

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2014 AUG 19 PM 4:33

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF KING

IN RE: BALLOT TITLE APPEAL OF
CITY OF SEATTLE INITIATIVES 107-
110,

No. 14-2-08551-6
No. 14-2-21111-2
No. 14-2-21112-1

And,

IN RE: BALLOT TITLE APPEAL OF
CITY OF SEATTLE PROPOSITION NO.
1B (ORDINANCE 124509),

**NOTICE OF DISCRETIONARY
REVIEW BY THE WASHINGTON
STATE COURT OF APPEALS,
DIVISION I**

And,

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

Plaintiffs,

v.

CITY OF SEATTLE and KING
COUNTY,

Defendants

Petitioners seek discretionary review by the Washington State Court of Appeals,
Division I of the attached Order Granting Motion for Relief from Order and for Joint Ballot

Title and Denying Application for Correction of Election Errors and Writs, and Motion for Final Declaratory and Injunctive Relief, and Order entered on August 15, 2014.

Petitioners appeal all three of the consolidated matters: In Re. Ballot Title Appeal of City of Seattle Initiatives, 107-110, No 14-2-08551-6; In re. Ballot Title Appeal of City of Seattle Proposition No. 1B (Ordinance 124509), No. 14-2-21111-2; and Yes for Early Success, et al. v. City of Seattle and King County, No. 14-2-21112-1.

A copy of the Order and the Brief Memorandum Opinion are attached to this notice.

Plaintiffs/Petitioners are represented by:

Knoll Lowney, WSBA #23457
Claire Tonry, WSBA #44497
Smith & Lowney, PLLC
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Respondents/Defendants, the City of Seattle, are represented by:

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Gregory J. Wong, WSBA #39329
Taki Flevaris, WSBA #42555
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1191 Second Ave.
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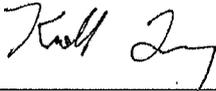
John B. Schochet, WSBA #
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Seattle City Attorney's Office
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Seattle, WA 98124-4769
John.Schochet@seattle.gov
Gary.Smith@seattle.gov

Respondents/Defendants, King County, are represented by:

Janine Joly
King County Prosecuting Attorney's Office
516 Third Avenue, Room W400
Seattle, WA 98104
Janine.joly@kingcounty.gov

DATED this 18th day of August, 2014.

SMITH & LOWNEY, PLLC.

By 

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Claire Tonry, WSBA #44497

Smith & Lowney, PLLC

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Attorneys for Petitioners

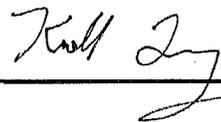
CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of August, 2014, I caused the foregoing Notice of Discretionary Review to be filed with the Court using the King County eFiling system, and true and correct copies of the same to be sent via email and same day US First Class mail, per agreement of counsel, to:

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Marisa.Johnson@seattle.gov



Attachment A

HONORABLE HELEN HALPERT

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IN AND FOR THE COUNTY OF KING

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No. 14-2-08551-6
14-2-21111-2
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And

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And

YES FOR EARLY SUCCESS, a non-
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CITY OF SEATTLE and KING
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ORDER GRANTING RELIEF FROM PRIOR ORDER AND
USE OF JOINT BALLOT TITLE AND DENYING
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ERRORS AND WRITS, AND MOTION FOR FINAL
DECLARATORY AND INJUNCTIVE RELIEF - 1

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FACSIMILE: (206) 245-1750

1 THIS MATTER came before the Court on Respondent/Defendant City of Seattle's
2 Motion for Relief from Order and for Joint Ballot Title and Plaintiffs Yes for Early Success, et
3 al.'s Application for Correction of Election Errors and Writs, and Motion for Final Declaratory
4 and Injunctive Relief. The Court has considered the papers and pleadings filed herein, including
5 the following:
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- 7 1. The City of Seattle's Motion for Relief from Order and for Joint Ballot Title;
- 8 2. Declaration of Gary Smith;
- 9 3. Declaration of Erica K. Johnson;
- 10 4. Declaration of Rebecca Johnson Arledge;
- 11 5. Plaintiffs' Memorandum in Opposition to CR 60 Motion and In Support of
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- 15 7. Affidavit of Claire Tonry;
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25 of Seattle Proposition No. 1B

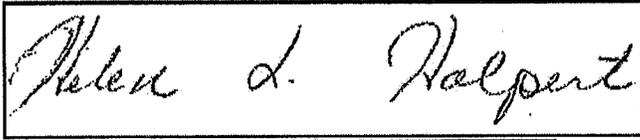
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King County Superior Court
Judicial Electronic Signature Page

Case Number: 14-2-08551-6
Case Title: IN RE BALLOT TITLE APPEAL OF CITY OF SEATTLE
INITIATIVES 107-110
Document Title: ORDER ON CONSOLIDATED MOTIONS

Signed by: Helen Halpert
Date: 8/15/2014 3:01:13 PM



Judge/Commissioner: Helen Halpert

This document is signed in accordance with the provisions in GR 30.

Certificate Hash: 802772A59F78160EA408BDE000D37A07916208CC
Certificate effective date: 7/29/2013 12:21:03 PM
Certificate expiry date: 7/29/2018 12:21:03 PM
Certificate Issued by: C=US, E=kscefiling@kingcounty.gov, OU=KCDJA,
O=KCDJA, CN="Helen
Halpert:NG36B3r44hG2yOw3YYhwmw=="

Attachment B

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IN RE: BALLOT TITLE APPEAL OF
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And

IN RE: BALLOT TITLE APPEAL OF
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And

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CHANDLER, and BARBARA FLYE,

Plaintiffs,

v.

CITY OF SEATTLE and KING
COUNTY,

Defendants.

No. 14-2-08551-6
14-2-21111-2
14-2-21112-1

Brief Memorandum Opinion

THIS MATTER came before the Court for oral argument on three consolidated cases, all dealing with the form of the ballot for two measures concerning early childhood education. I-107 is an initiative (Yes for Success), which was rejected by the

City Council. In its place, the City enacted Ordinance 124509 (The Preschool Plan), which it proposes to have on the ballot as an alternative to I-107. It is imperative that a decision be rendered quickly, in order to allow for possible appellate review before the final form of the ballot must be sent to the printer on September 5.

Does RCW 29A.036.071 require that I-107 (The "Yes for Success" Initiative) and Ordinance 124509 ("The Preschool Plan") be presented as alternatives pursuant to RCW 29A.72.050?

Both Article IV, §1 (D) of the Seattle City Charter and RCW 29A.72.270 permit the legislative authority, upon rejecting an initiative, to propose an alternative dealing with the "same subject."

Under the City Charter, the initiative and the legislative alternative are presented independently to the voters. If both receive a majority and if there is a conflict in "any particulars", the alternative receiving the most votes shall "be adopted and the other shall be considered rejected." Article IV, §1 (G). In contrast, under RCW 29A.72.270, the two alternatives are presented together, with the first vote being a "yes" or "no" on whether either of the alternatives should be voted into law and the second vote being a selection between the two alternatives. RCW 29A.72.050 provides the mandatory form for a state ballot initiative. See *also* Wa Const. Article 2 §1.

The City argues that RCW 29A.36.071, enacted in the 2003 legislative session, requires that local initiatives be structured in compliance with RCW 29A.72.050, which incorporates the alternative structure of RCW 29A.72.270, when the legislative authority has rejected an initiative and proposed an alternative on the same subject.

RCW 29A.36.071(1) provides, in part:

...[T]he ballot title of any referendum filed on an enactment or portion of an enactment of a local government and any other question submitted to the voters of a local government consists of three elements: (a) An identification of the enacting legislative body and a statement of the subject matter; (b) a concise description of the measure; and (c) a question. *The ballot title must conform with the requirements and be displayed substantially as provided under RCW 29A.72.050 (Emphasis added)*

In another context, in *Mukilteo Citizens for Simple Government v. City of Mukilteo*, 174 Wn. 2d 141, 149 (2012), the Supreme Court commented that RCW 29A.72.050 provides the mandatory form for a municipal ballot initiative.

The provisions of a city charter are subservient to the general laws of the State of Washington. That is—a provision in a charter that conflicts with the general laws is in violation of Wa Const. Article X, § 10 and cannot stand. This is true even if the general law is enacted after the Charter. See e.g. *Oakwood v. Tacoma Mausoleum Association*, 22 Wn. 2d 692 (1945); *Neils v. City of Seattle*, 185 Wash 269 (1936).

The City has met its burden of establishing that Seattle City Charter Article IV, §§ 1 (D) and (G) are in conflict with controlling State law. Under Wa Const. Article X, § 10, the general state law controls over conflicting municipal charter provisions and thus the conflicting charter provisions are unconstitutional.

Do I-107 and Ordinance 124509 address the same subject?

The two provisions here both deal with improving early childhood education, providing teacher training and certification and increasing teacher compensation, while making quality childcare/preschool more affordable. There are some significant differences, including different coordinating entities and different teacher certification requirements. In addition, the reach of I-107 is broader than the Council alternative.

Nonetheless, the court is satisfied that the two provisions address the same subject and that the Council's finding in this regard was not *ultra vires*.¹

Yes for Success raises a number of other challenges to the City's proposed ballot structure, including a challenge to the Open Public Meetings Act. Even assuming that the conversation with the City's attorneys that occurred before the finding of "same subject matter" was a violation of Chapter 42.30, the subsequent public vote and public discussion cured any violation. See *Organization to Preserve Agricultural Lands. V. Adams*, 128 Wn. 2d 869 (1996).²

Given the need for an expeditious resolution of these ballot challenges, plaintiffs' other claims will be denied without further discussion.

Finally, it is the court's expectation that with the guidance of this brief opinion and the discussion that occurred at the hearing this morning, the challenges to the wording of the ballot titles in alternative forms could be resolved through the agreement of counsel. If this cannot be resolved by agreement, the parties shall contact the court requesting further ruling.

Dated this 15 day of August, 2014.

Signed electronically

The Honorable Helen Halpert
King County Superior Court Judge

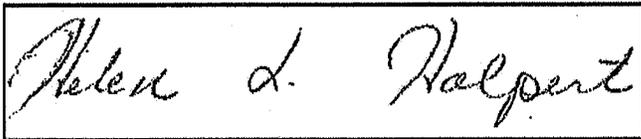
¹ It is necessary to address the "same subject" question because, if the ordinance and initiative did not address the same subject, the ballot construction issue of RCW 29A.36.071 and 29A.70.270 would have been irrelevant.

² The court is specifically not ruling on the question of whether there was a violation of OPMA.

King County Superior Court
Judicial Electronic Signature Page

Case Number: 14-2-08551-6
Case Title: IN RE BALLOT TITLE APPEAL OF CITY OF SEATTLE
INITIATIVES 107-110
Document Title: OTHER MEMORANDUM OPINION

Signed by: Helen Halpert
Date: 8/15/2014 3:01:13 PM



Judge/Commissioner: Helen Halpert

This document is signed in accordance with the provisions in GR 30.

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Halpert:NG36B3r44hG2yOw3YYhwmw=="

Page 5 of 5

Attachment A

HONORABLE HELEN HALPERT

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1 THIS MATTER came before the Court on Respondent/Defendant City of Seattle's
2 Motion for Relief from Order and for Joint Ballot Title and Plaintiffs Yes for Early Success, et
3 al.'s Application for Correction of Election Errors and Writs, and Motion for Final Declaratory
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6

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- 1 14. Affidavit of Knoll Lowney (August 14, 2014) and exhibits thereto.
2 15. Plaintiffs' Motion to Strike Seattle's Motion for Joint Ballot Title
3 16. City of Seattle's Opposition to Motion to Strike
4 17. City of Seattle's Response to Petition to Appeal Ballot Title for Ordinance
5 124509
6 18. King County's Response to Plaintiff's Motion for Consolidation and for Briefing
7 Schedule (establishing time line for printing)
8
9
-

10 Based on the above and after hearing oral argument of the parties, the Court ORDERS as
11 follows:

- 12 1. The City of Seattle's Motion for Relief from Order and for Joint Ballot Title is
13 GRANTED.
14
15 2. Due to changed circumstances, the City of Seattle and King County are relieved
16 from the Court's April 2, 2014 order.
17
18 3. The City of Seattle and King County are required to use the form of joint ballot
19 title specified in RCW 29A.72.050(3) for Initiative 107 and Ordinance Number
20 124509 on the November 4, 2014 ballot.
21
22 4. ~~The City of Seattle's proposed joint ballot title for Initiative 107 and Ordinance~~
23 ~~Number 124509, as drafted, meets the requirements of RCW 29A.72.050(3) and~~
24 ~~RCW 29A.36.071. (Reserved)~~
25

ORDER GRANTING RELIEF FROM PRIOR ORDER AND
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1 5. Plaintiffs' Application for Correction of Election Errors and Writs, and Motion
2 for Final Declaratory and Injunctive Relief is DENIED.

3 6. Plaintiffs' claims in Yes for Early Success, et al. v. City of Seattle, et al., No. 14-
4 2-21112-1, are DISMISSED in their entirety and with prejudice.
5

6
7 DATED this 15 day of August, 2014.

8
9 *Signed Electronically*

10 _____
11 The Honorable Helen Halpert
12 King County Superior Court Judge

13
14 Presented by:

15 PACIFICA LAW GROUP LLP

16
17 By s/ Gregory J. Wong

18 Paul J. Lawrence, WSBA #13557

19 Gregory J. Wong, WSBA #39329

20 Taki Flevaris, WSBA #42555

21 PETER S. HOLMES

22 Seattle City Attorney

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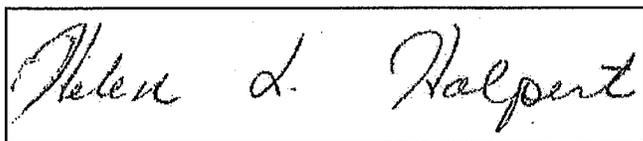
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King County Superior Court
Judicial Electronic Signature Page

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Signed by: Helen Halpert
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A rectangular box containing a handwritten signature in cursive script that reads "Helen Halpert".

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O=KCDJA, CN="Helen
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Page 5 of 5

Attachment B

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The City argues that RCW 29A.36.071, enacted in the 2003 legislative session, requires that local initiatives be structured in compliance with RCW 29A.72.050, which incorporates the alternative structure of RCW 29A.72.270, when the legislative authority has rejected an initiative and proposed an alternative on the same subject.

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The City has met its burden of establishing that Seattle City Charter Article IV, §§ 1 (D) and (G) are in conflict with controlling State law. Under Wa Const. Article X, § 10, the general state law controls over conflicting municipal charter provisions and thus the conflicting charter provisions are unconstitutional.

Do I-107 and Ordinance 124509 address the same subject?

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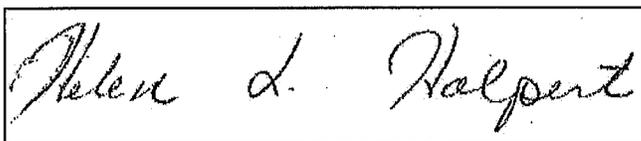
¹ It is necessary to address the "same subject" question because, if the ordinance and initiative did not address the same subject, the ballot construction issue of RCW 29A.36.071 and 29A.70.270 would have been irrelevant.

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INITIATIVES 107-110
Document Title: OTHER MEMORANDUM OPINION

Signed by: Helen Halpert
Date: 8/15/2014 3:01:13 PM



Judge/Commissioner: Helen Halpert

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