

Happy Accident?

Why critics of an initiative opposing illegal immigration are feeling hopeful

BY DANIEL WALTERS

In October of 2014, the Spokane City Council made official a policy that had already been in effect for the police department since 1995: It barred city employees from asking about immigration status.

To City Council President Ben Stuckart, banning immigration-status inquiries was crucial for public safety. He relates stories about immigrants being trapped in abusive relationships because they worry about talking with the cops.

A far-right, anti-illegal-immigration group called Respect Washington countered with a citizens initiative. If passed, the initiative would not only reverse the prohibition on immigration-status inquiries, it would ban the city from establishing such restrictions without approval of the city council and a vote of the people.

After initially failing to get enough signatures, the Respect Washington initiative is finally heading for the ballot this November. There's one more hurdle in its way: Last month, Center for Justice executive director Rick Eichstaedt, representing a coalition of immigration groups, sued to keep the initiative off the ballot.

One of Eichstaedt's main arguments rests on

a technicality. It turns out that the city council may have paved the way to stopping Respect Washington earlier this year, almost entirely by accident.

UNINTENDED CONSEQUENCE

On March 27, at a marathon meeting, the council debated a big change to the city code. The ordinance brought together disparate sections of city code regulating "human rights" under one section, and added several new guarantees.

Most of the debate at the meeting over the human rights ordinance had to do with the section banning income discrimination. Landlords warned that it could tie their hands, making renting that much riskier.

Nobody was talking about the impact that the ordinance could have on the Respect Washington initiative.

But Eichstaedt read the fine print. The Respect Washington initiative proposes repealing section "3.10.040," banning inquiries about immigration status. But the human rights ordinance, technically, *already* repealed section 3.10.040. (It then immediately resurrected it under a new chapter of city code called "Title 18," updating the restriction to also ban inquiries about "citizenship status," along with "immigration status.")

"You're asking voters to repeal and amend sections of the municipal code that no longer exist," Eichstaedt says.

He has precedent he can point to: In a 1965 case, the state Supreme Court ruled that an initiative in Yakima couldn't be placed on the ballot because the taxes that the initiative attempted to repeal were no longer in effect.

The difference here, of course, is that the ban on immigration status inquiries is very much still in force, just elsewhere in city law.

Dick Stephens, the attorney representing Respect Washington, says he's been involved in litigation over initiatives for a while, but hasn't seen Eichstaedt's argument used before.

"What happens when you're proposing a



Council President Ben Stuckart DANIEL WALTERS PHOTO

change in the law and the law gets tweaked in some way before people are allowed to vote?" Stephens says. "You could imagine the problem that would create."

Theoretically, if Eichstaedt's argument holds water, a city council or state legislature could play a shell game, swapping a law to another section and changing the details to stop it from getting repealed. "I think there's an argument that if they were initially trying to stymie something, the court may have a problem with that," Eichstaedt says. But in this case, he says, that wasn't the council's intent.

NEW GROUNDS

Most city council members, contacted last week about the potential side effect of the human rights ordinance, say it took them by surprise.

Even conservative Councilmember Mike Fagan, who has supported the immigration status initiative and decried illegal immigration in his comments opposing the city's human rights ordinance, says he had no idea that the ordinance could undermine Respect Washington's initiative.

"If that was the original plan by some members of the council, then good on them," he says.

Councilmembers Brean Beggs and Lori Kinnear, however, say they didn't know about the possible side effect of the human rights ordinance.

"We had 25 or 27 drafts," says Councilwoman

an Karen Stratton, the human rights ordinance's sponsor. "That issue never came up."

But Stuckart says he knew. He says he got a call from Eichstaedt noting that the human rights ordinance had the potential to undermine the Respect Washington initiative.

"He said, 'Hey, that's another ground to challenging that initiative,'" Stuckart says.

Stuckart insists that wasn't his primary motivation for supporting the new ordinance.

"I was already supportive of the changes, before I found out that everybody working on this would have this other added benefit," he says.

It isn't the only legal argument that Eichstaedt is leveling against the initiative: He also notes that the original initiative sponsor, Jackie Murray, withdrew as its sponsor in 2015. He argues that initiative signatures had been gathered using unapproved language, against the direction of the city attorney. And, crucially, Eichstaedt argues that the Respect Washington initiative exceeds the legislative authority of a local initiative by constraining the city's administrative powers.

"It [bars the] city from preventing any city employee from collecting and distributing immigration information," Eichstaedt says. "The ticket-taker at Riverfront Park couldn't be told by his boss, 'You can't hassle people about their immigration status.'"

He says the initiative also contradicts state law preventing city attorneys from collecting immigration status information during the plea stage of criminal proceedings.

But Stephens says that the court is likely to be wary of Eichstaedt's arguments. The bar for convincing the court to toss the initiative before voters get a chance to vote on it, he says, is high. Even if initiatives are ultimately ruled to be invalid after election, Stephens says that Washington courts still see value in letting voters make their opinions known.

"The court does not want to be used to stifle free discussions of political ideas," he says. ■

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