No. 90996-2

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

YES FOR EARLY SUCCESS, a non-profit corporation, LAURA CHANDLER, and BARBARA FLYE,
Petitioners,

v.

CITY OF SEATTLE and KING COUNTY,
Respondents.

RESPONDENT CITY OF SEATTLE'S ANSWER TO PETITION FOR REVIEW

PACIFICA LAW GROUP LLP
Paul J. Lawrence, WSBA #13557
Gregory J. Wong, WSBA #39329
Tania Culbertson, WSBA #45946
1191 Second Avenue, Suite 2000
Seattle, WA 98101
(206) 245-1700

PETER S. HOLMES,
Seattle City Attorney
Carlton W. Seu, WSBA #26830
Gary T. Smith, WSBA #29718
John B. Schochet, WSBA #36875
Assistant City Attorneys

Attorneys for City of Seattle

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Washington Cases

Non-Washington Cases

Constitutional Provisions

Statutes and Regulations

Rules

Other Authorities

I. INTRODUCTION

The Court of Appeals, applying the strictures of the Washington Constitution and a long and undivided line of Washington authority, determined that a mandatory state statute that establishes the form of ballot titles for local initiatives applied to the City of Seattle ("City"). Rather than preempting or altering Seattle's initiative process, the Court of Appeals simply recognized that the City's process was subject to the general laws of the state and applied the general laws to the particular type of initiative process that Seattle chose to adopt in its Charter. The Court of Appeals decision does not conflict with any decisions of any court in this state, nor does it raise an issue of substantial public interest.

Further, the decision does not raise any issue of state or federal constitutional significance. Petitioners' arguments here are based on an erroneous premise, namely that there is a constitutional or fundamental right under the state or federal constitution to a direct initiative to the people that bypasses the legislature. But no such right exists under the state or federal constitution. The right to have a local initiative is purely a creature of state law. And in Washington that right only emanates from the adoption of a city charter (for first class cities) that is subject to the general laws of the state or from an enactment of the state legislature (for other cities). Here the citizens of Seattle choose to adopt only an initiative

to the legislature. They did not adopt a direct initiative to the people (although they could have and still can).

Petitioners' other claims equally do not present issues appropriate for review by this Court and otherwise lack merit.

The Seattle City Council rejected Petitioners' initiative and instead proposed an alternative—its Preschool Plan—as allowed under Seattle's Charter. The Court of Appeals correctly determined that the form of ballot title mandated by RCW 29A.72.050(3), applicable to local initiatives for which the legislative body has proposed an alternative, applied. And the citizens of Seattle exercised their initiative rights when they passed the City's Preschool Plan by a margin of more than two-to-one over I-107. Review under RAP 13.4 is not merited.

II. IDENTITY OF RESPONDENT

Respondent is the City of Seattle.

III. STATEMENT OF THE CASE

A. The City meets with Petitioners in its development of a Preschool Plan and Petitioners file I-107 in response.

On September 18, 2013, the Seattle City Council adopted Resolution 31478, which established a formal goal of developing and instituting a high-quality preschool program for three- and four-year-old

children in Seattle. *See* Supp. App. 33, § 1.[1] Beginning in February 2014, the City held a series of meetings and discussions with Petitioners in order to gain input from organized labor so that the City could propose a broadly supported plan to voters in the November 2014 election. *See* Supp. App. 1, ¶¶ 2–3, 2, ¶ 4.[2]

On March 11, 2014, Petitioners filed I-107. App. 9–10. The initiative's subject was self-described as "early learning and child care."[3] App. 10, § 704. I-107 was intended to apply to any City preschool program and addressed teacher certification, training, professional development, and communications. *Id.*, §§ 101–503. Further, I-107 set requirements to address teacher compensation and affordability of early learning programs. *Id.*, §§ 201, 301.

Once filed, I-107 provided the framework for Petitioners' demands in their discussions with the City. Petitioners made clear that if the City

---

[1] Throughout this brief, the City will use "App." to refer to the Appendix to the Petition for Review and "Supp. App." to refer to the City's Supplemental Appendix.

[2] Petitioner Yes for Early Success is the I-107 political committee. It was staffed and almost entirely funded by "Kids First," a joint labor partnership of Service Employees International Union Local 925 ("SEIU 925") and American Federation of Teachers – Washington . *See* http://www.yesforearlysuccess.com/fact-sheet/about-2/ (last visited Nov. 6, 2014); http://web6.seattle.gov/ethics/elections/poplist.aspx?cid=378&listtype =contributors (last visited November 27, 2014). Petitioner Laura Chandler is an Executive Board Member of SEIU 925. *See* http://www.seiu925.org/about/where-we-work/ (last visited Nov. 22, 2014).

[3] On March 26, 2014, Petitioner Laura Chandler filed an appeal challenging the City Attorney's formulated ballot title for I-107. Supp. App. 481–504. Chandler requested that the subject of I-107 be changed to "early learning and childcare" to match the language contained in the text of I-107 concerning its subject. Supp. App. 483. On April 2, 2014, the trial court ordered that I-107's statement of subject be "support and standards for early learning and child care." Supp. App. 506.

did not integrate similar provisions into its Preschool Plan, Petitioners would move forward with placing I-107 on the ballot. Supp. App. 3, ¶ 9. Petitioners proceeded to collect sufficient signatures in support of I-107 for presentation to the City Council as required by Seattle City Charter Article IV, § 1.B. Supp. App. 66.

B. The City Council adopts the Preschool Plan as a different measure on the same subject as I-107.

On June 23, 2014, the City Council met in full and open session. For over 77 minutes, it heard extensive public comment on I-107 and the now-developed Preschool Plan, including testimony from Petitioners and other supporters of I-107.[4] City Councilmembers actively debated the City Council's actions on I-107 vis-à-vis the Preschool Plan. *See, e.g., id.* at 35:13, 44:06, 45:09. Ultimately, pursuant to its powers under Charter Article IV, § 1.C, the City Council rejected I-107 on a divided vote. Supp. App. 68. The City Council then adopted Council Bill 118114—now Ordinance 124509—which submitted to voters a proposed "comprehensive approach" to early learning (the Preschool Plan). Supp. App. 70–71. In rejecting I-107 and adopting the Preschool Plan, the City Council stated it was proposing "an alternative measure dealing with the

[4] Complete video of the City Council meeting is available online. *See* Video of Full Council Meeting (June 23, 2014) 1:48-79:22, available at http://www.seattlechannel.org/videos/video.asp?ID=2021450. For public testimony by Petitioners, see 5:15 (Karen Strickland, President of AFT-WA), 7:19 (Laura Chandler).

same subject" as I-107 pursuant to the discretion vested in it by Charter Article IV, § 1.C, and directed that both measures be placed "in conjunction" on the November 4, 2014 ballot "in accordance with applicable law." Supp. App. 110, §§ 2–5.

C. The trial court orders use of a joint ballot title for the Preschool Plan and I-107 to comply with the RCW.

Pursuant to RCW 29A.36.071, which mandates that local ballot titles "must conform with the requirements and be displayed substantially as provided under RCW 29A.72.050," the City sought relief from the trial court's prior ballot title order for I-107. The City sought to employ the joint ballot title form required by RCW 29A.72.050(3) for "an initiative to the legislature for which the legislature has proposed an alternative" for I-107 and the Preschool Plan. *See* Supp. App. 509–23. Under RCW 29A.72.050(3), the voters are asked two questions. First, should either of the measures be enacted into law? Second, regardless of how they voted on the first question, if one of these measures is enacted, which one should it be? Petitioners opposed the City's motion and filed two new actions—a petition for writs alleging OPMA violations and a challenge to the Preschool Plan's ballot title language. By agreement, the Superior Court consolidated the three actions for hearing. On August 15, 2014, Superior Court Judge Helen Halpert heard argument, granted the City's motion for

relief, ordered use of the joint ballot title form in RCW 29A.72.050(3), and denied Petitioners' constitutional and OPMA claims. App. 12–21.

D. The Court of Appeals upholds the Superior Court's rulings and the voters pass the City's Preschool Plan by a more than two-to-one margin.

The Court of Appeals affirmed the Superior Court in a published opinion on September 2, 2014 and denied Petitioners' motion for reconsideration on October 1, 2014. App. 1–8. I-107 and the Preschool Plan appeared together on the ballot for the November 4, 2014 general election as Propositions 1A and 1B, respectively, pursuant to the form required by RCW 29A.72.050(3). On November 25, 2014, King County Elections certified the election results. On the first question, 68% of voters indicated their preference that either 1A or 1B be enacted into law. On the second question, 69% of voters expressed their preference to enact the Preschool Plan (1B) over I-107 (1A).[5]

IV. ARGUMENT

In their Petition, Petitioners must demonstrate that the case meets the standards for discretionary review set forth in RAP 13.4(b). Here, Petitioners have failed to carry this burden. Indeed, Petitioners make only cursory references in two section headings to RAP 13.4(b)(3) (review for significant questions of law under the Constitution of the State of

[5] The certified election results are available at http://www.kingcounty.gov/elections/election-info/2014/201411/results/seattle.aspx.

Washington or of the United States) and RAP 13.4(b)(4) (review for an issue of substantial public interest that should be determined by the Supreme Court). Petitioners fail to set forth substantive arguments demonstrating how the standards for review are met here. For this reason alone review should be denied. Regardless, the legal arguments Petitioners assert do not meet these standards.

A. The Court of Appeals decision is consistent with a long line of authority that state law governs city charters.

Review of the Court of Appeals decision is not appropriate because the decision is consistent with well-settled authority that city charter provisions are subject to the general laws of the state. This conclusion applies to the local initiative process. Here, the legislature has enacted a mandatory law governing the form of a local initiative ballot title. The Court of Appeals correctly held that the mandatory state law applied to the City's initiative process.

Washington's Constitution grants power directly to cities to enact charters for their own local government, but explicitly commands that such charters "shall be subject to and controlled by general laws." Const. art. XI, § 10. This Court has repeatedly held that where a charter's provisions are not in accord with state law, state law governs. *See, e.g.*, *Martin v. Tollefson*, 24 Wn.2d 211, 217, 163 P.2d 594 (1945) (holding that

a general law amended the election procedures provided in the charter of the City of Tacoma because "the overall, comprehensive grant to the cities to frame charters for their own government is limited by reserving to the legislature the right to control such charters by general laws").[6] This rule holds true even where the general law was enacted after the city charter provision in question. *See, e.g., Oakwood Co. v. Tacoma Mausoleum Ass'n*, 22 Wn.2d 692, 695–96, 157 P.2d 595 (1945) (general law enacted in 1943 controlled despite existing provision of the 1927 charter of the City of Tacoma); *Neils v. City of Seattle*, 185 Wash. 269, 274–75, 53 P.2d 848 (1936) (general law first enacted in 1903 superseded provision of the 1890 Seattle Charter).

Here, the legislature has passed a general law governing the form of ballot title for local measures. RCW 29A.36.071. The requirements of RCW 29A.36.071 are unambiguous and mandatory: the statute requires, *inter alia*, that ballot titles for any "question submitted to the voters of a local government . . . must conform with the requirements and be displayed substantially as provided under RCW 29A.72.050" (emphasis

---

[6] *See also Mosebar v. Moore*, 41 Wn.2d 216, 222, 248 P.2d 385 (1952) (analyzing Const. art. XI, § 10 and holding that "city charters are specifically made subject to and controlled by [the state's] general laws"); *Hindman v. Boyd*, 42 Wash. 17, 29, 84 P. 609 (1906) ("It is the evident policy of the state Constitution that the charters of cities of the first class and amendments thereto shall be subject to the control of general laws. . . . The power is vested in the people to adopt their own charter, and also to amend it; but the matter is subject to the control of general laws.").

added). As this Court concluded in *Mukilteo Citizens for Simple Government v. City of Mukilteo*, 174 Wn.2d 41, 48–49, 272 P.3d 227 (2012), Washington law imposes certain "procedural requirements for initiatives," including "a ballot title form that local initiatives are to follow".[7]

RCW 29A.72.050 provides two potential ballot title forms depending on the procedural posture of the initiative. The first ballot title form applies to "an initiative to the people, or for an initiative to the legislature for which the legislature has not proposed an alternative." RCW 29A.72.050(2). The second ballot title form applies to "an initiative to the legislature for which the legislature has proposed an alternative." RCW 29A.72.050(3).[8]

The only initiative procedure permitted under the Seattle Charter is an initiative to the legislative body. The Charter provides that all initiatives receiving sufficient signatures must be forwarded to the City Council. Once forwarded, the City Council must take one of three actions: 1) it may adopt the initiative and enact it into law; 2) it may reject the initiative, which has the effect of placing the initiative on the ballot to be

---

[7] *See also Knowles v. Holly*, 82 Wn.2d 694, 700–01, 513 P.2d 18 (1973) (where a statute is incorporated by reference, the "precepts and terms to which reference is made are to be considered and treated as if they were incorporated into and made a part of the referring act, just as completely as if they had been explicitly written therein").

[8] There are further ballot title forms for referenda, which are not relevant here.

voted on by the people; or 3) it may reject the initiative and propose a different measure on the same subject as an alternative and both measures are placed on the ballot together. Charter, art. IV, §§ 1.B, 1.C. This is analogous to a state initiative to the legislature, where, upon being presented an initiative, the legislature has the option to 1) adopt the initiative as law; 2) adopt the initiative and refer it to a vote; 3) reject the initiative in which case the initiative is sent to the people for a vote; or 4) reject the initiative and propose a different one dealing with the same subject, in which case both alternatives go to the people. Const. art. II, § 1. Here, the City Council chose to reject I-107 and propose an alternative measure. Under the statutory scheme, then, the required form of ballot title is the joint form for "an initiative to the legislature for which the legislature has proposed an alternative." RCW 29A.72.050(3).

Petitioners' arguments against application of the mandatory local ballot title statute are without merit. First, Petitioners' argument that the Seattle Charter mandates the use of the single-measure format of RCW 29A.72.050(2) is simply wrong. That format applies only for "an initiative to the people, or for an initiative to the legislature for which the legislature has not proposed an alternative". RCW 29A.72.050(2). Under the Seattle Charter, there is no ability to bring an initiative directly to the people. And there is no question the City Council put forth an alternative

measure to I-107. The single-measure format does not apply. Petitioners cite no relevant authority that would permit rewriting the unambiguous language of RCW 29A.72.050 in the guise of "harmonizing" the statute with the Seattle Charter. Regardless, to the extent the initiative process in the Seattle Charter may be read to allow for separate votes on the two alternatives, the plain language of RCW 29A.72.050(3) controls.

Second, Petitioners cite no authority or legislative history for their assertion that RCW 29A.36.071 is simply "ministerial." The citation to RCW 29.79.320 (1965) is not relevant to RCW 29A.36.071, in which the legislature mandates that local ballot measures follow the state form. Indeed, if anything can be gleaned from the legislative history it is that the legislature intended the local ballot title statute to apply as written. In 1993, the legislature established mandatory ballot titles for state and local referenda. Laws of 1993, ch. 256, § 7. In 2000, the legislature extended the mandatory ballot titles to all local measures. Laws of 2000, ch. 197, § 12. In 2003, the legislature enacted comprehensive election reform (an almost 200 page bill), and purposefully reenacted the law establishing mandatory local ballot titles. Laws of 2003, ch. 111, § 907, 1806. If the legislature had intended for the local ballot title statute to have no substantive effect, it would not have reenacted it in 2003. Yet that is what the legislature chose to do.

Third, Petitioners' suggestion that RCW 29A.36.071(3), which provides that the ballot title forms do "not apply if another provision of law specifies the ballot title for a specific type of ballot question or proposition," should apply here likewise is incorrect. When read as a whole, "another provision of law" references other state laws that designate the specific ballot format in a specific context such as RCW 29A.36.210(2) ("The ballot proposition authorizing a taxing district to impose a permanent regular tax levy under RCW 84.52.069 must contain in substance the following . . .") and RCW 35.61.030(3) ("The proposition shall include the following terms . . ."). Any other reading would effectively render RCW 29A.36.071(1) meaningless and create a loophole exempting all local initiatives from state regulation.

Fourth, Petitioners' argument that the Court of Appeals decision prevents voters from "overcom[ing] legislative obstacles by placing legislation on the ballot for approval or rejection" ignores the initiative process available under the Seattle Charter. Again, the Seattle Charter provides no mechanism for an initiative directly to the people. Seattle voters have never had the right to place legislation directly on the ballot without City Council review.

Fifth, the fact that Seattle's initiative process is a valid exercise of the City's authority does not render that process immune from the general

laws. *Hartig v. Seattle*, 53 Wash. 432, 102 P. 408 (1909), does not stand for the proposition that Seattle's initiative and referendum powers are exempt from the constitution's mandate that city charters shall be subject to and controlled by general laws. Rather, this Court upheld the initiative and referendum amendment to the Seattle Charter, holding that it did not conflict with a general law vesting the legislative powers of cities in a mayor and city council. The *Hartig* Court simply found no conflict with the then-existing general laws.

Finally, Petitioners' preemption argument is without merit. The only preemption case Petitioners cite, *Brown v. City of Yakima*, 116 Wn.2d 556, 807 P.2d 353 (1991), is wholly inapposite. *Brown* addressed the preemption of local laws passed under the broad police powers granted to cities in Article XI, § 11. The City's exercise of its police powers is not at issue in this case. Preemption is not relevant.

In sum, the Court of Appeals decision is consistent with a long line of cases from this Court and does not present any significant questions of law under the state constitution that merit review.

B. Use of the joint ballot title does not change the initiative right under the Seattle Charter, or otherwise raise a reviewable issue of public interest.

The initiative right under the Seattle Charter is as viable today as it has been historically. As described above, the Seattle Charter provides for

only initiatives to the City Council. Use of the joint ballot title form does nothing to alter that initiative right. The joint ballot title simply puts the initiative and its legislative alternative on the ballot together so voters can express their preference at the ballot box.[9] This statutory mandate to discern voter intent at the time of voting fails to raise a substantial issue of public interest that merits review. And, of course, there is nothing to prevent citizens from amending the Seattle Charter to allow for initiatives directly to the people.

Further, Petitioners' claim that employing the joint ballot title form leaves no means to determine the outcome of the initiative election or fails to determine a majority is incorrect.[10] The joint ballot title form ensures majority approval because voters are asked, regardless of how they vote on whether either measure should be enacted, which of the two measures they prefer. The measure receiving the most votes in answer to this question achieves a majority vote. This is the exact same procedure employed for state legislative alternatives to initiatives. Petitioners fail to articulate why this identical procedure is unconstitutional when applied to

[9] This is entirely consistent with the Seattle Charter. Where, as here, the two measures conflict "in any particular," the Seattle Charter mandates that only one measure will be adopted—the measure "receiving the highest number of affirmative votes"—and the other rejected. Charter, art. IV, § 1.G. The joint ballot title form provided by RCW 29A.72.050(3) makes it clear to voters that only one measure will be adopted and thus allows voters to express their preference at the ballot box. The measure with the higher number of affirmative votes prevails.

[10] Petitioners cite their "unrebutted expert," even though there was no expert testimony in this case. Further, Petitioners' expert is simply their own political polling firm. App. 37.

local legislative alternatives. And one need only consult the results of the most recent election to see how this procedure is borne out in practice: 68 percent voted for passage of either 1A or 1B; 69 percent then voted for 1B over 1A. The voters clearly expressed their preference.

C. Petitioners' constitutional rights claims do not merit review.

Petitioners have not demonstrated that employing the joint ballot title form under RCW 29A.72.050(3) deprives voters of their constitutional rights and their conclusory allegations that the joint form of ballot title imposes a "severe restriction" on petitioning, speech, and voting rights are contradicted by the facts and the law. In fact, Petitioners have failed to demonstrate any burden on First and Fourteenth Amendment rights, let alone a burden severe enough to warrant strict scrutiny. *See Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (degree of scrutiny of state election laws depends upon "the extent to which a challenged regulation burdens First and Fourteenth Amendment rights"). Finding no Washington law in support of their position, Petitioners cite a non-binding opinion regarding the constitutionality under Massachusetts law of a legislative substitute for an initiative. *See Buckley v. Sec'y of Commonwealth*, 371 Mass. 195, 355 N.E.2d 806 (1976). *Buckley* is concerned with initiatives directly to the people under the constitution of

Massachusetts and examines whether the particular legislative substitute proposed was sufficiently related to the subject matter of the people's initiative to serve as an "alternative." *Id.* at 200. *Buckley* is inapposite.

Further, Petitioners' political speech arguments do not present a significant constitutional question because the First Amendment is not implicated by laws that determine the process by which legislation is enacted. *Initiative & Referendum Inst. v. Walker*, 450 F.3d 1082, 1098–1101 (10th Cir. 2006) (holding state law requirement that initiative measures that relate to wildlife management must receive a two-thirds supermajority vote does not implicate the First Amendment). "Although the First Amendment protects political speech incident to an initiative campaign, it does not protect the right to make law, by initiative or otherwise." *Id.* at 1099. "The distinction is between laws that regulate or restrict the communicative conduct of persons advocating a position in a referendum, which warrant strict scrutiny, and laws that determine the process by which legislation is enacted, which do not." *Id.*; *see also Save Palisade FruitLands v. Todd*, 279 F.3d 1204, 1211 (10th Cir. 2002) (holding that "the right to free speech and the right to vote are not implicated by the state's creation of an initiative procedure, but only by the state's attempts to regulate speech associated with an initiative procedure, which is not the case here"); *Campbell v. Buckley*, 11 F. Supp.

2d 1260 (D. Colo. 1998) (state single-subject requirement for initiatives did not violate First Amendment). This is true even if the election regulation may make some political outcomes less likely than others. *Initiative & Referendum Inst.*, 450 F.3d at 1100–01.

Nor does *Filo Foods LLC v. City of SeaTac*, 179 Wn. App. 401, 403, 319 P.3d 817 (2014), cited by Petitioners, support a First Amendment claim. In *Filo Foods*, the court struck down the voiding of all signatures of a person signing an initiative petition more than once, rather than simply voiding the duplicate signatures. The Court held the rule burdened citizens' First Amendment right to sign once in support of an initiative. Here, Petitioners were not hindered from expressing support for I-107 during signature gathering or at the ballot box.

Likewise, Petitioners' "vote stripping" arguments do not provide a basis for review. Under the RCW joint ballot title procedures, all eligible voters are able to vote on the measures and all votes are counted equally. Indeed, if requiring voters to choose between an initiative and a legislative alternative constitutes an equal protection violation, then the Seattle Charter, RCW 29A.72.050, and Article II, § 1 of Washington's constitution are all unconstitutional—something that Petitioners did not allege below and cannot now argue to this Court. *See Brown v. Safeway*

Stores, Inc., 94 Wn.2d 359, 369, 617 P.2d 704 (1980) ("Issues not raised before the trial court will not be considered for the first time on appeal.").

Finally, despite Petitioners' repeated invocation of the word "fundamental," the right to bring an initiative is not a fundamental right under the U.S. Constitution that implicates the Equal Protection Clause. *See Save Palisade FruitLands*, 279 F.3d at 1210–11 (holding law that provides the initiative power to some counties but not others does not violate the Equal Protection Clause). Nor have Petitioners argued that the RCW form of joint ballot title "singles out [a] discrete or insular minority for special treatment." *Angle v. Miller*, 673 F.3d 1122, 1132 (9th Cir. 2012) (denying equal protection challenge to rule that applied to "all initiatives regardless of subject matter"). Petitioners have failed to identify any constitutional question that would justify review.

D. Petitioners' new constitutional claims are barred and are without merit.

Petitioners argue to this Court, for the first time, that the RCW joint ballot title form discriminates between charter cities and all other cities in the state because it prevents charter cities from sending an initiative to the ballot for an up or down vote. Petitioners cannot raise this argument for the first time on appeal. *Brown*, 94 Wn.2d at 369.

Regardless, the argument makes no sense. Charter cities, unlike other cities, have authority to establish their own initiative processes. They can establish a direct initiative or not. Seattle did not. Nothing prevents Seattle from amending its Charter to provide for an initiative directly to the people. Non-charter cites do not have that right (such as those governed by ch. 35.17 and ch. 35A.11 RCW, both cited by Petitioners). Rather, state law provides the only initiative form allowed in non-charter cities. It is hard to see how granting greater leeway to charter cities is a form of discrimination. Petitioners' attempt to manufacture a new constitutional issue for this Court's review should be rejected.

E. Petitioners' OPMA claim does not merit review.

Petitioners fail to identify or articulate to this Court how the OPMA was violated in this case. Regardless, the OPMA argument fails to justify review. As permitted by RCW 42.30.110(1)(i), the City Council held executive sessions to receive legal advice regarding I-107's requirements and legal impact vis-à-vis the Preschool Plan. Supp. App. 457, ¶ 3. Petitioners point to no evidence that any policy matters were discussed or actions taken during these executive sessions. Nor could they, as no such discussions or votes were taken. *Id.*, ¶ 4.

Even had any policy matters been discussed or actions taken during the executive sessions (which the City denies), the "[OPMA] does

not . . . require that subsequent actions taken in compliance with the Act are also invalidated." *Org. to Pres. Agric. Lands v. Adams County*, 128 Wn.2d 869, 883, 913 P.2d 793 (1996). Without deciding the question of whether any OPMA violation had occurred, the trial court correctly ruled in this case that the City Council cured any alleged violation when it heard extensive public testimony, debated the issue on the record, and voted to take actions related to I-107 and the Preschool Plan at the June 23rd meeting. *Eugster v. City of Spokane*, 118 Wn. App. 383, 423, 76 P.3d 741 (2003), *review denied*, 151 Wn.2d 1027 (2004) (subsequent action at an open meeting cures prior potential OPMA violations).

The Court of Appeals affirmed the trial court and pointed out, as a further basis to affirm, that Petitioners' OPMA argument was moot in light of the fact that the RCW joint ballot title form applied. Petitioners' claim that the Court of Appeals thereby fundamentally altered OPMA jurisprudence is without merit and does not provide a ground for review.

V. CONCLUSION

Use of a joint ballot title for the Preschool Plan and I-107 as required by the general laws does not raise a significant question of law under the state or federal constitutions and does not involve an issue of substantial public interest. Accordingly, review should be denied.

RESPECTFULLY SUBMITTED this 1st day of December, 2014.

PACIFICA LAW GROUP LLP

By */s/ Gregory J. Wong*
Paul J. Lawrence, WSBA #13557
Gregory J. Wong, WSBA #39329
Tania Culbertson, WSBA #45946

PETER S. HOLMES
Seattle City Attorney

Carlton W. Seu, WSBA #26830
Gary T. Smith, WSBA #29718
John B. Schochet, WSBA #36875
Assistant City Attorneys

Attorneys for City of Seattle

CERTIFICATE OF SERVICE

I am and at all times hereinafter mentioned was a citizen of the United States, a resident of the State of Washington, over the age of 21 years, competent to be a witness in the above action, and not a party thereto; that on the 1st day of December, 2014 I caused the original to be filed with the Supreme Court and a true and correct copy of the foregoing document to be served upon the following pursuant to the electronic service agreement:

Knoll D. Lowney Claire E. Tonry Smith & Lowney, P.L.L.C. 2317 East John Street Seattle, WA 98112 Phone: 206-860-2883	Via Email knoll@igc.org seattleknoll@gmail.com clairet@igc.org jessie.c.sherwood@gmail.com

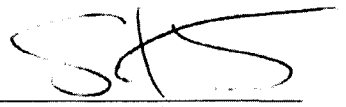
Attorneys for Plaintiffs

Janine Joly King County Prosecuting Attorney's Office 900 King County Admin. Bldg. 500 Fourth Avenue Seattle, WA 98104	Via Email Janine.joly@kingcounty.gov

Attorney for King County

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

DATED this 1st day of December, 2014.



Sydney Henderson

OFFICE RECEPTIONIST, CLERK

To: Sydney Henderson
Subject: RE: Yes For Early Success v. City of Seattle, et al. No. 90996-2 / City of Seattle's Answer to Petition for Review

Rec'd 12/1/14

From: Sydney Henderson [mailto:Sydney.Henderson@pacificalawgroup.com]
Sent: Monday, December 01, 2014 1:22 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: knoll@igc.org; seattleknoll@gmail.com; clairet@igc.org; jessie.c.sherwood@gmail.com; janine.joly@kingcounty.gov; john.schochet@seattle.gov; jeff.slayton@seattle.gov; carlton.seu@seattle.gov; gary.smith@seattle.gov; marisa.johnson@seattle.gov; Paul Lawrence; Greg Wong; Tania Culbertson
Subject: Yes For Early Success v. City of Seattle, et al. No. 90996-2 / City of Seattle's Answer to Petition for Review

Clerk of the Court:

Attached for filing, please find Respondent City of Seattle's Answer to Petition for Review relating to the above-referenced matter. A hard copy of the Supplemental Appendix will be sent to the Court via U.S. mail.

Sydney Henderson
Legal Assistant to:
Jessica A. Skelton, Kymberly K. Evanson
and Tania Culbertson

PACIFICA
LAW GROUP

D 206.245.1730 **F** 206.245.1780
1191 Second Avenue, Suite 2000 Seattle, WA 98101
Sydney.Henderson@PacificaLawGroup.com