

1 APPEARANCES:

2 For the STEPHENS & KLINGE
3 Appellant- BY: RICHARD M. STEPHENS
4 Defendant: 10900 NE 8th Street, Ste. 1325
 Bellevue, WA 98004

5
6 For the CENTER FOR JUSTICE
7 Plaintiffs: BY: RICK EICHSTAEDT
 35 West Main, Ste. 300
8 Spokane, WA 99201

9 For the OFFICE OF THE CITY ATTORNEY
10 Defendant BY: NATHANIEL J. ODLE
11 City of and MICHAEL PICCOLO
12 Spokane: 808 W. Spokane Falls Blvd.
 Spokane, WA 99201-3326

13 For the SPOKANE COUNTY PROSECUTING ATTORNEY
14 Defendant BY: DAN L. CATT
15 Vicky Dalton: W. 1115 Broadway Avenue
 Spokane, WA 99260

16

17

18

19

20

21

22

23

24

25

1 THE COURT: I have Case No. 17-2-01621-1, in
2 re the matter of Global Neighborhood, et al. For the
3 record, I can place the rest of the organizations but I
4 believe that should take care of things with regards to
5 the plaintiffs. Present for the plaintiffs, Mr.
6 Eichstaedt. The defendants are Respect Washington, who
7 is represented by Richard Stephens, correct?

8 MR. STEPHENS: That's correct, your Honor.

9 THE COURT: Vicky Dalton is here represented
10 by Dan Catt, who is present in the courtroom.

11 MR. CATT: Ms. Dalton will be up in a few
12 minutes.

13 THE COURT: All right. And then the City of
14 Spokane being represented by Nathaniel Odle, and Mike
15 Piccolo is also present for the City.

16 MR. ODLE: Correct, your Honor.

17 THE COURT: Have I missed any of the
18 attorneys that need to be addressing this matter this
19 morning for record purposes?

20 THE JUDICIAL ASSISTANT: Your Honor, I'm not
21 sure who is in the jury box.

22 THE COURT: I think I just have attorneys in
23 the jury box, correct?

24 This is a declaratory judgment brought by
25 the plaintiffs requesting some relief. I had the

1 opportunity to go through the documentation which has
2 been provided to the court. I will turn to argument,
3 then, of counsel.

4 MR. EICHSTAEDT: Your Honor, may I use the
5 podium?

6 THE COURT: Yes, please. That's where I
7 would prefer you to be.

8 MR. EICHSTAEDT: Thank you. And
9 approximately how much time do we have?

10 THE COURT: Well, this is quite a lengthy
11 issue so I'm going to give everybody at least 15 minutes
12 that needs 15 minutes. I assume neither the City nor
13 the Auditor need that kind of time, it's just more
14 perfunctory based on my review of this.

15 MR. EICHSTAEDT: Your Honor, I do have a
16 couple of documents I'd like to refer to during my
17 argument. I have shared copies with the -- with
18 counsel. May I approach the court?

19 THE COURT: You may.

20 MR. EICHSTAEDT: Well, thank you, your
21 Honor. As I indicated, my name is Rick Eichstaedt and I
22 represent the plaintiffs in this matter. My clients are
23 all Spokane-based organizations with an interest in
24 working and protecting the rights of immigrants in our
25 community. As you indicated, we are here seeking a

1 declaratory order declaring that City of Spokane
2 Proposition 1 is unlawful and should not be placed on
3 the November ballot.

4 Before I go too far, we're gonna hear a lot
5 of disagreement but I want to start with, I think
6 there's about five things we agree upon. I'm sure
7 counsel will speak up if they disagree.

8 First, Proposition 1 will be on the November
9 ballot absent an order from this court. Second,
10 Proposition 1 would repeal restrictions from the Spokane
11 Police Department that prohibit officers from profiling
12 based on citizenship status, and would prohibit the City
13 from enacting restrictions on any employee collecting
14 and distributing information -- excuse me, immigration
15 information, and cooperating with federal law
16 enforcement. Third, this court has authority, under the
17 Uniform Declaratory Judgment Act, to determine, in
18 certain circumstances, on a pre-election basis, whether
19 or not a measure may proceed to a ballot. Fourth, a
20 ruling is necessary from this court, prior to September
21 5th, in order to avoid placing Proposition 1 on the
22 ballot. And lastly, while Respect Washington generally
23 disputes standing of all parties, it has admitted that,
24 at least to the Spokane chapter of the National
25 Organization of Women, they have members.

***because the other plaintiff organizations are phoney, unincorporated names
without memberships cooked up for purpose of this lawsuit.**

1 THE COURT: Counsel, before I have you go to
2 your next, folks, I can't have anybody standing in the
3 door for fire code purposes. I apologize for the size
4 of my courtroom, but unfortunately I do not want to be
5 in trouble with the fire marshall.

6 Ms. Gurkowski, could you keep an eye on
7 that? Because there may be folks coming in. I'm sorry,
8 counsel, I'll have you...

9 MR. EICHSTAEDT: Before I proceed any
10 farther, I believe that the plaintiffs have provided
11 substantial evidence and argument to rebut Respect
12 Washington's allegations that plaintiffs lack standing.
13 Would the court like to hear more on this matter?

14 THE COURT: I'm going to have you put your
15 argument as you deem best to the court.

16 MR. EICHSTAEDT: I will touch on that, then.
17 Generally speaking, the test for standing in a
18 declaratory judgment action has two requirements:
19 First, a plaintiff's interest sought to be protected is
20 within the zone of interest; and second, the challenged
21 action must cause injury in fact, economic or otherwise,
22 to the party seeking standing.

23 The standard for injury is not certainty, or
24 even whether it is injury to a neatly (Phonetic)
25 protected right. For example, the Court of Appeals in

bogus "injury" argument as Spokane Charter's "Less than Fifteen Percentum" initiative petition requires ballot placement on Municipal General Election ballot, ostensibly to collect the widest possible participation and incur no incremental cost at this scheduled biennial ballot.

1 the *City of Longview v. Wallin* has said that financial
2 and administrative burden of placing a potentially
3 unlawful initiative on the ballot was a sufficient
4 injury to confer standing.

5 For organizations, these criteria are
6 applied to the organization itself, to its members, or
7 federal courts have applied it, as well, to employees.
8 Also, the case must be germane to the interests of that
9 organization. So in order for this case to proceed, you
10 need only find standing of one of the multiple parties
11 here.

12 In the response -- or reply -- excuse me,
13 the response brief, Respect Washington raises concern
14 that the organizations, with the exception of the
15 National Organization of Women, do not have members. As
16 provided in our reply brief and the declarations, all
17 four of the organizations do have members. All of the
18 organizations have members to advocate on behalf or
19 provide services to the immigrant community here in
20 Spokane. no evidence of membership, website or incorporation

21 We also provided studies and declarations
22 that demonstrate that my clients will be harmed, that
23 this isn't some theoretical injury. Because law
24 enforcement's involvement in immigration matters has
25 been demonstrated to increase the risk of profiling

1 against immigrants and refugees, decrease the trust of
2 and fear of law enforcement, and third, decrease the
3 likelihood that victims and witnesses of crime, amongst
4 the immigrant community, will call the police for
5 assistance. These are real harm.

6 For now, Respect Washington argues that
7 advocating for the rights of immigrant women is not
8 germane to its mission. However NOW's mission, as
9 stated in the Jones declaration, includes advocating
10 against sexual violence, gun violence, police brutality,
11 domestic violence, and harassment of women, all areas
12 that will be impacted if there's decreased trust of
13 police in our community. Moreover, in the -- as pointed
14 out in our reply, NOW has a -- on its web site, points
15 out explicitly that immigration is a feminist issue.

16 My client organizations also have standing
17 because they will be required to divert limited
18 resources to addressing the harms caused by Prop 1.
19 Courts have recognized that injury to mission and
20 diversion of resources is sufficient injury to establish
21 standing.

22 Lastly, Proposition 1 will harm clients'
23 employees. Many of the employees of, for example,
24 Global Neighborhood's or immigrants, this is part of the
25 program they implement. The harms described will harm

1 their employees. And federal courts, which Washington
 2 have said we can look to federal cases for standing
 3 rules, have held that an employer has standing in
 4 certain circumstances to bring an action on behalf of
 5 its employees. So no matter where you look, we have
 6 standing in this matter to proceed.

7 Now I'd like to address some of the
 8 procedural and substantive challenges that are raised in
 9 this case. And again, you only need to determine that
 10 one of our arguments are valid in order to issue a
 11 declaratory judgment order.

The REichstaedt-Stuckart conspiracy enabled this argument to dupe Judge McKay. McKay swallowed the "hook."

12 First I want to address the issue of
 13 mootness. Proposition 1 seeks to amend the municipal
 14 code, sections 3.01.040 and .050. However, those
 15 provisions no longer exist. In March of this year, the
 16 Spokane City Council repealed those sections and adopted
 17 Title 18 of the municipal code. Now, Respect Washington
 18 essentially asks this court to ignore that and to -- and
 19 asks you, your Honor, to rewrite Proposition 1, which I
 20 can find no authority that allows you to do this. In
 21 fact, a similar situation was addressed by the Supreme
 22 Court in the *Yakima v. Huza* case, where the City of
 23 Yakima sought a declaratory judgment that an initiative
 24 was defective. But before the litigation could be
 25 decided, the City, on its own, enacted a new ordinance

In
 contravention
 of Council's
 own prior
 (RES
 2016-0008 on
 2/22/16)
 reservation of
 Sections
 3.01.040
 and .050 to
 the November
 ballot 2017!

1 that extended the taxes that were subject to that
2 initiative. And the court then, in turn, found that the
3 initiative was moot.

4 So not only did they repeal the sections
5 that are subject to Proposition 1, but they also made
6 changes. And here's where I'm gonna refer to this
7 document. The first sheet is actually the petition.
8 And if you look at the second sheet, there's the actual
9 language of Proposition 1. And again it refers to
10 3.10.040, and makes a minor change there in section .050
11 and completely strikes that.

12 Turning to the next sheet, which is actually
13 a title from the -- or a web site of the municipal code.
14 If you are an informed voter and looking to see what
15 those sections do, you'll find that those sections have
16 been repealed, you will not be able to find those in the
17 municipal code. **How could McKay have been so blind to swallow this
argument!**

18 So the last sheet is actually a document I
19 created relying upon Exhibit A and Exhibit F from my
20 first declaration. It compares; what does Proposition 1
21 do and what do the city council do. So Proposition 1
22 would take out the words "citizenship status" from
23 section 3.10.040. That section no longer exists. It's
24 been recodified with amendments into Title 18 as
25 18.01.030(U). In addition, the council added additional

1 terms "immigration status" and "refugee status." If
2 left to go to the voters, what would be the impact of
3 those terms?

4 Proposition 1 would strike section 3.10.050,
5 as indicated in the left-hand column. Again, the
6 council already struck that section and recodified it as
7 section 18.07.020. They added additional terms. They
8 had it apply not only to officers and employees, but
9 agents. In section B and C, they added terms
10 "citizenship status" in addition to "immigration." If
11 Proposition 1 moves forward, what will be the effect?
12 Will it only apply to agents? Will it only apply to
13 citizenship? What will be the impact?

14 Proposition 1 purports to add a new section
15 called Respect For Law that limits the ability of any
16 city employee, including police officers, from
17 collecting immigration and distributing information
18 regarding immigration status. However, in section -- or
19 Title 18 in March, the council added a new section,
20 18.07.010, Vice Free Policing. And part of that stated
21 the police department, its officers-employees
22 commissioned under the Spokane Police Department, are
23 prohibited from engaging in profiling as the term is
24 defined in 18.01.030(U). And that takes you back to the
25 top of the page, which includes citizenship status,

1 immigration status and refugee status.

2 These are in direct conflict. You can't, at
3 the same time, prohibit any city employee from engaging
4 in collection of information regarding immigration
5 status, and at the same time allow -- or specifically
6 prohibit or allow any city employee to do it. These two
7 sections do not fit together. And in fact, courts
8 have -- under the canons of construction, are to avoid a
9 literal reading of a statute which would result in
10 unlikely, absurd, or strained consequences. That's what
11 we would have if we allow both section 18 to proceed and
12 Proposition 1 to proceed. These sections no longer
13 would make sense. And again the courts, Supreme Court
14 in *Huza*, said in this type of situation, rather than
15 allowing -- or putting it on the court to try to figure
16 out how do we melt these, we should simply declare them
17 as moot.

18 The second issue I want to address is
19 whether or not this matter is legislative or
20 administrative in nature. I've gotta tell you; you will
21 be making law on this matter. There is no case. And in
22 fact, I've looked to other courts across the country
23 that has determined whether or not how we police and how
24 we manage employees is administrative or legislative.

25 Now, I believe it's administrative for a

"Administrative" argument falls on two points: 1.) Prop. 1 mandated no change to administratively initiated SPD Policy 428 (so SPD might continue "sanctuary" practice and 2.) Prop. 1 merely removed a Council-enacted PROHIBITION of employee acts and did not compel any employee act.

1 number of reasons. The Supreme Court has said,
2 generally speaking, an administrative action is
3 something if it furthers or hinders an existing plan or
4 some other superior power. The Supreme Court said that
5 in *City of Port Angeles*. In other words, something is
6 administrative in nature if it seeks to modify an
7 existing plan or policy, which is what we believe
8 Proposition 1 does.

9 So let me throw out some examples of the
10 difference here. And again, I'm not sure how helpful
11 these will be for your Honor, but I think it's worth
12 mentioning. The decision to fluoridate our city water
13 is administrative. The amendment to a comprehensive
14 street plan is administrative. A rezone is
15 administrative. So, you know, narrow, specific actions.
16 What kind of programs are legislative? Bigger, broader
17 programs. So going to a punch card balloting system has
18 been determined to be legislative. Where to place a
19 stadium has been determined to be legislative.

20 Those are not the type of actions we have
21 here. And in fact, not only would Proposition 1 change
22 the municipal code, but it would also modify existing
23 administrative policy of the police department that have
24 been in place for some time. Policy 428 and 402 have
25 been in existence since at least 2013, and were

A false statement. Prop. 1 mandated no change to SPD Policy

1 essentially adopted into policy by the city council.

2 Proposition 1, by limiting the ability of
3 our police department to adopt this policy, flies in the
4 face of other authority that has been given to our Chief
5 of Police. Specifically, section 3.10.010(B)(1)
6 provides that the chief of police has the discretion to
7 make rules and issue orders for the proper functioning
8 of the division consistent with the law, council policy,
9 and the rules of Civil Service Commission. This does
10 not say policy through initiative. And that's what, so
11 far, the police department has done.

12 By allowing -- if Prop 1 moves forward, if
13 this is determined to be legislative, this will allow,
14 by initiative, the people to determine the minutia of
15 how we police, an already very difficult job. Would it
16 be acceptable for an initiative that says we will not
17 enforce traffic laws or that we're gonna divert all
18 officers to enforcing property crimes on the South Hill?
19 I think if we go down this slope, that's where we're
20 gonna end up. **Laughable that Judge McKay adopted this deception**

21 That's why we have not seen cases - again,
22 I've looked at every case I could - on looking whether
23 or not this kind of action has been allowed to move
24 forward. And I found none. This is administrative in
25 nature. It goes to the minutia of how the police

1 operate, which is a policy that the council -- the
2 police chief can develop. And it also goes into the
3 minutia of how city employees act, that they can collect
4 additional data that's outside their scope of their
5 work.

6 And that goes into my third argument. We
7 believe this conflicts with other state laws. Courts
8 have said initiatives cannot conflict with state law.
9 If passed, Proposition 1 would prohibit city officials
10 from limiting other employees from collecting and
11 disseminating immigration information. This could
12 include information that's obtained in the context of a
13 confidential attorney/client relationship, such as city
14 public defenders. It also could limit what restrictions
15 there could be on sharing information in the courtroom.
16 For example, RCW 10.40.200(1) provides that at the time
17 of a plea, no defendant be required to disclose his or
18 her legal status to the court. This is in the purview
19 of the municipal courts to enforce. Section -- or
20 Proposition 1 would essentially **prohibit** the judge from
21 **stopping** any city employee from complying with that law.

22 Likewise, as you know, your Honor, Rules of
23 Professional Conduct limit what employee -- or what
24 attorneys can share, both confidential information
25 obtained from their clients as well as information that

What would
this double
negative
look like in
reality!
Absurd.

Line 12 - Completely moot as 1.) the disgruntled co-sponsor sought to resign after County Auditor's "terminal date" of signature count when even the disgruntled's signature was counted toward "sufficiency." and 2.) REichstaedt misrepresents the SMC at time of petition. REichstadt dishonestly cites an SMC altered in May 2016 [perhaps even upon REichstaedt advice?] long after Prop. 1 was declared "sufficient" in Dec. 2015 and long after Council referred Prop. 1 in Feb. 2016 to the 2017 ballot. Stunningly dishonest of REichstaedt. In her Finding No. 8 Judge McKay refused to rule (or condemn) this argument.

1 could be share to prejudice a proceeding. And in
 2 particular, immigration information. Proposition 1
 3 would prohibit city officials from taking action against
 4 their employees who may be violating these RPCs. And
 5 certainly Respect Washington will say, well, they could
 6 be subject to a bar complaint. Well, don't we want to
 7 discipline or fire our employees who are violating the
 8 state law and Rules of Professional Conduct? It's just
 9 simply unworkable to have a situation where a manager
 10 cannot discipline his or her employee for violating
 11 state law.

12 The last two issues I want to address are
 13 procedural issues. First, Proposition 1 lost its
 14 sponsor. Prior to the validation of signatures, the
 15 sponsor sent two separate e-mails explicitly stating she
 16 is withdrawing her sponsorship. Now, the code requires
 17 in several places, SMC 2.02.030(A) and SMC 2.02.030(B).
 18 More importantly, SMC 2.02.020 explicitly states that a
 19 legal resident of the city, or a political committee,
 20 may petition to the city council to ordain a proposed
 21 measure. So essentially, you need to have a sponsor.

22 Now, Respect Washington has argued that you
 23 only need a sponsor at the beginning. But in order to
 24 petition the city council, you have to have a validated
 25 petition. You have to have your signatures, it has to

1 be validated. And then that's presented to city council
2 where they determine, number one, should they pass the
3 measure or should they present it to the people on the
4 ballot? Now, in December of 2015 when this occurred --
5 or excuse, me in February of 2016 when this occurred,
6 there was no sponsor. Ms. Murray withdrew in December
7 of the previous year. So this begs the question: Who
8 actually petitioned the council? And we assert there
9 was a fatal flaw to this measure.

10 The last claim I want to address is added
11 language. The code, Municipal Code 02.02.030, provides
12 that there should be a concise description of a measure
13 that's true and impartial, and that will not create
14 prejudice either for or against the measure.

15 Again, your Honor, I'm gonna refer to the --
16 I guess the second page of the handout, which is the
17 actual petition. And the language that we're referring
18 to is this box on the side described as legislative
19 history, and it lists members who voted for Spokane to
20 become a sanctuary for illegal aliens. It goes on to
21 say, "Members who voted to prevent Spokane from becoming
22 a sanctuary to illegal aliens and to defend the right of
23 taxpayers," so on. So it creates this dichotomy of, you
24 know, here's the good people and here's the bad people.
25 It also asserts that Spokane is a sanctuary for illegal

Misrepresentation
- see prior page
comment

1 aliens and that we harbor lawless activities. Clearly
2 this is not impartial. Clearly this creates prejudice.

3 Now, the defense that Respect Washington
4 says is, well, that section only applies to the ballot
5 description on page 1. But if we were going to apply
6 that argument, essentially you could have a short,
7 impartial ballot description on page 1 and circumvent
8 that requirement of an impartial description that
9 doesn't create prejudice by putting anything you want on
10 subsequent pages. And we think that defeats the intent
11 of that language, and certainly is inconsistent with the
12 goal of having true and impartial descriptions.

13 Now, Respect Washington says, well, this can
14 happen in other places. This is unique language to the
15 City of Spokane. If you look at other codes, and
16 certainly state requirements, there is not similar
17 language, this is something that's unique to Spokane.

18 The last point I want to bring, the --
19 Respect Washington asserts we can't bring this case,
20 that the doctrine of laches prevents us from moving
21 forward. Well, laches requires an unreasonable -- you
22 know, proof that there was an unreasonable delay by the
23 plaintiffs, and that damages to the defendant will
24 result from the unreasonable delay. And they have to
25 prove all the elements to this court. There is no

1 evidence of intentional delay. Plaintiffs moved forward
2 when they assembled and wanted to challenge the case, we
3 moved forward in an expeditious matter within once the
4 case was filed.

5 More importantly, they indicate the injury
6 they will suffer is from -- from a delayed election is
7 additional time spent and money on informing voters of
8 an election at a later time. Well, first off, this has
9 already been delayed. They wanted to have this on the
10 ballot two years ago. Because of **problems** they had with
11 collecting signatures, it was delayed two years.
12 Moreover, by their own admission in filings to the
13 Public Disclosure Commission, they've spent no money on
14 this. And in fact, they admit, since it became about
15 campaign in April, Respect Washington has expended no
16 funds on a Proposition 1 ballot campaign, and that's
17 attached to one of the declarations submitted in our
18 reply brief.

19 Moreover, if you search for a web site or
20 look for a campaign sign, or even a Facebook page,
21 you'll find nothing. They have not moved forward with
22 any effort to pass this. And it makes sense. They
23 don't have a local -- a local sponsor. This is
24 essentially a group from the west side here arguing to
25 Spokane that we need to put what is an unlawful

The "problem" came about when REichstaedt's Democrat ally Auditor Vicky Dalton disqualified just enough signatures (37) of lawful City of Spokane voters to declare "insufficiency" upon the first signature turn-in. Respect Washington cured that deficiency one week later, yet past the deadline for Nov. 2015 ballot.

1 initiative on our ballot.

2 That's all I have, your Honor, unless you
3 have any questions for me.

4 THE COURT: I do not at this time.

5 MR. EICHSTAEDT: Thank you.

6 THE COURT: Mr. Stephens.

7 MR. STEPHENS: Thank you, your Honor. I'd
8 like to first deal with the standing issue and say that
9 I realize judges have different views on this issue,
10 which is, is it appropriate it add factual information
11 in the reply brief. I mean, our argument was they
12 haven't shown standing in their moving papers. I will
13 concede these other declarations allege standing. But
14 I've seen some judges say you can't beef up your factual
15 basis in your reply, and which case I would say they
16 should not shown standing in their moving paper. I've
17 also seen other judges allow it, in which I would
18 concede they added -- they beefed up the record in their
19 final reply to allege standing.

20 I would like to deal next with the laches
21 issue. First, it's undisputed that in February of 2016,
22 that is when, by a public decision, the city council
23 said this was gonna go on the ballot. And in the
24 Exhibit K to Mr. Eichstaedt's original declaration, he
25 cites a news article from March of 2016 talking about

1 the initiative. So everybody's known about this. And
2 they don't file until over a year later. And I would
3 submit that even the filing of this motion is an
4 unreasonable delay. I've been involved in a lot of
5 ballot title challenges and other initiative-related
6 challenges, and in initiative challenges, sometimes a
7 disagreement with the Superior Court requires an
8 emergency appeal.

9 They have guaranteed by presenting this to
10 the court, scheduling this motion right before the
11 deadline, the September 5th or 6th, I forgot which day
12 it was, they guaranteed that it's gonna be impossible to
13 appeal this decision. Their case was filed in early
14 May. They could have scheduled this for June, July, any
15 of those days would have allowed for an emergency
16 appeal, if necessary. And by strategically setting it
17 for today, they've avoided that problem.

18 It does disadvantage Respect Washington.
19 They've argued that there's no PDC records showing
20 contributions in 2016 and/or 2017. But when this
21 petition was put together, it was in 2015, that's when
22 money was spent. And it's unrebutted that money was
23 spent by Respect Washington, and, more importantly,
24 volunteer time. There are volunteers in Spokane who, if
25 they do not get to complete this process in November,

1 it's going to delay the whole event of the election a
2 whole other year. And just by dragging out a campaign
3 inherently has damages to the proponent of the measure.

4 And the other requirement for laches is that
5 the delay be unreasonable. I have not heard any reason
6 as to why either the scheduling of the motion or waiting
7 a year, year and a quarter for filing the case, was
8 appropriate. Your Honor, we would submit it is
9 unreasonable to do it at this last minute, which gets to
10 the issue of harm. We agree that they can meet the
11 standing requirement but they are essentially asking for
12 injunctive relief. And in order to have injunctive
13 relief, there has to be a higher level of showing of
14 harm, and there is no harm in allowing people to vote.

15 And we would contend that they haven't met the
16 requirements, the harm showing requirements, to get
17 injunctive relief in this case.

18 I'd like to spend the rest of my time, if I
19 could, dealing with the several issues on the merits of
20 their argument, and I'd like to deal with mootness
21 first. And if the court would allow, I'd like to
22 present a case that was not cited in our brief, which I
23 think is relevant to the mootness issue.

24 THE COURT: Have you provided that to...

25 MR. STEPHENS: I've given it to Mr.

1 Eichstaedt.

2 THE COURT: All right. Thank you.

3 MR. STEPHENS: Thank you, your Honor. This
4 argument is based primarily on the *Huza v. Yakima* case.
5 That's the one case where the court said the initiative
6 was gonna be moot. And in that case, it's factually a
7 little different than ours. In *Huza*, the Yakima City
8 Council enacted two different taxes, actually I think it
9 was four taxes, but in two different ordinances. The
10 new initiative says we are repealing these two
11 ordinances. The City of Yakima said, well, we're gonna
12 going to repeal these ordinances, as well, before the
13 initiative takes effect. And the court said, well, it's
14 moot, the initiative stands on its own. And that's some
15 important language, "it stands on its own."

16 But the case that I handed to you is
17 *Citizens For Financially Responsible Government v. City*
18 *of Spokane*. And it's from the Supreme Court as well,
19 but it's about 20 years later in 1983. And I'd refer
20 the court to -- find the page. In the bottom right,
21 there's the page numbers. It's page 8.

22 In the language that I've highlighted that
23 says, "Moreover, we find persuasive the dissent argument
24 in *Huza* that repealing and reenacting procedure by a
25 legislative body should not be allowed to frustrate the

1 initiative slash referendum process," citing the dissent
2 in *Huza*. And it goes on and says we distinguish *Huza* on
3 its facts. It should be limited to its facts. And
4 therefore we're not gonna actually reconsider that
5 particular case because the ruling in *Huza* is not going
6 to be applied to other facts, other cases. And so I
7 would argue that this court doesn't have the authority,
8 in light of this, to say, "I'm just gonna declare this
9 moot and therefore not let people vote on it."

10 And I think that there are a couple of
11 additional reasons why that's true. If you look at the
12 prior paragraph, the paragraph that is not highlighted,
13 in approximately the middle of the paragraph, the
14 Supreme Court says, "In *Huza*, the amending ordinance was
15 complete in itself and it made no reference to the
16 previously enacted ordinance which were the object of
17 the initiative. Its effect was to repeal the ordinance
18 under -- ordinances under attack." Again, the
19 initiative said we're repealing this ordinance.

20 Proposition 1 does not stand on its own, it
21 makes changes to existing language. And it does,
22 critically, add section 3, a completely new section.
23 There is no argument that section 3 is moot. We can't
24 say that the city council changed section 3, added
25 section 3, deleted section 3. Section 3 is completely

1 new, and that is a reason -- another reason why
2 Proposition 1 is not moot.

3 The other thing that I think is significant
4 is that since *Huza*, the Supreme Court stated in the
5 *Coppernoll* case. Again, *Coppernoll* was a state
6 initiative. Agreeably it's a state initiative so the
7 analysis is a little different, but it's basically the
8 same. The court in *Coppernoll* said pre-election review
9 can interfere with free speech values. And in
10 *Coppernoll*, the court noted initiative 695 on the \$30
11 license tabs. And the court noted how the Supreme Court
12 said this -- after the election, this initiative is
13 invalid. But it noted that the legislature responded to
14 the public vote and made some changes. Initiatives on
15 the ballot have free speech value, and that is a reason
16 why the court should not step in and keep a measure from
17 actually going to the voters.

18 I would then like to go to the legislative
19 versus administrative issue. And the Supreme Court has
20 recognized that it's just not always clear because
21 legislative bodies do operate in -- sometimes in an
22 administrative function, and sometimes they operate in a
23 legislative capacity. But I contend that the question
24 for making that determination is based on is there a new
25 policy in effect. Proposition 1 does represent a new

1 policy which is more than simply details about carrying
2 out preexisting policy.

3 And the Supreme Court, in the *Ruano v.*
4 *Spellman* (Phonetic) case, which I think was talked about
5 in the water fluoridation case, was saying this is
6 about -- the initiative there was about the construction
7 of the I-90 bridge. And -- wait, excuse me, I got that
8 one mixed up. This was about a public proposal for a
9 construction project, believe it was the Kingdome. And
10 the initiative was going to deal with how the bonds were
11 going to be issued and who was gonna do that. And the
12 court said look, the decision had already been made, the
13 legislative decision had been made. The initiative
14 can't undo that by going after details about how letting
15 out of contracts and selecting contractors.

16 And it's important when you look at the
17 water fluoridation case, the court said this is
18 administrative because -- not because the subject of
19 fluoridation is administrative and not legislative, but
20 because the city was operating under state and federal
21 regulations for running their water system. There were
22 requirements about how the city operates its water
23 system. An initiative can't come in and say, "You've
24 gotta operate it in this detail in a different way."
25 That's not what we have with Proposition 1.

1 As to the argument that Proposition 1 is
2 illegal, I would like to start out by saying that the
3 court has been very narrowly looking at these questions,
4 once again because there are free speech implications at
5 stake. And as Mr. Eichstaedt points out, the state
6 initiative process is based on the state constitution.
7 Local initiatives are based on local, the charter and
8 state law. But it is still the same type of interest,
9 it is the right of people to vote. And so the court
10 narrowly looks at the question: Is this the kind of
11 subject that is appropriate for the initiative process,
12 is it appropriate for the voters? Not whether or not it
13 is just legal or illegal.

14 Now, and the case that they rely on is the
15 *Spokane Entrepreneurial* case, where the court said this
16 is not within the scope of initiative power because it
17 would violate the federal constitution and violate state
18 law. You have to look carefully at what the Supreme
19 Court said. The Supreme Court said this initiative is
20 trying to take away rights that were established by the
21 federal constitution, and that is not the subject of
22 local initiative power. So you can't purport to take on
23 things that is not within the bailiwick of the
24 legislative body.

25 The classic case is a case called

1 *Philadelphia 2 v. Gregoire* (Phonetic), a statewide
2 initiative where the proponents were wanting to
3 establish a federal constitutional convention. And the
4 court said that's not the subject matter of the local --
5 or excuse me, the state initiative process. Just like
6 in the *Spokane Entrepreneurial* case, it's not the
7 subject of the city's initiative power. That's not the
8 same as saying some provision of the initiative might
9 turn out to conflict with some state law or, as they've
10 alleged, rules of professional conduct.

11 I would contend that questions about
12 interpretation and potential conflict should be resolved
13 in a ripe case, which requires that the measure goes on
14 the ballot and the measure is adopted. And only then,
15 if it arises in a particular case, will the court decide
16 which law prevails. Because I think it is wholly
17 inappropriate to ask the court now, at this stage, to
18 interpret and decide what this measure would do if it
19 were adopted. Those kinds of issues can wait and should
20 wait. Just because you can imagine the conflict in a
21 specific case does not mean the court should step in and
22 prevent people from being able to vote on it.

23 And finally on the illegality question.
24 They've argued that Proposition 1 says the City cannot
25 prohibit certain communications to federal officials.

1 And the argument this morning is don't we want the City
2 to be able to discipline people. You know, those kinds
3 of arguments belong in the campaign, they don't belong
4 in an argument to the court, for the court to step in
5 and say people don't get to vote. If they think there
6 are bad things in the initiative, bad policy, that's
7 what they get to argue to the public forum.

8 And I would contend that just because
9 Proposition 1 says the City can't do these things on
10 prohibiting communications, that does not mean that the
11 RPC can't, that the state can't through the state
12 statute which they rely on. There is not necessarily a
13 conflict between state law, and the court shouldn't
14 assume and step in in the absence of a ripe case.

15 I'd then like to deal with the lack of a
16 sponsor. Plaintiffs contend that, well, there's no code
17 allowing a sponsor to disappear. And our response is
18 there's no code that disallows a sponsor from
19 disappearing. And I would argue that in the interest of
20 the freedom of the sponsor to step aside, as well as the
21 importance of the signatures of all of the thousands of
22 people, they signed a petition believing that if enough
23 signatures were gathered, they would be submitted. And,
24 in fact, they were submitted. And the argument is made,
25 well, Ms. Murray, the prior sponsor, withdrew before

1 they were submitted to the counsel. But they were
2 submitted and then the signatures were verified.

3 And I think that's how the court should look
4 at this. Otherwise you're authorizing somebody to
5 collect signatures on a campaign, and then keep them in
6 their pocket and destroy the beliefs and understanding
7 of people who signed it, believe in the good faith of
8 the signature gatherer that they are going to be
9 submitted. Again, they were in this case. The court
10 should not prohibit a vote simply because the sponsor,
11 the original sponsor, changed her mind.

12 And finally on the impartiality of the
13 concise description. I think it's important to know
14 that the Spokane Municipal Code on this subject tracks
15 state law on this subject for statewide initiatives.
16 That the city attorney drafts this. And because the
17 city attorney drafts it, it is supposed to be impartial.
18 Just like in a statewide initiative, the Attorney
19 General drafts it. It is supposed to be -- that is
20 supposed to be impartial. But there is no requirement
21 in state law, in the city code, that says anything else
22 on the initiative has to be impartial as well. In fact,
23 sometimes the initiative text itself is not partial.

24 Goes on and talks about what a great idea,
25 statements of intent. As the Supreme Court said in the

1 *Pierce County* case, policy fluff. It's campaigning.
2 It's all appropriate. And in the examples that we
3 attach to the Keller declaration, this is normal for the
4 initiative process for campaign slogans to be placed at
5 various points on the initiative petition. It's what
6 the city attorney writes that or has to be impartial,
7 and there is no argument that it is not impartial. What
8 they're trying to do is extrapolate the concise
9 description argument and say it has to apply to the
10 whole initiative. There is absolutely no authority for
11 that.

12 And for those reasons, we would ask court to
13 deny the plaintiffs' motion.

14 THE COURT: Thank you. Mr. Catt, I'll turn
15 to you next. I'm not sure whether there's anything that
16 you need to put on the record, but you have the
17 opportunity.

18 MR. CATT: Thank you, your Honor. On behalf
19 of the Auditor, as indicated in the brief, we don't take
20 a position on the merits of this case. We're only
21 concerned about being able to proceed with the election
22 in a timely manner so that there are no holdups, either
23 locally or statewide. Everything rolled along in the
24 process timelines. If a decision were to be made to try
25 to prevent the appearance after the dates designated,

1 believe September 5th, then that would put the Auditor
2 in conflict with the court's order and state statutes,
3 federal statutes. So that's why we're appearing here,
4 for purposes of advising the court and parties the need
5 for a timely decision on this.

6 If the court has any questions concerning
7 any of the timing procedure from the election
8 standpoint, I'd be happy to answer those.

9 THE COURT: I don't particularly at this
10 point in time.

11 MR. CATT: Thank you.

12 THE COURT: I'm not sure. Counsel, I'll
13 have you argue for the City. Wasn't sure which one of
14 you were going to be arguing.

15 MR. ODLE: Thanks, your Honor. As Mr. Catt
16 said, the City has no position -- has taken no position
17 in this particular dispute, and only wishes to have
18 clear direction from the court as to which direction to
19 proceed and will defer to the court's judgment in that
20 fashion. If there's any questions I can answer for you,
21 I rest on the papers.

22 THE COURT: Thank you. Counsel, returning
23 for just a very brief reply.

24 MR. EICHSTAEDT: All right. Thank you, your
25 Honor.

1 Again for standing, essentially the most --
2 what we were presented was essentially treated. It
3 was -- we believed we had laid out standing. They
4 raised arguments unique. We really treated that like
5 you would in a motion to dismiss based on standing. We
6 believe the court should consider that.

7 As far as unreasonable delay. Well, they
8 also are guilty of unreasonable delay. Their answer was
9 nearly a month late. We had to move for a motion for
10 default. Part of the delay was theirs. As soon as that
11 issue was resolved, we actually moved forward to
12 schedule a hearing. And your Honor, as you know, you've
13 got a very busy schedule so it took us -- we were
14 initially scheduled for a hearing in a week or two, and
15 it took a lot of prodding and pleading with your clerk
16 to get that moved to this date. So we did everything we
17 could. And frankly, there is no evidence that there was
18 any intentional effort to delay this proceeding. And
19 moreover, if there is harm, if there was -- if there are
20 volunteers working, there was no evidence provided other
21 than for the first time hearing it. Again, they're not
22 spending any money. There's no web site. There's
23 nothing to indicate that they're actually campaigning on
24 this matter.

25 *Coppernoll*, which is again repeatedly cited,

1 I would just encourage this court to take a look at what
2 is the controlling case, which actually came out of
3 Spokane and the Spokane County Superior Court, *Spokane*
4 *Entrepreneurial Center v. Spokane Moves to Amend*.
5 That's cited extensively in my brief. But it lays out
6 the difference between a local initiative and a
7 statewide initiative. Which again, we concede a
8 statewide initiative is protected by the constitution
9 and has constitutional free speech. Here, local
10 initiative is discretionary. City of Spokane could
11 elect not to have it at all, and it's regulated entirely
12 by the municipal code.

13 *Huza* is brought up, as well as *Citizens For*
14 *Financially Responsible Government*. We actually address
15 that case extensively in our brief, in our opening
16 brief. But I'd also like to point out we believe that
17 that language is dicta. The court says, in *Citizens For*
18 *Financially Responsible Government*, because we
19 distinguish *Huza* on its facts, it should be limited to
20 its facts, and it's not necessary to reconsider its
21 holding at this time.

22 Even if you want to consider that, two
23 things. One, *Huza* -- or that case says unlike the
24 ordinance in *Huza*, the second ordinance cannot stand
25 alone and does not repeal the first. So it

Like the "deliberate effort" REichstaedt did make in the SMC 3-to-SMC 18 "shell game"!

1 distinguishes the facts here. And moreover, there's
 2 been no evidence presented to indicate that there was
 3 any deliberate effort from city council. The
 4 contemporaneous statement, and statements on the
 5 resolution itself, talk about continued support of
 6 justice for all citizens. It lays out there was
 7 expansive changes in Title 18 that expand the rights of
 8 citizens in the Spokane, including things like
 9 prohibiting a religious registry.

more REichstaedt dishonesty. The only time SMC requires a "sponsor" is upon initiation of the filing process.

10 The sponsor, again the plain language in
 11 section .020, says you need a citizen to petition the
 12 city council. That process does not occur until you
 13 have a validated petition. You've got to have your
 14 signatures, they've got to be validated, and then that
 15 petition process occurs under the city code.

16 As far as the addition of other languages --
 17 or other prejudicial or campaign language, it may be the
 18 case that that happens in other places or on statewide
 19 ballots, but that's not what happens here. We have
 20 explicit language that's unique to the City of Spokane
 21 that says impartial, not prejudicial. It just flies in
 22 the face of that requirement to say you can stick it on
 23 another place.

24 And in fact, Mr. Piccolo informed the city
 25 council, in June of 2015, that they were well informed

1 that the legislative history added to the initial form
2 well after the initiative was reviewed and formatted by
3 the city attorney's office. Did not meet -- did not
4 conform to the requirements of the SMC. They chose to
5 proceed regardless of the discrepancies between the
6 initiative form and the SMC and their embellishments.
7 They knew the harm. Early on the city clerk told them
8 that. These are both attached to declarations in our
9 opening brief. They just decided to the heck with it,
10 they wanted to proceed anyway.

11 So for all these reasons, we believe that
12 this measure is unlawful, that declaratory judgment is
13 appropriate, and again we urge that the court issue an
14 order prior to September 5th. Thank you, your Honor.

15 THE COURT: Thank you. It's a little bit
16 after 10:00 and I have one more motion to go. I had the
17 opportunity to review the briefs from both sides. I had
18 the opportunity to review the cases that you referred
19 to. However, I would like to go back, because I do know
20 it was cited in plaintiffs' brief, and they made
21 reference to it, but obviously it's being cited in a
22 different manner before me today by the defense with
23 regards to *Huza* and the moot issue, which is of concern
24 to the court. So I'm going to take a bit of time. I'm
25 hoping to do that this morning to review this particular

Sorry,
REichstaedt.
the U.S. First
Amendment
is superior to
Clerk's mere
preference.

1 case and go back through my notes. There's one other
2 spot I want to look at based on arguments made here
3 today.

4 I would like to have you all perhaps come
5 back here at 11:15 and I will have a ruling on this case
6 at that time. Bear with me because this is a very
7 serious matter to all those involved, based upon the
8 passionate arguments made and the number of folks I have
9 here today, as well. If you'll give me time, I'll be
10 back to make my decision. But before leaving the bench,
11 I'm going to turn to my last motion here so I do need to
12 have you vacate counsel table at this time.

13 MR. EICHSTAEDT: Thank you, your Honor.

14 (Off the record.)

15

16 THE COURT: Back on the record for the
17 Global Neighborhood v. Respect Washington case. I asked
18 the parties to come back so I could review the *Citizens*
19 *For Financial Responsibility Government* case, as well as
20 some notes that I took during argument, comparing them
21 to the briefing and the other cases read.

22 I want the parties to all understand, I had
23 the opportunity to review the briefing multiple times.

24 This is not an area of the law I encounter every day.

25 Absorbing the impact of all the cases, and the actual

1 points being argued by counsel, was not something I was
2 able to do without multiple reads of all of this. I'm
3 hoping I have the appropriate grasp on the issues. I
4 think I do under these circumstances.

5 This is a request for declaratory relief.
6 The plaintiffs that consist of Global Neighborhood,
7 Refugee Connections of Spokane, Spokane Chinese
8 Association, Asian Pacific Islander Association, Spokane
9 Chinese American Progressives, and the National
10 Organization of Women, with regards to specifically the
11 Spokane charter, are the plaintiffs as a whole. They
12 are requesting the court find that Proposition 1 is
13 invalid, and that the Spokane County Auditor be ordered
14 not to place this on the ballot for 2017.

15 The defendant's, Respect for Washington,
16 initial position is the plaintiffs lack standing to
17 bring this issue; that this matter is legislative in
18 nature, not administrative, and therefore the court
19 should not grant the declaratory action. Their briefing
20 indicates the court lacks jurisdiction to do so under
21 these circumstances.

22 The other two defendants, Vicky Dalton in
23 her official capacity as the Spokane County Auditor, and
24 the City of Spokane, both take no position with regards
25 to the merits of this matter, but only need to have some

1 direction from the court as to what to do pending the
2 decision I make. That was quite clear from the briefing
3 and what was briefly put on the record.

4 Based upon my review of the case law, the
5 initiative power of the citizens of Washington state,
6 including those within the city of Spokane, is a
7 paramount right that is granted. It is constitutionally
8 granted at the state level, and obviously granted to the
9 citizens of the city of Spokane through the city
10 charter. Same would be if this were a county issue
11 through the county charter.

12 The ability for the judiciary, in other
13 words the courts, to review an initiative, should be
14 exercised with great caution. It is not something to
15 weigh into with abandon saying, "Easy to do." It is
16 not. As courts, we are directed not to interfere in
17 electoral or legislative processes. We are not to
18 render any type of advisory positions or opinions under
19 these circumstances. Those are the parameters under
20 which I operated when reviewing this matter in making my
21 decision after hearing arguments today.

22 The motion has been filed. I'm tasked with
23 reviewing that motion. It is with caution and serious
24 consideration I make my decision today. That's how I
25 approached it. I am very mindful of my limitations, and

1 that impacts my decision. I am applying, to the best of
2 my ability, the law with regards to the specific facts
3 in this case, as I am required to do.

4 While it was addressed in briefing, there
5 was not a lot of oral argument with regards to whether
6 this is a justiciable controversy. From my perspective,
7 it is a controversy that is available for me to hear at
8 this point in time.

9 There is an actual present and existing
10 dispute between the parties. The dispute is between the
11 parties with genuine and opposing interest. Those
12 interests are both direct and substantial. My
13 determination would potentially be a termination that is
14 final and conclusive, pending any type of appeal or
15 review the parties may opt for. Under these
16 circumstances, I find there is a controversy for me to
17 hear.

18 Standing was extensively briefed. The case
19 law I was reading speaks to standing. Without standing,
20 I don't have a decision to make. The plaintiffs must
21 have standing to be here. The test for that is not in
22 dispute, either. To find standing in a declaratory
23 action, the court must first have an interest sought to
24 be protected, which must be arguably within the zone of
25 interests to be protected or regulated by the initiative

1 in question.

2 The second portion of standing is the
3 challenged action must cause injury in fact, economic or
4 otherwise, to the party seeking standing. Both the
5 plaintiffs and defendant put that into their briefing.
6 That's not really what the issue is. It's how to apply
7 this that becomes the issue.

8 I reviewed case law to look at the
9 distinctions between pre-election and post election
10 initiatives. Under the case law, pre-election review of
11 initiatives under a city charter are only required to
12 meet traditional standing requirements. There was some
13 thought that perhaps a heightened scrutiny needs to be
14 applied. That is not the case. The state Supreme Court
15 resolved that issue. It is just the basic standing
16 requirements that this court is applying.

17 In addition, case law has directed that
18 there are only two types of pre-election challenges that
19 the court can review, and those are procedural
20 challenges. In other words, the sufficiency of
21 signatures, the ballot titles, things along those lines.
22 Then whether the subject matter is proper for direct
23 legislation.

24 This second type of challenge is the
25 challenge that is generally made through local

1 initiatives because they are more limited. The local
2 initiative power is more limited than that at the state
3 level. As pointed out, there is a distinction between a
4 state initiative and a local initiative. Obviously that
5 state grant is established by the state constitution.
6 The filing of local initiatives is not granted by the
7 state constitution.

8 Under these circumstances, I have to find
9 that the plaintiffs show they are within the zone of
10 interest protected, and that there is injury in fact. What!
11 What was interesting in all the reading I did with
12 regards to these matters, there are different ways
13 standing can be found. Organizationally was argued.
14 Organizational standing would be the organization can
15 bring the action on behalf of its members.

16 Defense initially argued there were no
17 individual members of the plaintiff organizations that
18 were directly affected by Proposition 1. Their initial
19 argument, by briefing, was that perhaps the National
20 Organization of Women had some members who would be
21 affected, but their mission didn't apply to this
22 particular case. By "their mission," I mean the
23 National Organization of Women's mission didn't apply to
24 this type of case. That was one of the questions I was
25 asked to address.

1 In their reply, the plaintiffs bolstered
2 their evidence with regards to the other members of the
3 organizations who would be affected by the proposition
4 who would then, by being a member of the organization,
5 have standing to bring this type of suit. The
6 organization would have standing, as well.

a mistake

7 Through argument today, defense concedes
8 there is standing based upon those circumstances. The
9 court will accept that. I make that same finding.

10 In reviewing for organizational standing,
11 the initial member was the National Organization of
12 Women, indicating they have members that could sue in
13 their own right. The mission extends not only to
14 women's rights, but obviously immigration issues that
15 affect women, as well. That was clear from the
16 evidence.

17 The final portion of organizational standing
18 is that individual members are not needed because the
19 relief sought is declaratory in nature, in this
20 particular case, not monetary. As a whole, the National
21 Organization of Women meets that standard. When I
22 reviewed the additional evidence presented in reply,
23 that would apply also to the Asian Pacific Islanders
24 Association through Ms. Abdul Fields; the Spokane
25 Chinese American Progressives through Dr. Lam; and the

All showing Julie McKay's pro-illegal bias

1 Spokane Chinese Association through Lo Nguyen
2 (Phonetic).

3 The other information this court has is that
4 Global Neighborhood and Refugee Connections hire
5 immigrants to work for them. They have a legitimate
6 concern with regards to the impact this initiative would
7 have on the ability of their workers to live, work
8 safely within the community, and integrate into the
9 community. The declarations made that clear. Those
10 organizations were suing, as indicated, on behalf of
11 their employees.

12 The injury they addressed is the fact that
13 their resources appeared to be not necessarily great
14 resources. In other words, not a lot of resources to go
15 around to address all kinds of different issues. Their
16 limited resources would be directed towards the
17 controversy here and their requirement to then educate
18 their employees and the people they serve regarding the
19 impact of this proposition, and the role that law
20 enforcement and city officials play, if the proposition
21 were to be implemented. I find that there is injury
22 that could occur if this proposition were to go into
23 effect.

24 The argument was made that police stops, or
25 the profiling of immigrants, would automatically

Good on
Judge
McKay!

1 increase based upon the implementation of Proposition 1.
2 I don't know that I can make a finding that, by merely
3 adopting Proposition 1, police profiling would
4 immediately go up, and that harassment of the immigrant
5 refugee citizenship would immediately start.

6 Harassment was described in declarations of
7 varying differences. I find that fear of, or reluctance
8 to seek assistance from, law enforcement, is a valid
9 concern. In other words, the quelling effect of
10 Proposition 1 on any immigration or folks with
11 citizenship issues to seek assistance from law
12 enforcement, whether it be in reporting crime or just
13 seeking some assistance from them across the board,
14 would be affected by this proposition. That is an
15 injury, in my opinion, that I can find under these
16 circumstances.

17 In addition, the organizations talked to
18 injury about how they advise and deal with this
19 proposition; how they are supposed to advise the folks
20 they service without really knowing the application.
21 Under those circumstances, I find that the plaintiffs
22 have standing to bring this action.

23 There was some briefing with regards to
24 public importance. Based upon my finding under other
25 theories, I didn't address the public importance portion

1 that was argued through briefing, although not
2 necessarily orally.

3 The next area I'm going to deal with is a
4 bit backwards - I shouldn't say backwards - from the way
5 counsel argued this. The next issue is whether the
6 initiative exceeds the scope of local initiative power.

7 The question becomes: Is Proposition 1
8 passed to make a new law or declare a new policy, or is
9 it to merely to carry out and execute laws or policies
10 that are already in existence? Plaintiffs argue the
11 initiative seeks to amend the policies of the Spokane
12 Police Department. The materials used in their briefing
13 argued the policies were longstanding, however, the
14 dates used were 2013. I wouldn't necessarily consider
15 from 2013 to now longstanding, but they are certainly
16 policies that were and are in effect at the time this
17 proposition started moving forward.

18 What was put into the brief, and then
19 argued, was the fact that the police department has
20 these policies as to how to instruct their officers with
21 regards to taking action and adopting a policy against
22 using national origin or bias-based policing
23 restrictions. I reviewed those. I heard argument on
24 that as well.

25 Defendants argue that Proposition 1 is a new

Which is an inaccurate charge. No change to SPD Policy 428 was mandated by Prop. 1. Defendant could have emphasized that distinction.

1 policy for the City of Spokane, and that the initiative
 2 just reverses a policy that was put into place in 2014.
 3 The facts show that the police department has these
 4 policies for how to move forward, and the City of
 5 Spokane then codified the policy in Spokane Municipal
 6 Code 3.10.040 and 3.10.050.

7 I spent some time reviewing the case law
 8 with regards to the distinction between legislative and
 9 administrative policy. I agree with counsel for the
 10 defense; sometimes that's not an easy distinction to
 11 make. The hope is, when you look at these cases, a
 12 light bulb comes on and there is a very clear picture
 13 the court can follow as to what would be considered
 14 legislative and what would be considered administrative.

15 I certainly couldn't find that bright bulb of "a-ha,
 16 this has to be the answer" that I wished I certainly
 17 could. The cases that refer to those things that are
 18 administrative in nature were, for instance, the red
 19 light camera policies, the fluoridation issues referred
 20 to by both parties. Rezoning was another one I
 21 reviewed.

22 Using that case law to guide how I
 23 approached this particular proposition as it applies to
 24 the proposed law going into effect, I can make the
 25 finding the effect of this proposition to be

Contrite of
 McKay to
 admit. So
 she should
 have
 deferred
 allowing the
 citizens to
 vote.
 Allowing the
 subject
 matter
 disagreeeme
 nt
 adjudicate
 AFTER an
 election.

1 administrative in nature. It deals with how the police
2 and city employees carry out or execute the laws or
3 policies that are already in existence.

4 Under the bias-based profiling that
5 Proposition 1 alters, it doesn't change some of the
6 other terms and conditions within that bias-based
7 profiling. For instance; perceived race, national
8 origin, color, creed, sexual orientation. There is a
9 list of them. The only piece of the policy and code
10 that was removed in the one section of Prop 1 is
11 citizenship status. It does not change the bias-based
12 profiling directive, it only changes one portion of what
13 the officers are to be looking at.

14 From my perspective, this is not new law,
15 this is not new policy; this is a directive to law
16 enforcement specifically detailing how police are to do
17 their policing. For those purposes, I find this
18 administrative in nature and not legislative.

19 Turning, then, to the issue of mootness that
20 was argued by both defense and the plaintiffs. The
21 plaintiffs argue that Proposition 1 is moot. It seeks
22 to amend CMC 3.01.040 and 3.01.050, adding another
23 section. The sections don't exist any more, they have
24 been repealed, as is quite clear. That's not in
25 dispute. The proposition targets these code sections

1 that don't exist any more but does, in fact, add a
2 respect for law clause to Title 3.

3 On the other hand, the defense argues that,
4 first, the intent of Proposition 1 can be applied to the
5 new codification of these under the code section
6 18.01.030. In my interpretation of their argument, you
7 could, from that section, remove citizenship status,
8 which leaves other wording, as was argued by plaintiffs.

9 In addition, 3.10.050, recodified into
10 18.07.020, could be implemented as well. In other
11 words, the law tells us that statutes are required to
12 facilitate, not frustrate, the right of an initiative.
13 That could be moved from what was being repealed to what
14 exists now.

15 The parties didn't address, from the
16 briefing I saw or through oral argument, the additional
17 language that was added to Title 18. By adopting or
18 accepting the defendants' position regarding the
19 initiative being able to be applied to the recodified
20 section ignores the additional language that is added
21 into the Title 18 sections. I'm not quite sure how that
22 becomes doable at this stage in the game. It would
23 either be meaningless or impossible to implement, given
24 the additional language that was added to section 18.

25 I can make a finding that Proposition 1 is

Why does McKay allow herself to be wrapped around REichstaedt's "axel" when it was clearly illegal for Council to violate their own Feb. 2016 reservation of Prop. 1 to the 2017 ballot with their March 2017 "Human Rights" ordinance shell game! Then, come June 2017, we learned that the shuffle was likely deliberate to derail Prop. 1. Shame on Judge McKay for abetting the rawly dishonest anti-democrats on Spokane Council.

1 moot, due to the fact that the code sections referred to
2 in the initiative have been repealed and recodified,
3 adding additional language that can't be rectified.

4 One of the things I looked at during my
5 break was the *Huza* case, as well as the *Citizens For*
6 *Financially Responsible Government*. This case was
7 referred to in the original briefing of the plaintiff.
8 The argument made by defense counsel made sense to the
9 court. I went back and reviewed both of those cases
10 again. Under these circumstances, based upon the
11 initiative in question, and based upon where things have
12 gone, I am more inclined to follow *Huza* than *Citizens*
13 *for Financial Responsibility*. Based upon these cases,
14 my decision remains the initiative is moot.

15 The other issues that were addressed by both
16 counsel is whether Proposition 1 conflicts with state
17 law, RCW 10.40.200(1), or with the RPCs. From that
18 aspect, it appears that perhaps the initiative puts the
19 local law in conflict with state law. However, I am
20 unaware of any case law that allows me to use that as a
21 basis for a pre-election review.

22 I agree with the defense; that is more a
23 post election issue that should not be addressed at this
24 time. While it is clear that local law cannot conflict
25 with state law for purposes of this type of action, I

1 don't believe that is something I can base my decision
2 on. For record purposes, because it was argued, I will
3 indicate I have not based my decision in this case on
4 that section.

5 The other portions argued with regards to
6 the initiative sponsor being the same and the
7 prejudicial language being proposed, I am not reaching
8 any findings with regard to those as well, based upon
9 the fact that I find this is invalid under the other
10 portions of my decision, so I have not made findings
11 with a regards to that.

12 I do, however, need to address the laches
13 issue. It was put on the record, really brought up
14 first in defense's argument. From their perspective,
15 this is a very important issue.

16 The defense is arguing that the plaintiffs
17 timed this motion to prevent them from having any relief
18 from my decision. At the time arguments were made,
19 certainly the defense has no idea what my decision will
20 be. The bottom line is whether laches would apply if I
21 were, in fact, to grant the declaratory relief as I have
22 done so today.

23 In reviewing the evidence in this motion,
24 and applying the laches case law, I don't know that I
25 can make a finding that this was intentionally done,

No, but a
judge must
rule to prevent
becoming a
laches tool!
Judge
restraint from
obstructing a
public vote
protects the
judiciary.

So, assume the worst from a vile plaintiff. And err on the side of preserving a citizen vote following a lawful petition!

1 that the plaintiffs intentionally or unreasonably
2 delayed the filing of this motion. Obviously it is
3 certainly butting right up against those time frames
4 that have been referred to. I don't have any evidence
5 that the plaintiffs have filed this motion scheduling
6 this hearing where it is, for purposes of preventing
7 appeal if the declaratory judgment were to be granted.
8 Under those circumstances, I don't believe that I can
9 apply laches to this case.

10 The issue of damages that were argued, one,
11 there are no damages. I have information that would
12 suggest Respect Washington certainly hasn't spent any
13 money or funds with this recently or had any volunteer
14 labor, for lack of a better term, put into this
15 recently, but they do refer to the fact that work was
16 done early on. That wasn't quantified other than
17 through the argument made by counsel.

18 Considering all the facts, I will not apply
19 laches. I do not think it is appropriate under the
20 circumstances here.

21 For all the reasons as outlined, I will
22 grant the plaintiffs' request for a declaratory
23 judgment. I will also, then, go one step further as
24 requested by the City and the Auditor, and order that
25 the auditor not place Proposition 1 on the ballot for

1 the November 2017 general election.

2 I will start with counsel for plaintiffs. I
3 have a proposed order you provided. It does not
4 adequately address some of the other findings I made.
5 How soon do you think you can get an order back to me
6 with regards to this hearing?

7 MR. EICHSTAEDT: Your Honor, I could
8 probably by Wednesday of next week.

9 THE COURT: Counsel, your ability to address
10 that? The sooner the better would be...

11 MR. EICHSTAEDT: Or Tuesday.

12 THE COURT: My guess, since it is almost
13 Friday afternoon.

14 MR. STEPHENS: Your Honor, we've argued the
15 difficulty in seeking an appeal. It's still
16 theoretically possible, and as of September 5th it will
17 be impossible.

18 THE COURT: That's not a lot of time, I
19 understand that. I want to make sure we get an order
20 entered as soon as possible so that anything moving
21 forward can happen as expeditiously as possible.
22 Whether it is going to happen or not, I do not know.

23 MR. STEPHENS: I would really like to see an
24 order entered by Monday.

25 THE COURT: Counsel, can you get an order to

1 me by 4:00 on Monday?

2 MR. EICHSTAEDT: Your Honor, I can.

3 THE COURT: All right. That will put your
4 feet to the fire a little bit. I see you have a draft
5 started, which although doesn't quite get there if it
6 requires a transcript. I'm guessing that Mr. Sanchez
7 will not have that to you, but will at least take a shot
8 at it.

9 MR. EICHSTAEDT: I think we can manage
10 without a transcript.

11 THE COURT: Any other issues that need to be
12 placed on the record before we recess?

13 MR. EICHSTAEDT: No, your Honor.

14 MR. STEPHENS: No, your Honor.

15 THE COURT: Anything from the City or the
16 Auditor?

17 MR. CATT: No, your Honor.

18 THE COURT: Thank you.

19 (In Recess.)

20

21

22

23

24

* * *

25