and does not consider the position of the City of Spokane in this litigation.

1. Respondents Meet the Court’s Mistakenly Narrow Conception of the Public Interest Exception Because Community Bills of Rights are Common

Because Envision Spokane conceded Respondents’ standing and the parties did not, therefore, focus on the standing issue in their briefing, Respondents did not have the opportunity to introduce evidence of similar initiatives in other locales. The Court, however, has mistakenly assumed

the Envision Community Bill of Rights is unique. *See* Opinion at 16. It is not. It is part of a nationwide legislative effort. The nationwide organization supporting Envision Spokane (and for whom appellant’s counsel works) claims that more than 100 cities across the nation have adopted laws that it has drafted. “Where We Work,” Community Environmental Legal Defense Fund, available at <http://www.celfd.org/where-we-work-1> (last visited February 18, 2015). Moreover, related community bills of rights initiatives have been proposed in Bellingham, as well as in multiple cities and counties in Oregon. *See, e.g., City of Bellingham v. Whatcom Cnty.*, No. 691520, slip op. (Wash. Ct. App. Sept. 21, 2012) and CP 7 (Complaint, ¶ 4); *see also Allen v. Benton County*, Case No. 12-10594 (Benton County (Ore.) Circuit Court, 2013); *Reerslev v. Betschart*, Case No. 16-13-19628 (Lane County (Ore.) Circuit Court, 2014); Prospective Petition 15-1 (“Establishing a Community Bill of Rights for the People of Columbia County”), Columbia County (Ore.), 2015. Tellingly, the other Community Bills of Rights initiatives in Washington and Oregon challenged in court have all failed to withstand pre-election challenges.

Furthermore, even if considered independently, the Envision initiative by its terms presents questions of concern well beyond the borders of the City of Spokane. *Compare* Opinion at 16. The Environmental Rights provision grants standing to all residents of the City of Spokane to enforce undefined river flow and water quality standards

throughout the Spokane River basin. Opinion, Appendix 1. The Spokane River flows for 112 miles from Lake Coeur d'Alene in Idaho to Lake Roosevelt in Lincoln County, Washington, through Spokane, Stevens, and Lincoln Counties, the cities of Coeur d'Alene and Post Falls, Idaho and Liberty Lake, Spokane Valley, and Spokane, Washington, and the Spokane Indian Reservation. The Spokane Valley-Rathdum Prairie Aquifer also extends through Stevens and Spokane Counties and into Idaho. The river and aquifer cover a total of more than 6,000 square miles in both states. "Welcome to the Spokane River", Washington Department of Ecology, available at http://www.ecy.wa.gov/geographic/spokane/images/sr_riversign.pdf (last visited February 18, 2015).

Because versions of this initiative have been raised in cities across the state and country, and because this specific initiative implicates multiple counties, multiple states, and sovereign Indian country, Respondents have established standing under even the Court's mistakenly limited version of the public importance exception, and the Court should reconsider its decision based on these overlooked material facts.

2. Respondents Raised the Issue of Standing to Challenge the Corporate Rights Provision Below

The Opinion states that Respondents "did not argue to the trial court their standing to challenge the Corporate Rights provision." Opinion

at 11. This is incorrect.¹² Plaintiff's Motion for Declaratory Judgment specifically highlighted the injuries that the Corporate Rights provision would cause Respondents: "the SMAC and Envision initiatives impair Plaintiffs' constitutional rights to free speech, political expression, and government petition under the First Amendment." CP 226. This segment of the argument referred directly to the language of the Envision Corporate Rights provision. CP 227 (Noting that the injury would be caused by language that "depriv[ed] corporations that violate the initiatives of their speech rights."). Because many of the Respondents are corporations, both for- and not-for-profit, they are clearly within the "zone of interests" of an initiative seeking to place conditions on their existence and their fundamental rights. *See, e.g.*, CP 29-30 (Complaint at ¶¶ 76-77, noting that "All plaintiffs have a well-grounded fear of the immediate invasion of their rights because the Corporate Rights provision will strip corporations and other business entities of constitutional, statutory, and regulatory protections. . . All plaintiffs who are "corporations or other business entities" have a particularly well grounded fear . . .").

¹² The analysis was understandably limited because standing to challenge the Envision Spokane initiative was not controversial. Standing to challenge harms to core First Amendment rights – harms that the Corporate Rights provision would cause – was addressed in detail concerning the SMAC initiative and Respondents discussed the Envision Spokane Corporate Rights provision in conjunction with the SMAC initiative's corporate rights provisions. The same arguments this Court noted as persuasive concerning Respondents' pre-election standing to challenge the SMAC initiative apply to Respondents' standing to challenge the Corporate Rights provision of the Envision Spokane initiative. As a result, the Court should recognize Respondents' standing to challenge at least the Corporate Rights provision and reach the merits of that claim, including whether the entire initiative fails because the Corporate Rights provision is not severable from the remaining Community Bill of Rights.

Because the Court overlooked this portion of the record below, the Court should reconsider its decision not to address Respondents' standing to challenge the Corporate Rights provision, as well as Respondents' argument that the Corporate Rights provision cannot be severed from the remainder of the Community Bill of Rights.

3. The Court Overlooked Spokane County's Status as a Public Entity and Its Interest in Elections

Although the Court discusses Spokane County's interest as the operator of a sewage treatment plant, *see* Opinion at 11, it overlooks important considerations raised by the County, and does not consider those considerations' impacts on the Court's standing analysis.

The County argued below that the proposed initiative would "impair Spokane County's ability to perform its statutory responsibilities." CP 166 (Dec. of Spokane County in Support of Plaintiff's Motion for Preliminary Injunction). In its analysis of the standing requirements under the UDJA, the Opinion does not discuss the impact on the County beyond its wastewater treatment plant. The Opinion's discussion of the public importance doctrine thus overlooks any analysis of a legal question of public importance: whether (and how) a local government (a city) can infringe on the rights and responsibilities of another local government (a county). Moreover, the County's involvement challenging the initiative underscores the significant public interest involved in this case.¹³

¹³ Spokane County also shares the interests of the City of Spokane in protecting the integrity of the initiative process by avoiding advisory votes on invalid proposed initiatives. *See* CP 9 (Complaint at ¶ 9). Pursuant to RCW 29A.04.216, the County

4. The City's Role as an Interested Non-Party Is Relevant to the Standing Analysis

The Opinion noted that “The City of Spokane had standing to challenge the Envision Initiative if it had desired to do so.” Opinion at 18. While the City is not a plaintiff in this suit, it did make its position clear: “*if* this Court declares the initiatives invalid the Court should also provide clear guidance to the Spokane County Auditor that the initiative(s) should not be placed on the . . . ballot.” CP 251 (Defendant City of Spokane’s Response to Plaintiff’s Motion for Declaratory Judgment) (emphasis in original). The City does not want to suffer the harm of paying for an election and undermine the integrity of its initiative process by holding an election if the Court concludes the initiative is invalid. At a minimum, the City’s role in this lawsuit establishes that, contrary to the Opinion’s erroneous reading of City Council legislative history, *see* Opinion at 16, fn. 19, the issue is of substantial public importance. *See* CP 251-57.

D. The Court Should Reconsider its Opinion Because the Remedy it Grants is Premature

The remedy proposed by the Court is not clearly permissible, and the Court should reconsider its instruction to place the measure on the next ballot. Because the issue involves complicated questions of law and fact, in the event that the Court does not reconsider its standing determination,

Auditor is responsible for supervising all local elections. Although the statute authorizes the Auditor to apportion to each city its share of the costs of any election, it is the County that must bear the expense in the first instance. In addition, the County itself bears the expense of such apportionment, meaning that it too is financially harmed. Even if the financial harm is minimal, that interest alone – an interest overlooked by the Court – is enough to support standing for a declaratory judgment action in this case.

it should still reconsider its instruction and remand to the trial court for a more complete analysis of available remedies.

First, since this initiative was first proposed, the Spokane City Council has changed the process by which citizens can bring forth local initiatives. Current law requires the Spokane city attorney's office to draft ballot summaries, while the Envision initiative's ballot summary was drafted by its sponsors. *See* Mike Prager, Council Revamps Initiative Process, The Spokesman-Review (Spokane, WA), May 1, 2012, available at <http://www.spokesman.com/stories/2012/may/01/council-revs-initiative-process/> (last visited February 18, 2015). Thus, it is unclear whether the initiative as currently drafted is eligible for the ballot under current law or if a new summary should be drafted by the City.

Second, the next general election is scheduled for November 2016. *See* CP 205 (Defendant Vicky Dalton, Spokane County Auditor's, Response to Motions, stating that this initiative must be placed on a general election ballot). It is unclear from the record before this Court whether the initiative's signatures come from persons who remain "registered and qualified electors of the City," Spokane Charter art. IX, § 82, and whether signatures obtained during one election cycle may legally be used to qualify a ballot initiative in a subsequent cycle with a different electorate. Further, if the ballot summary is required to be amended as described above, the effects of that amendment on the validity of any signatures remain unclear.

IV. CONCLUSION

For all of the reasons above, Respondents request the Court reconsider its Opinion and affirm the decision of the trial court.

RESPECTFULLY SUBMITTED this 18th day of February, 2015.

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CERTIFICATE OF SERVICE

I, Barbara McAdams, the undersigned, hereby declare that on February 18, 2015, pursuant to the parties' agreement regarding electronic service under CR 5(b)(7), I sent an e-mail attaching:

- 1) Respondents' Motion for Reconsideration with Appendix A;

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

Executed this 18th day of February, 2015 in Seattle, Washington.


Barbara J. McAdams

Appendix A

#47189-4

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CLERK OF SUPREME COURT STATE OF WASHINGTON
STATE OF WASHINGTON

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NOTICE: ALL CASES
PROSECUTED BY THE
CLERK OF SUPREME COURT

SEATTLE BUILDING AND CONSTRUCTION TRADES COUNCIL,
an unincorporated association; WILLIAM E. CROAKE,

Respondents,

vs.

THE CITY OF SEATTLE, a municipal corporation;
TIM HILL, Comptroller of The City of Seattle; KING
COUNTY, a county of the State of Washington;
CLINT G. ELSOM, Manager, Records and Elections
Division of King County; DONALD R. PERRIN, Super-
intendent of Elections of King County,

Appellants.

BRIEF OF APPELLANTS

FILED
SUPREME COURT
STATE OF WASHINGTON
AUG 15 PM 2:21
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CLERK

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AUG 15 1980

By DAVIS, WRIGHT, TODD, RIESE & JONES

TABLE OF CONTENTS

	<u>Page</u>
ASSIGNMENT OF ERROR	1
Statement of Issues for Review	2
STATEMENT OF THE CASE	3
ARGUMENT	
A. Initiative Measure No. 21 and the Superior Court's Judgment	8
B. The effect of RCW 47.20.645-.647	14
C. The Pertinence of RCW Chapter 47.52 and the Memorandum Agreement	21
(1) Efficacy as a condition to submission	23
(2) Political processes come first --	25
(3) Improper proceeding --	30
D. The Legislative/Administrative distinction	32
(1) Administrative vis-a-vis legislative act	33
(2) Preemption	38
E. The real nature of Initiative Measure No. 21	40
F. Inequity of Injunctive Relief	50
CONCLUSION	53

effect. No single part -- not even an important one -- comprises the total. If any part be within the initiative powers, the electorate should be allowed to vote on the whole.

F. Inequity of Injunctive Relief

An injunction is an extraordinary relief that may be granted or withheld by a court sitting in equity in the exercise of its discretion.

A court of equity ought not exercise its jurisdiction when only political questions are involved and no property rights are affected. Cf. Weyerhaeuser Timber Co. v. Banker 186 Wash. 332, 344, 58 P.2d 285 (1936); Wilton v. Pierce County, 61 Wash. 386, 389, 112 Pac. 386 (1910); Gottstein v. Lister, 88 Wash. 462, 515, 153 Pac. 595 (1915). Neither the complaint nor any supplemental material shows any injury to the persons or property rights of the plaintiffs from holding the election. If Initiative Measure No. 21 were to pass, no city expenditures need to be restrained. No change would occur in any judicially-enforceable right or liabilities. When the election expense itself is the sole basis for standing, a case is surely political in nature.

Standing was claimed as a taxpayer to spare the public the cost of a useless election, cf. Yakima v. Huza, 67 Wn.2d 351, 407 P.2d 815 (1965); State ex rel. Berry v. Superior Court, 92 Wash. 76, 159 Pac. 92 (1916); 26 American Jurisprudence 2nd 33, Elections § 201.

(Complaint ¶ 1.1-2, CP 253) Out-of-state cases discount the complainant's interest as a taxpayer when the additional cost is low. Power v. Ratliff 112 Miss. 88, 72 So. 864, 865-866 (1916); Brumfield v. Brock, 169 Miss. 784, 142 So. 745 (1932). The incremental cost of placing Initiative Measure No. 21 upon the November 4, 1980 ballot is about \$5,000 (Defendants' Memorandum, Ex 1, Affidavit of Clint G. Elsom, p. 1, CP 48). With a project of I-90's magnitude, that cost would be a worthwhile investment if the election could accelerate the project's ultimate fate by even a single day.

The pendency of the election is not causing any delays to the I-90 project. The I-90 project is now in a holding pattern. (Defendants' Memorandum, Ex 8-15, CP 90-128) No approvals are pending before any City officials or agencies nor does the City anticipate any during 1980. The State Department of Transportation has expressed no concern about the initiative nor is it a party to these proceedings.

In contrast enjoining the election would disrupt the orderly course of judicial review that might occur if Initiative Measure No. 21 were to pass. If it passes and political processes fail to resolve the antagonism between Initiative Measure No. 21 and the I-90 project, Section 7 would direct the City Attorney to maintain all actions necessary to enforce its provisions. As an ordinance, Initiative Measure No. 21 would be entitled

to a presumption of validity; its severability clause in Section 9 (if necessary) could be given effect; and, like contingent appropriations and statutes (e.g. Chapter 239, Laws of 1979, 1st Ex. Sess., RCW 35.92.360, and Chapter 116, Laws of 1980), the facts current when the law takes effect would be determinative. More importantly, an enforcement action would bring all parties to the Memorandum Agreement before the court. Discovery would present facts and place information in clear focus. The parties would frame the issues against a precise background. By comparison, the time to respond to Building Trades Council motion caused the City on a matter of great magnitude to supply newspapers clippings, hearsay evidence, in order to provide background facts. A decree in a post-election action would bind the concerned parties on the merits.

Judicial intrusion into a political dispute has insidious effects on the electoral process. If available, injunctions will become an instrument in political tactics.

The opponents of an initiative would gain an additional weapon since enjoining an election by its nature would not help the proponents. A lawsuit to enjoin an election can impair the proponents' campaign -- its pendency alone can dampen fund raising; a preliminary injunction can disrupt momentum; and the cost of intervening or

an appeal could deplete the proponents' resources. A judge's remarks in rendering an oral decision could become fodder for partisans. Even if the injunction is dissolved in this case, the opponents of Initiative Measure No. 21 could use remarks in the Superior Court's oral decision to further their purpose.

Finally, the injunction will set a precedent that Washington courts are available as policemen in the political process. That is not a judicial function. State ex rel. Case v. Superior Court, 81 Wash. 623, 634, 143 Pac. 461 (1914); Parmeter v. Bourne, 8 Wash. 45, 38 Pac. 586, 757 (1894) [removal of county seat]; State ex rel. Fawcett v. Superior Court, 14 Wash. 604 45 Pac. 23 (1896) [election contest]; Whitten v. Silverman, 105 Wash. 238, 177 Pac. 737 (1919 [election contest]).

CONCLUSION

Keep the courts out of politics: Quash the injunction, not the election! Let the judgment be reversed.

Respectfully submitted,

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Tim Hill, City Comptroller

In the
SUPREME COURT OF THE STATE OF WASHINGTON

NO. 47189-4

SEATTLE BUILDING AND CONSTRUCTION
TRADE COUNCIL,
an unincorporated association;
WILLIAM E. CROAKE,

Respondents,

v.

THE CITY OF SEATTLE,
a municipal corporation;
TIM HILL, Comptroller of the City;
KING COUNTY, a county of the
State of Washington;
CLINT G. ELSOM, Manager,
Records and Elections Division
of King County;
DONALD R. PERRIN, Superintendent of
Elections of King County,

Appellants;

BRIEF OF RESPONDENTS

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TABLE OF CONTENTS

	<u>Page</u>
I. STATEMENT OF ISSUES FOR REVIEW	1
II. STATEMENT OF THE CASE	1
III. FACTS	2
A. Background of History of Interstate 90 Project	2
B. Binding Arbitration of Dispute	6
C. The 1975 Legislation	7
D. Memorandum Agreement	9
IV. ARGUMENT IN SUPPORT OF JUDGMENT	10
A. Injunctive Relief is Appropriate Where Initiative 21 Is Beyond the Initiative Power	10
1. The Courts Have Consistently Held That Challenges Going to the Scope of the Initiative Power Will Support Injunctive Relief	10
2. Principles of Judicial Economy Justify This Court Reaching the Merits of the Controversy	13
B. The Provisions of Initiative Measure No. 21 Are Invalid as Beyond the Scope of the Initiative Power	14
1. The Power to Invoke the Withdrawal and Substitution Option Has Been Preempted by the State	15
(a) The Initiative Power Does Not Extend to Matters Which Have Been Preempted by the State	16

(b)	The Right to Disapprove the I-90 Plan Unilaterally Has Been Precluded by the Limited Access Facility Act, Including the Review Board Procedure in Which Seattle Participated	17
(c)	Initiative 21 Has, In Fact, Been Preempted by Ch. 272, Laws of 1975, 1st Ex. Sess	19
(d)	The "Modification, Alteration, or Vacation of Any Street, Alley, Sidewalk, or Other Public Right-of-Way . . ." Are Administrative Acts Preempted by the State	24
2.	The Decision to Request Withdrawal Is Administrative in Nature	26
(a)	Initiatives Are Limited to Legislative Matters	26
(b)	A Decision to "Withdraw and Substitute" Is Administrative in Nature	28
(c)	Revocation of the Memorandum Agreement Is Administrative in Nature	32
(d)	The Adoption of a "Policy" Which Cannot be Carried into Effect Is Not "Legislation"	36
3.	The Required Procedure for Requesting Withdrawal of an Interstate Segment Is Inconsistent with and Impliedly Precludes the Use of the Initiative Process	41

(a)	Powers Delegated to a Specific Municipal Body May Not Be the Subject of Initiative	41
(b)	As a Matter of State Law, the Power of "Withdrawal" Involved Here Vests Specifically with the City Council	43
(c)	As a Matter of Federal Law, The Power Involved Here Vests Specifically with the City Council, Not the Municipality as an Entity	43
C.	The Provisions of Initiative Measure No. 21 Which Seek to Effect Projects Other Than the Interstate 90 Project Are Similarly Invalid	52
V.	ARGUMENT IN RESPONSE TO APPELLANT	58
A.	Initiative 21 Is in Its Essence an I-90 Initiative	58
1.	The "Heart and Purpose" of the Initiative	58
2.	Ancillary Effects	59
B.	Potential Limitation on State or Federal Funding Are Irrelevant	60
C.	Appellants Have a Misplaced Focus in the "Memorandum Agreement"	62
D.	Reliance on the Recall Analogy Is Misplaced	62
E.	The Severability Clause Should Not Save the Initiative	63
VI.	CONCLUSION	65

metropolitan area. In December, 1976 a Memorandum Agreement was entered into by the Washington State Highway Commission; King County, the Municipality of Metropolitan Seattle, and the three affected cities. To make it clear that the determination by the board of review could be modified, the 1977 legislature amended RCW 47.52.180 to provide that a modification of the findings of the board of review may be made by stipulation of the parties. Section 3, ch. 77, Laws of 1977 (effective under an emergency clause of March 30, 1977) (see Appendix VI to Plaintiff's Memorandum at Trial, CP 224-237).

With the adoption of the Memorandum Agreement, the design was finalized.

IV.

ARGUMENT IN SUPPORT OF JUDGMENT

A. Injunctive Relief is Appropriate Where Initiative 21 Is Beyond the Initiative Power.

1. The Courts Have Consistently Held That Challenges Going to the Scope of the Initiative Power Will Support Injunctive Relief.

The City of Seattle has argued that an injunction should not be issued to prevent the

submission of the initiative measure to the voters and its adoption by the voters. The City fails to draw the necessary distinction between a challenge addressing the substance of the legislation proposed, such as a contention that the legislation is unconstitutional, as contrasted with a procedural challenge addressed to the validity of the use of the initiative process to accomplish the desired result. It is respondents' argument that Initiative 21 is not a valid exercise of the initiative process and that contention frames the context in which the appropriateness of pre-election relief must be addressed.

Similar questions have been specifically presented and ruled upon by the Washington courts. Thus, Ford v. Logan, 79 Wn.2d 147, 483 P.2d 1247 (1971), challenged an initiative measure brought under the King County Charter. Ford filed a complaint for a declaratory judgment and injunction relief seeking the same relief sought here -- a determination that the initiative measure was invalid as beyond the scope of the initiative power and an injunction preventing its submission

to the voters. The opinion announcing the decision of the court posed and answered the question as follows:

Do our courts have jurisdiction to determine whether the subject matter of a proposed initiative is within the scope of the initiative power before the proposal is enacted by the electorate? We conclude that they do.

79 Wn.2d at 151. (Opinion by Justice Neill concurred in by Justices McGovern and Stafford. Two additional justices concurred in the result and three justices dissented.) The court further concluded that the proposed initiative involved a matter which could not properly be dealt with by initiative and affirmed the trial court's injunction.

The principle thus stated is so well established as to be beyond challenge. Thus, as long ago as 1916 the state Supreme Court enjoined proceeding with an initiative measure even before signatures were obtained on the grounds that the form of the initiative was invalid. State ex rel. Barry v. Superior Court, 92 Wash. 16, 159 Pac. 92 (1916); Leonard v. Bothell, 87 Wn.2d 847, 557 P.2d

1306 (1976), citing Ford v. Logan, stated that referenda are limited to acts which are legislative in nature and refused to permit a referendum where the court determined that the proposed referendum was beyond the scope of the referendum power. See also Durocher v. King County, 80 Wn.2d 139, 492 P.2d 547 (1972), and Neils v. Seattle, 185 Wash. 269, 53 P.2d 848 (1936). Accord, In re Certain Petitions, Etc., 154 N.J. Super. 482, 381 A.2d 1217 (App. Div. 1977); Amalgamated Transit Union, Division 575 v. Yerkovich, 24 Or. App. 221, 545 P.2d 144 (1976). The common thread running through these cases is the holding that elections, whether purporting to be under the initiative or referendum power, can and will be enjoined when the proposed statute or ordinance does not properly fall within the initiative or referendum power.

2. Principles of Judicial Economy
Justify This Court Reaching
the Merits of the Controversy.

Even if the court should conclude that the trial court should not have granted injunctive relief before the election, we respectfully urge

that this court should consider the case on the merits and affirm the declaratory judgment entered below." The record is sufficient for a determination on the merits and a clear determination now, precluding subsequent litigation, will serve the ends of judicial economy. See Bolser v. Washington State Liquor Control Board, 90 Wn.2d 223, 580 P.2d 629 (1978). Principles of political economy would equally be served by preventing a hasty (five-week) campaign, and an unnecessary election on an initiative destined to be declared illegal.

B. The Provisions of Initiative Measure No. 21 Are Invalid as Beyond the Scope of the Initiative Power.

Initiative 21 attempts to affect the Interstate 90 project by declaring it to be the policy of the City of Seattle to withdraw from the Memorandum Agreement of December 21, 1976 and to prohibit construction of any new bridge or the expansion of any existing bridge across Lake Washington. Specifically, the initiative provides that the City will not modify any street or other public right-of-way in connection with an expansion of State Route 90 (I-90) or State Route 520

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

SPOKANE ENTREPRENEURIAL)
CENTER,)
SPOKANE COUNTY, DOWNTOWN)
SPOKANE PARTNERSHIP, GREATER)
SPOKANE INCORPORATED, THE)
SPOKANE BUILDING OWNERS AND)
MANAGERS ASSOCIATION,)
SPOKANE ASSOCIATION OF)
REALTORS, THE SPOKANE HOME)
BUILDERS ASSOCIATION, THE)
INLAND PACIFIC CHAPTER OF)
ASSOCIATED BUILDERS AND)
CONTRACTORS, AVISTA)
CORPORATION, PEARSON)
PACKAGING SYSTEMS, WILLIAM)
BUTLER, NEIL MULLER, STEVE)
SALVATORI, NANCY MCLAUGHLIN,)
MICHAEL ALLEN, and TOM POWER,)

Respondents,)

v.)

SPOKANE MOVES TO AMEND THE)
CONSTITUTION, ENVISION)
SPOKANE, VICKY DALTON,)
SPOKANE COUNTY AUDITOR, in her)
official capacity, THE CITY OF)
SPOKANE,)

Appellants.)

No. 31887-7-III

ORDER DENYING
MOTION FOR
RECONSIDERATION

THE COURT has considered respondent's motion for reconsideration and is of the opinion the motion should be denied. Therefore,

No. 31887-7-III

IT IS ORDERED, the motion for reconsideration of this court's decision of January 29, 2015 is hereby denied.

DATED: March 10, 2015

PANEL: Judges Korsmo, Fearing & Lawrence-Berrey

FOR THE COURT:


LAUREL SIDDOWAY
Chief Judge