NO. 91551-2

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

SPOKANE ENTREPRENEURIAL CENTER, et al,

Petitioners,

v.

ENVISION SPOKANE, et al.,

Respondents.

BRIEF OF *AMICI CURIAE*
WASHINGTON STATE ASSOCIATION OF COUNTIES,
ASSOCIATION OF WASHINGTON BUSINESS,
BUILDING INDUSTRY ASSOCIATION OF WASHINGTON,
INLAND NORTHWEST AGC, AND
WASHINGTON REALTORS
IN SUPPORT OF PETITION FOR DISCRETIONARY REVIEW

Josh Weiss
WSBA # 27647
Wash. State Assoc. of Counties
206 Tenth Ave. SE
Olympia, WA 98501
Tel: (360) 586-4219
jweiss@wacounties.org

Robert Battles
WSBA # 22163
Assoc. of Wash. Business
1414 Cherry St. SE
Olympia, WA 98501
Tel: (360) 943-1600
bobb@awb.org

Adam Frank
WSBA # 43389
Building Indus. Assoc. of Wash.
111 21st Avenue SW
Olympia, WA 98501
Tel: (360) 352-7800
Fax: (360) 352-7801
adamf@biaw.com

Robert H. Crick, Jr.
WSBA # 26306
Robert Crick Law Firm, PLLC
Attorney for Inland Northwest AGC
421 W. Riverside Ave., Suite 1650
Spokane, WA 99201
Tel: (509) 535-0391
rob@cricklawfirm.com

Bill Clarke
Attorney at Law
WSBA # 28800
Attorney for Washington REALTORS
1501 Capitol Way Suite 203
Olympia, WA 98501
Tel: (360) 561-7540
bill@clarke-law.net

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

I. INTRODUCTION AND INTERESTS OF AMICI

The Court of Appeals erroneously adopted a new heightened standing requirement for Washington counties and citizens seeking a judicial determination of the validity of proposed local initiatives. If followed, the new standard will deprive members of *Amicus Curiae* Washington State Association of Counties of their ability to protect citizens within their counties from abuse of the local initiative process and upset the balance between county and local governments. Similarly, the new standard would prevent members of the private *Amici* organizations from protecting themselves from pointless, costly and repetitive campaigns on invalid local initiatives. Such protection is part of the function of *Amici* for their members. *Amici*'s participation in this case serves the interests of their members in that the ruling as it stands has the potential to significantly undermine their interests. This Court should accept review because whether counties and private parties have standing to challenge the scope of proposed local initiatives is an issue of substantial public interest. RAP 13.4(b)(4).

The Court of Appeals' Opinion fails to recognize long-standing law and practice allowing Washington courts to determine pre-election whether a local initiative is beyond the scope of the local initiative power. Courts have routinely decided pre-election challenges by counties, cities,

and private parties. By declaring invalid local initiatives that are beyond the limited scope of the local initiative power, courts have protected the integrity of the local initiative process; alleviated confusion in the electorate arising from voting on (or purporting to adopt) invalid measures; protected private parties from the cost of campaigns over futile measures and the risk of improper enforcement should they pass; and preserved the ability of counties to protect their interests and citizens. *Amici* wish to preserve the ability of their thousands of members to seek a pre-election judicial declaration of the scope of local initiatives.

A. *Amici* Represent Washington's 39 Counties and Thousands of Businesses Across the State

The Washington State Association of Counties ("WSAC") is a non-profit association. Its membership includes elected county commissioners, council members, and executives from all of Washington's 39 counties. WSAC has a strong interest in this case because its members own and operate facilities subject to potential local initiatives. It also has a strong interest in the local initiative process and the management of elections, and wishes to maintain its members' standing to challenge city initiatives within county borders to help preserve the dual sovereignty balance between counties and cities.

The Association of Washington Business ("AWB") is Washington

State's chamber of commerce, manufacturing, and technology association, and works to advance an economic climate that enables its members, employees, and all citizens to prosper. With over 8,000 member businesses employing over 750,000 people across the state, AWB has a strong interest in a wide range of potential business, environmental, labor, and other regulations that are regularly considered in local initiatives.

The Building Industry Association of Washington ("BIAW") is the voice of the housing industry in Washington, dedicated to enhancing the vitality of the building industry for the benefit of its over 7,700 member companies and the housing needs of Washingtonians. Because many local initiatives involve land use, employment, and other regulations of import to the building industry, the BIAW has a strong interest in this case.

Inland Northwest AGC ("Inland AGC") is the region's largest full-service commercial construction trade association. It represents over 275 companies across eastern Washington. Local initiatives routinely amend or establish zoning or water regulations, giving the Inland AGC a strong interest in this case.

Washington REALTORS® ("Realtors") is a trade association of approximately 16,000 licensed real estate brokers and 33 local REALTORS® associations in Washington State. Land use, Growth Management, and zoning are largely regulated by local government.

Local ballot measures therefore directly impact the availability, location, and cost of commercial, industrial, and residential real estate, creating a strong interest in this case for the Realtors.

II. STATEMENT OF THE CASE

Amici adopt the Petition for Review's Statement of the Case.

III. ARGUMENT

The Court of Appeals' Opinion merits review under RAP 13.4(b)(1)-(4) for all of the reasons listed in the Petition for Review and in the City of Spokane's Answer Supporting Discretionary Review ("Spokane Answer"). *Amici*'s statewide experiences add additional reasons for review by reinforcing the existence of a "substantial public interest" in the issues raised in the Petition for Review. RAP 13.4(b)(4).

A. The Court of Appeals' Opinion Deprives Counties and County Auditors of Their Ability to Protect Against Costly and Misleading Elections on Invalid Subjects, and Avoids a Key Question of Dual Sovereignty.

The rule adopted by the Court of Appeals ignores the counties' interests in maintaining the legitimacy and integrity of the local initiative process and the ability of counties to protect their own interests and operations within localities threatened by proposed local initiatives.

First, WSAC shares the interest of the City of Spokane in protecting the integrity of the ballot. Spokane Answer at 10-16. That interest is amplified by counties' financial investment in the

administration of local elections.[1] Washington's counties thus have a heightened interest in maintaining the integrity of the ballot, and ensuring it is not improperly used as a soapbox for initiatives that are null and void before passage because they are beyond the scope of the local initiative power. *Swanson v. Kramer*, 82 Wn.2d 511, 518 (1973) (noting the State's interest in preventing the "use of the ballot for political stunts").

Maintaining the integrity of local initiatives is not a hypothetical concern. Local initiatives have frequently involved ludicrous subjects or subjects plainly beyond the proper scope of the local initiative power, and holding elections on all proposed local initiatives—even if invalid—would confuse the public and diminish the legitimacy of the electoral process. For example, proposed Seattle initiatives have included a 2001 suggestion to require the Mayor of Seattle to sit in a dunk tank in Westlake Park and a 2007 initiative that declared the end of the war in Iraq on international law grounds. "Ballot Initiatives," Seattle Municipal Archives, available at

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[1] Although counties apportion the cost of elections to cities and towns, it is the counties that must expend the funds in the first instance. RCW 29A.04.216; RCW 29A.04.410. In *Nelson v. Appleway Chevrolet, Inc.*, 160 Wn.2d 173, 186 (2007), this Court held that a customer had standing to challenge a business' decision to directly charge its B&O tax liability to the customer even though the business could have passed some portion of the cost through to the customer by way of higher market prices. The same reasoning applies here. As the Court of Appeals held in a pre-election challenge case, "public funds should not be expended needlessly to place an initiative that violates the county code on the ballot." *City of Longview v. Wallin*, 174 Wn. App. 763, 782 (2013) (holding that placing a "potentially invalid initiative on the ballot . . . would be an unnecessary waste of public resources."). The same is true with regard to the county funds and personnel required to hold an election. *Id.* at 782-83 (holding a city's "financial and administrative costs associated with the election process" are an injury in fact).

http://www.seattle.gov/cityarchives/seattle-facts/ballot-initiatives (last visited June 1, 2015) (Initiatives 55 and 95-96). Allowing such invalid measures on the ballot undermines the integrity of the process. There is no legitimate public purpose served by holding an election on measures that cannot have any legal meaning because their subject matter is outside the scope of the local initiative power. *Georges v. Carney*, 691 F.2d 297 (7th Cir. 1982) ("[T]here is no constitutional right to use the ballot box as a forum for advocating a policy.") (Posner, J.). The local initiative power is limited and should be kept for legitimate purposes. Counties and courts play important roles in safeguarding this process.

Second, the Court of Appeals failed to recognize the unique needs of counties to not only safeguard their citizens' rights generally but to operate facilities and provide services throughout counties for the benefit of county citizens. As Spokane County explained to the trial court, the Envision Spokane initiative threatened to "impair Spokane County's ability to perform its statutory responsibilities" by interfering, for example, with the operation of its wastewater treatment plant and stymying its economic development goals. CP 166. If the residents of one city may, through the use of a local initiative, impair or threaten a county's operations within that city, counties must have standing to seek a declaration of the validity of such a proposed local initiative. Whether

(and how) one local government may infringe on the rights and responsibilities of another is an important matter of public interest, yet the Court of Appeals focused only on private party standing. Opinion at 17 ("[W]e conclude that, in order for a *private* party to bring a *pre-election* challenge to a local initiative . . .").

B. The Opinion Encourages Abuses of the Initiative Process and Prevents Private Parties Who May Be Harmed by Local Initiatives from Avoiding Costly and Futile Campaigns and Post-Election Enforcement.

For generations in Washington, pre-election challenges have been a routine part of the local initiative process, and private parties are often the only groups with the resources or political will to bring them. These private challenges assist local governments in avoiding the wasted cost and effort of holding a moot election; protect the integrity of the local initiative process; and help avoid costly, repetitive, and pointless campaigns. The "heightened showing of standing" rule set forth by the Court of Appeals threatens those interests. Opinion at 6.

The reasoning set forth in the Court of Appeals' Opinion encourages abuse of the local initiative process by encouraging broad and vague local initiatives. Despite acknowledging the Petitioners' multiple and specific interests that would be affected by the various provisions of the Envision Spokane initiative, Opinion at 10-12, the Court wrote that,

"There is no existing project that is named in the initiative or that specifically would be impacted by the broad and very general terms of the initiative . . . This is too indefinite to justify pre-election judicial intervention." Opinion at 13. Under that standard, the broader and more generalized the initiative (i.e., the more injuries it may cause if adopted), the greater protection it will have from pre-election judicial review. Such a standard makes no sense. It would permit clearly improper proposed initiatives to escape review, which is flatly contrary to the long-standing and well-established law and practice allowing courts to determine whether a proposed local initiative is within the narrow scope of the local initiative power. *See, e.g., Mukilteo Citizens for Simple Gov't v. City of Mukilteo*, 174 Wn.2d 41 (2012); *1000 Friends of Wash. v. McFarland*, 159 Wn.2d 165 (2006); *Seattle Bldg. & Constr. Trades Council v. Seattle*, 94 Wn.2d 740 (1980); *Ford v. Logan*, 79 Wn.2d 147 (1971).

Restricting the ability of private parties to seek protection from the courts pushes private parties to protect their interests by spending money on costly and pointless campaigns. Often, an initiative proponent places the same (or substantially similar) initiative on the ballot in multiple localities or in sequential elections, each time building up voter recognition. Many local initiatives follow this pattern, and the Envision

Spokane initiative appears to be a fair example.[2] As an invalid local initiative gains momentum, members of the community concerned about the potential for harmful enforcement before a court can declare it invalid after an election must raise and spend money to defeat the proposal. Such efforts are a waste of time, money, and resources when the proposed local initiative is plainly beyond the scope of the local initiative power and "postelection events will not further sharpen the issue" as a matter of law. *Coppernoll v. Reed*, 155 Wn.2d 290, 299 (2005) ("the subject of the proposed measure is either proper for direct legislation or it is not").

C. The Opinion Incorrectly Dismisses the Public Importance Standing Doctrine

This Court has recognized that Washington courts should address cases of public importance regardless of the formalities of standing. *Farris v. Munro*, 99 Wn.2d 326 (1983), *Wash. Natural Gas Co. v. Public Utility Dist. No. 1 of Snohomish Cty.*, 77 Wn.2d 94 (1969). It is difficult to conceive of a more fitting application of the public importance standing doctrine than addressing the scope of the local initiative power, and the Courts of Appeal have (except for this case) agreed. *Am. Traffic Solutions, Inc. v. City of Bellingham,* 163 Wn. App. 427 at 433 (2011); *City of Longview v. Wallin*, 174 Wn. App. 763 at 783 (2013); *Eyman v.*

[2] The Envision Spokane initiative appears to be part of a national movement that has proposed similar Community Bills of Rights in Spokane, Bellingham, and "nearly 200 municipalities in 10 states." Petition for Review at 20, n. 13.

McGehee, 173 Wn. App. 684 at 688-89 (2013). Of course, local initiative cases are not limited to Spokane[3] and the broad coalition of *Amici* reflects the strong statewide public importance of local initiatives. Indeed, all Washington counties are members of WSAC while the private *Amici* represent tens of thousands of members operating throughout Washington.

For all the reasons set forth above, it is extremely important to the public for the courts to determine – before the confusion and waste of a potentially pointless election – if a proposed local initiative is beyond the scope of the local initiative power. The Court of Appeals' Opinion wrongly concludes that local initiatives are not generally of public importance, Opinion at 16, and thereby significantly reduces the judicial check on invalid initiatives. The scope of the public importance standing doctrine is of substantial public interest, and merits review by this Court.

IV. CONCLUSION

For the reasons stated above – as well as those stated by Petitioners and Respondent the City of Spokane – *Amici* respectfully urge this Court to grant the Petition for Discretionary Review.

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[3] Pursuant to RCW 35.22.200, which permits charter cities to "provide for direct legislation . . . upon any matter within the scope of the powers, functions, or duties of the city," local governments throughout the state of Washington have adopted some form of local initiative power. *See, e.g.,* Seattle City Charter, Article IV, Section 1; Vancouver City Charter, Article X, Section 10.01 *et seq*; Walla Walla Municipal Code Chapter 1.19.050 *et seq.*

RESPECTFULLY SUBMITTED this 8th day of June, 2015.

By _____

Robert Battles, WSBA #22163
Association of Washington Business

Wash. State Assoc. of Counties
Josh Weiss, WSBA # 27647

Building Industry Assoc. of Wash.
Adam Frank, WSBA # 43389

Inland Northwest AGC
Robert H. Crick, Jr., WSBA # 26306

Wash. Assoc. of Realtors
Bill Clarke, WSBA # 28800

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on June 8, 2015, I caused the document to which this certificate is attached to be delivered by email to the following:

Robert J. Maguire
Rebecca Francis
Davis Wright Tremaine LLP
1201 Third Avenue, Suite 2200
Seattle, WA 98101-3045
robmaguire@dwt.com
rebeccafrancis@dwt.com

Michael Ryan
Thad O'Sullivan
K&L Gates
925 Fourth Avenue, Suite 2900
Seattle, WA 98104-1158
michael.ryan@klgates.com
thad.osullivan@klgates.com

Dan Catt
Spokane County
1100 West Mallon Avenue
Spokane, WA 99260-0270
dcatt@spokanecounty.org

Nathanial Odle
Nancy Isserlis
City Hall, 5th floor
808 West Spokane Falls Blvd.
Spokane, WA 99201
nodle@spokanecity.org
nisserlis@spokanecity.org

Lindsey Schromen-Wawrin
Community Environmental Legal Defense Fund

306 West Third Street
Port Angeles, WA 98362
lindsey@world.oberlin.edu

Signed in Olympia, Washington, this 8th day of June, 2015.

Robert Battles
WSBA # 22163