

**GOODSTEIN
LAW GROUP**

PLLC

501 S. G Street
Tacoma, WA 98402
Fax: (253) 779-4411
Tel: (253) 779-4000

Carolyn A. Lake
Attorney at Law
clake@goodsteinlaw.com

July 21, 2016

VIA EMAIL

William A. Lemp, III
(William.lemp@pdc.wa.gov)
Lead Political Finance
Investigator State of
Washington
Public Disclosure
Commission PO Box 40908
Olympia, WA 98504-0908

RE: PDC Case 6626 – Port of Tacoma Response to Complaint

Dear Mr. Lemp:

We represent the Port of Tacoma (“Port”) and submit this response to the Public Disclosure Commission (“Commission”) in PDC Case 6626 , as a result of the Citizen Action Complaint (Complaint”) filed by Arthur West with the Washington State Attorney General’s Office (AG) on June 16, 2016. We understand that the AG forwarded the Complaint to the Commission on July 14, 2016. The Commission has requested a response from the Port by July 21, for consideration at the Commission’s July 28, 2016 meeting.

I. SUMMARY RESPONSE

The Port of Tacoma responds to Mr West’s Complaint, wherein he alleges two primary campaign violations:

- RCW 42.17A.205-240- failure to register or report campaign related expenditures made as a political committee,
- RCW 42.17A.555- use of public facilities for campaign purposes

After consideration of the Complaint and our information provided herein, the Port respectfully urges the Commission to find that there is no evidence to establish a material violation of any laws or regulations under the jurisdiction of the Commission and to dismiss the Complaint.

The Port did not violate RCW 42.17A.205, .235, and .240. The Port is not a political committee with a requirement to register and report with the PDC, because the Port is not a “receiver of contributions” in support of, or in opposition to candidates or ballot propositions, and because supporting candidates or ballot propositions is not one of its primary purposes.

The Port did not use public facilities for campaign purposes. Judicial review is not use of public funds for campaign purposes. The Port (1) filed a declaratory judgement lawsuit to request a neutral fact finder to make a judicial determination on the legal validity of the Initiatives, and (2) held a public vote to ratify that action during a properly noticed, public meeting where public comment for and against was received, consistent with RCW 42.17A.555(1). The Port’s legal action also is consistent with the long list of legal cases in which public agencies have properly sought judicial review of the legal sufficiency of a proposed Initiative; in no case were these action found to violate RCW 42.17A.555.

The Port took no campaign action to influence the vote on a ballot measure. Here, any expenditures at issue were made prior to a ballot initiative campaign, and were in fact related to challenging the initiation of such a campaign on the grounds that the ordinance was facially unconstitutional. If a proposed local initiative is facially beyond the local initiative power and unconstitutional, it can logically never become part of a legitimate "ballot initiative campaign."

There is *no* First Amendment right to place an initiative on the ballot, much less an invalid one. Including invalid initiatives on the ballot does not vindicate or protect any rights, rather it undermines the integrity of a system intended to enact laws. The Port’s action in pursuing a legal determination from the neutral judicial system was not campaigning but instead was consistent with the underlying purpose of Washington campaign laws to protect the integrity of the voting process.

Before we address each allegation in detail below, we first provide the Commission with background facts regarding the Port, as well as facts related to the Port’s legal action.

II. BACKGROUND FACTS

A. The Port.

The Port is a special purpose public port district that operates under Title 53 of the Revised Code of Washington and is classified as a special purpose district. The Port is a member of The Northwest Seaport Alliance, a marine cargo operating partnership with the Port of Seattle. Under a port development authority, the ports manage the container, breakbulk, auto and some bulk terminals in the Seattle and Tacoma harbors. Today, the Port covers more than 2,700 acres in the Port industrial area. The Port is one of the top container ports in North America and a major gateway for trade with Asia and

Alaska. Five Commissioners are elected to four-year terms by the citizens of Pierce County to serve as the Port's board of directors. The commission hires the CEO, sets policy and strategic direction, and approves all major expenditures.

Port Strategic Plan. With input from community members, customers, business leaders and employees, the Port has in place a 10-year Strategic Plan in 2012 ("Plan"), found at <http://portoftacoma.com/sites/default/files/StrategicPlanBrochure.pdf>. The Plan is updated annually to provide further focus and clarity to the initiatives. The Plan focuses on four areas that build on the Port's specific strengths to make better connections:

- ***Strategic investments***
We will make strategic investments that enhance the Port's waterway, terminal, road, rail and industrial property infrastructure to create the most efficient, productive and cost-effective system possible to move our customers' freight to the marketplace.
- ***New business opportunities***
To create opportunity for future investments, we will focus attention on attracting new business opportunities with healthy income streams and increase the diversity of the Port's business portfolio.
- ***Customer care***
We're serious about our tagline "People. Partnership. Performance." We will continue to demonstrate great care for our business relationships with customers and key stakeholders.
- ***Community pride***
Business development, environmental stewardship and livable communities go hand in hand. We continually hear that our community's support of the Port and trade-related jobs is a key competitive advantage. We intend to grow the Port responsibly to ensure continued trust in our collective future.

Port Mission. The Port mission is to "Deliver prosperity by connecting customers, cargo and community with the world". The Port' Core values are as follows:

- ***Integrity***
Being ethically unyielding and honest; inspiring trust by saying what we mean and matching our behaviors to our words; acting in the public interest and in a manner to maintain public confidence.
- ***Customer focus***
Creating long-term relationships by consistently delivering value; helping customers to become high-performance businesses by understanding their business needs; establishing realistic expectations and meeting commitments.

- **Teamwork**
Focusing on the success of the entire organization; fully utilizing our collective skills, knowledge and experiences to achieve our goals; encouraging diversity, respect and full participation; being effective collaborators with a broad range of partners in the region; having fun together.
- **Courage**
Facing challenges with fortitude; setting aside fears and standing by personal principles; extending beyond personal comfort zones to achieve goals; taking responsibility for actions.
- **Competitive spirit**
Pursuing our goals with energy, drive and the desire to exceed expectations; going the extra mile for our customers and to differentiate ourselves in the market; demonstrating passion and dedication to our mission; constantly improving quality, timeliness and value of our work.
- **Sustainability**
Focusing on long-term financial viability; valuing the economic well-being of our neighbors; doing business in a way that improves our environment.

As a public port district, the Port has a legislative mandate to foster economic development in Tacoma and Pierce County. The Port also is owner of land both within and outside of Tacoma city limits. A critical segment of the Port's state mandated mission, use of tax dollars and business is to lease lands to tenants. More than 29,000 jobs are generated by Port activity, which also provides \$195 million per year in state and local taxes to support education, roads and police and fire protection for our community. [Port Economic Impact Study, 2014]. The Tacoma-Puyallup Industrial Subarea's 21,300 jobs make up 4 percent of the Puget Sound Region's industrial employment. [PSRC Industrial Lands Analysis, 2015]. These jobs pay an average \$80,000 a year. [PSRC Industrial Lands Analysis, 2015].

B. Port's Legal Challenge

The Port became aware of two potential City of Tacoma Initiatives, led by a committee called Save Tacoma Water (STW). STW's Code Initiative 6 seeks to have the City Council enact the changes to the Tacoma Municipal Code ("Code Initiative"). STW's Code Initiative 6 sought to impose a requirement that any land use proposal requiring water consumption of 1336 CCF (one million gallons) of water or more daily from Tacoma be submitted to a public vote prior to "the City" "providing water service" for such a project. (*Code Initiative at §A*). The Initiative would accomplish this by requiring developers seeking that water use to fund the "costs of the vote on the people" and only if "a majority of voters approve the water utility service application and all other application requirements may the City provide the service." *Id.*

STW's Code Initiative expressly purports to elevate its proposed Charter amendment above state law, by pronouncing that "all laws adopted by the legislature of the State of Washington, and rules adopted by any state agency, shall be the law of the City of

Tacoma only to the extent that they do not violate the rights or mandates of this Article. (*Id.*, §B). STW's Code Initiative expressly purports to overrule and/or disavow the United States Constitution, along with "international, federal [and] state laws" that "interfere" with the proposed amendment. (*Id.*, §C), and to curtail the jurisdiction of state and federal courts, and to eliminate certain rights of corporations, in conflict with the Washington and Federal Constitutions, as well as U.S. Supreme Court rulings. The Initiative deprives corporations of their right under the Washington state constitution to sue and defend against lawsuits in courts, "like natural persons." Wash. Const. art. I, § 12, and seeks to deprive the courts and other "government actors" from recognizing any "permit, license, privilege, charter or other authorizations" that would violate the Initiative. *Id.* The Initiative also gives "any resident of the city" the right to enforce the Initiative. *Code Initiative* § D. STW apparently sought all of these results through Tacoma Municipal Code provisions. The companion measure, STW's Charter Initiative 5, repeats all the same provisions of the Code Initiative.

The Port was aware that STW's Initiatives were near identical to Initiatives recently found to be legally invalid (outside the valid scope of local initiative powers) by the Washington Supreme Court in *Spokane Entrepreneurial Ctr. v. Spokane Moves to Amend the Constitution*, 185 WA 2d. 97 (Feb. 4, 2016).

The Port, along with co-Plaintiffs Economic Development Board for Tacoma-Pierce County ("EDB") and the Tacoma-Pierce County Chamber ("Chamber") filed a legal action on June 6, 2016 to seek judicial determination under Washington's Uniform Declaratory Judgment Act, RCW Ch. 7.24, that both the Charter Initiative and Code Initiative are beyond the proper scope of the local initiative power, and for injunctive relief. The Port spent approximately \$45,000 in that legal effort.

The City of Tacoma filed its Answer and Cross Claims on June 8, 2016. In its pleadings, the City agreed the Initiatives were legally defective and filed a cross claim against the Initiative sponsors within the existing suit.

On June 18, 2016, the Port Commission held a public meeting, which it noticed in advance the Commission's intention to take up a vote to "ratify the Port's action of filing a Declaratory Judgment and Injunctive challenge of two proposed local initiatives filed with the City of Tacoma—Charter Amendment 5 and Code Initiative 6 ("Initiatives"). The Declaratory Judgment asks the Pierce County Superior Court to (1) declare that local Initiatives exceed the proper scope of local initiative powers and therefore are invalid, and (2) enjoin the Initiatives' signatures from being validated and enjoin the Initiatives from being placed on the November 2016 ballot, or adopted by the City." See Port of Tacoma Commission Agenda for June 16, 2016, **Exhibit 1**. Staff provided a Commission Memo which was publically available. **Exhibit 2**. The Commission took public comment on the matter from over 20 persons, who spoke for and primarily

against the action. The Commission voted unanimously to ratify filing the legal action. See Minutes of June 16, 2016 Port meeting, **Exhibit 3**.

On July 1, 2016, the Pierce County Superior Court granted Plaintiffs' Motion for Declaratory Judgement, finding the two Initiatives invalid and granting an injunctive relief to prevent the Pierce County Auditor from placing the measures on the ballot. See **Exhibit 4**.

III. RESPONSE TO ALLEGATIONS

A. First Allegation:

The Port did not violate RCW 42.17A.205, .235, and .240. The Port is not a political committee with a requirement to register and report with the PDC, because the Port is not a "receiver of contributions" in support of, or in opposition to candidates or ballot propositions, and because supporting candidates or ballot propositions is not one of its primary purposes.

1. Relevant authority to be considered on this question includes the following:

- **RCW 42.17A.005(37)**

"Political committee" means any person (except a candidate or an individual dealing with his or her own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition.

- **Interpretation 07-02 "Primary Purpose Test" Guidelines**

Interpretation 07-02 is a summary of the "primary purpose test" Guidelines that relate to "political committees" under Washington State law. It sets forth two alternative prongs under which an individual or organization may become a political committee and subject to the Act's reporting requirements: (1) a "receiver of contributions" prong; and (2) a "making of expenditures to further electoral political goals" prong. A requirement of the "making expenditures" prong states that the organization making expenditures must have as its "primary or one of its "primary or one of its primary purposes ... to affect, directly or indirectly, governmental decision making by supporting or opposing candidates or ballot propositions ..." (WA Court of Appeals, EFF v. WEA, 2003). In addition, the Interpretation states that an appropriate framework for determining whether electoral political activity is one of the organization's primary purposes should include an examination of the stated goals and mission of the organization and whether electoral political activity is a primary means of achieving the stated goals and mission during the period in question.

A nonexclusive list of analytical tools that may be used to evaluate the evidence includes:

- (1) the content of the stated goals and mission of the organization;

- (2) whether the organization's actions further its stated goals and mission;
- (3) whether the stated goals and mission of the organization would be substantially achieved by a favorable outcome in an upcoming election; and
- (4) whether the organization uses means other than electoral political activity to achieve its stated goals.

- **RCW 42.17A.205**

Every political committee shall file a statement of organization with the commission. The statement must be filed within two weeks after organization or within two weeks after the date the committee first has the expectation of receiving contributions or making expenditures in any election campaign, whichever is earlier.

- **RCW 42.17A.235 and .240**

Every political committee is required to file ongoing reports of contributions and expenditures at specified intervals.

2. Analysis. The Committee should find that there is no evidence that the primary or one of the primary purposes of the Port is to affect, directly or indirectly, governmental decision making by supporting or opposing candidates or ballot propositions, such that the Port is a political committee subject to the Public Disclosure Act's disclosure requirements.

The Commission's Interpretation 07-02, "Primary Purpose Test" Guidelines ("Interpretation"), sets forth two alternative prongs under which an individual or organization may become a political committee and subject to the Act's reporting requirements:

- (1) a "receiver of contributions" prong; and
- (2) a "making of expenditures to further electoral political goals" prong. A requirement of the "making of expenditures" prong states that the organization making expenditures must have as its "primary or one of its primary purposes ... to affect, directly or indirectly, governmental decision making by supporting or opposing candidates or ballot propositions ...". *Evergreen Freedom Foundation v. Washington Education Association*, 111 Wn. App. 586, 49 P.3d 894 (2002), *review denied* 148 Wn.2d 1020, 66 P.3d 639 (2003).

In addition, the Interpretation states that an appropriate framework for determining whether electoral political activity is one of the organization's primary purposes should include an examination of the stated goals and mission of the organization and whether electoral political activity is a primary means of achieving the stated goals and mission during the period in question.

A nonexclusive list of analytical tools that may be used to evaluate the evidence includes: (1) the content of the stated goals and mission of the organization; (2) whether the organization's actions further its stated goals and mission; (3) whether

the stated goals and mission of the organization would be substantially achieved by a favorable outcome in an upcoming election; and (4) whether the organization uses means other than electoral political activity to achieve its stated goals.

Receiver of Contributions Prong: There is no evidence that the Port was a receiver of contributions under RCW 42.17A, nor has it been demonstrated that the Port has any expectation of receiving contributions reportable under RCW 42.17A.

Primary Purpose /Expenditure Test Prong: To address this allegation, PDC is urged to reviewed evidence relevant to the analysis recommended by the *EFF v. WEA* court , i.e., whether one of the Port's primary purposes is to support or oppose candidates or ballot propositions. ("If, after making these considerations, the fact finder determines that, on the whole, the evidence indicates that one of the organization's primary purposes was electoral political activity during the period in question, and the organization received political contributions as defined in the Act, then the organization was a political committee for that period and should comply with the appropriate disclosure requirements. (*Id* at 600).

There is no evidence that one of the organization's primary purposes is electoral political activity. To the contrary, the Port is a special purpose district whose primary mission is to create economic development activity. The Port's Strategic Plan focus is to "create opportunity for future investments, we will focus attention on attracting new business opportunities with healthy income streams and increase the diversity of the Port's business portfolio". Its mission is to "Deliver prosperity by connecting customers, cargo and community with the world". Electoral political activity appears nowhere in the Port's mission statement, goals or stated purpose.

Instead, the Port has long been a public policy advocate on issues affecting industrial and manufacturing preservation and theses sector's role in economic vitality. Port communications regarding the need to preserve and protect industrial lands and jobs is part of the Port's normal and regular conduct of the Port. Examples of such communications include:

- The Port's standard presentation on the 2012-2022 Strategic Plan. Example attached as **Exhibit 5** is one was given to the Propeller Club.
- The Port's Gateway stories about Frederickson's industrially-zoned property, attached as **Exhibit 6 and 7**.
- The Port's presentation PowerPoint that shows the Port's role in economic and industrial growth over the years, attached as **Exhibit 8**.

The Port's PowerPoint presentation **Exhibit 8** includes excerpts of Port Annual Reports where its mission of economic development and industrial preservation is a constant theme:

“A major asset of the Port of Tacoma is our ownership of prime industrial land adjacent to deep water marine berths. The combination of excellent road and rail access, large vacant industrial tracts, and close proximity to deep water marine berths, gives the Port of Tacoma a competitive advantage in attracting industrial clients...”

~Ernest L. Perry, General Manager, 1974 Annual Report

“Through a combination of natural advantages, an emphasis on service and careful planning, the versatile Port of Tacoma expects to expand in the 1980s.”

~Richard Dale Smith, Executive Director, 1980 Annual Report

“In the last few years, the Port of Tacoma has become a major player in the shipping industry...The Port of Tacoma has accomplished this expansion by its innovativeness and its willingness to provide for its customers’ needs, whether those needs are in facilities, services or labor.”

~Robert G. Earley, Port Commissioner, 1987 Annual Report

“Tacoma and the Puget Sound Region will benefit from a dramatic expansion of the Pacific Rim and perhaps European trade throughout region because of the settlement with the Puyallup Tribe of Indians.”

~John McCarthy, Port Commissioner, 1991 Winter Pacific Gateway

“By taking care of our customers, building a foundation for growth and most importantly, being a good neighbor to our surrounding communities, the Port of Tacoma has succeeded in its mission of job creation, economic development and environmental stewardship. I am optimistic that the best is yet to come.”

~Jack Fabulich, Port Commissioner, 2006 Annual Report

Thus, under the *EFF v. WEA* test of whether a primary Port purpose is electoral political activity, the Committee should find that the Port is not a political action committee. *State v. Evans*, 86 Wn.2d 503, 546 P.2d 75 (1976) is in accord.

In *Evans*, the State Supreme Court considered whether a committee bearing the governor’s name that made a single contribution to the fund of the state Republican Central Committee became a political committee within the meaning of (former) RCW 42.17. **The Court held that in the absence of showing that such committee made expenditures for the purpose of supporting or opposing a specific candidate or ballot proposition, or contribution of similar nature, and in the absence of evidence that the committee solicited, received, or had the expectation of receiving contributions to be used in support of or opposition to candidates or ballot propositions, such a committee was not a**

political committee and not subject to the disclosure requirements of RCW (former) 42.17. The same is true here.

No evidence exists or has been provided showing that supporting candidates or ballot proposition campaigns is or was a top priority for the Port. No evidence exists or has been suggested that the Port has substantially achieved its stated goals and mission by a favorable outcome in an election or ballot measure. It is clear that Port uses means other than electoral political activity to achieve its stated goals. Thus, the Port does not meet the definition of a political committee under RCW 42.17A.005(37) (“Political committee’ means any person (except a candidate or an individual dealing with his or her own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition.”) (emphasis added).

The Committee should find that there is no evidence that the primary or one of the primary purposes of the Port is to affect, directly or indirectly, governmental decision making by supporting or opposing candidates or ballot propositions, such that the Port is a political committee subject to the Public Disclosure Act’s disclosure requirements.

B. SECOND ALLEGATION. RCW 42.17A.555, use of public facilities for campaign purposes.

1. Relevant authority to be considered on this question includes the following:

- **RCW 42.17A.555 Use of public office or agency facilities in campaigns—Prohibition—Exceptions.**

No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency. However, this does not apply to the following activities:

(1) Action taken at an open public meeting by members of an elected legislative body or by an elected board, council, or commission of a special purpose district including, but not limited to, fire districts, public hospital districts, library districts, park districts, port districts, public utility districts, school districts, sewer districts, and water districts, to express a collective decision, or to actually vote upon a motion, proposal, resolution, order, or ordinance, or to support or

oppose a ballot proposition so long as (a) any required notice of the meeting includes the title and number of the ballot proposition, and (b) members of the legislative body, members of the board, council, or commission of the special purpose district, or members of the public are afforded an approximately equal opportunity for the expression of an opposing view;

(2) A statement by an elected official in support of or in opposition to any ballot proposition at an open press conference or in response to a specific inquiry;

(3) Activities which are part of the normal and regular conduct of the office or agency.

(4) This section does not apply to any person who is a state officer or state employee as defined in RCW 42.52.010.

2. Analysis. The Port did not use public facilities for campaign purposes. Judicial review is not use of public funds for campaign purposes. The Port (1) filed a declaratory judgement lawsuit to request a neutral fact finder to make a judicial determination on the legal validity of the Initiatives, and (2) held a public vote to ratify that action during a properly noticed, public meeting where public comment for and against was received, consistent with RCW 42.17A.555(1). The Port's legal action is consistent with the long list of legal cases in which public agencies have properly sought judicial review of the legal sufficiency of a proposed Initiative; in no case were these action found to violate RCW 42.17A.555. The Port took no electioneering or campaign action to influence the vote on the ballot measure. Including invalid initiatives on the ballot does not vindicate or protect any rights, rather it undermines the integrity of a system intended to enact laws. The Port's action in pursuing a legal determination from the neutral judicial system was not campaigning but instead was consistent with the underlying purpose of Washington campaign laws to protect the integrity of the voting process.

2.1 Judicial Review is Not Use of Public Funds for Campaign Purposes.

The Port's action was confined to the judicial and not the campaign/ electioneering arena. No funds were raised or spent to campaign in support or opposition of the Initiatives.

The Port's declaratory judgement action is nothing close to the advertising campaign analyzed in *Voter Educ. Comm. v. Pub. Disclosure Comm'n.*, 161 Wn.2d 470 (2007). There, the advertisement slammed a particular candidate and concluded that "Deborah Senn Let Us Down." Because Senn was not an incumbent, the Court held that the advertising "had contemporary significance only with respect to Senn's candidacy for attorney general." 161 Wn.2d at 791. Here, in contrast, the Port's request for judicial determination was not accompanied by any information that explicitly or implicitly asks

voters to cast their ballot for or against the measures.

Raising questions about the legal sufficiency of a measure does not constitute electoral communications and does not seek to support or oppose any measure. The Port sought to engage a neutral fact finder on the legal status of the measures so that the Pierce County Auditor (and City Council) would have the benefit of that judicial ruling.

Just as the Court found in *Seattle v. State*, 100 Wn.2d 232 668 P.2d 1266 (1983), that “An even-handed program of assistance available to *all* candidates based on objective minimum qualification criteria simply does not involve the abuses of public trust which inspired RCW 42.17.130.”, neither does a strictly judicial inquiry into the legal legitimacy of a measure offend the purpose for which RCW 42.17.130 was enacted. The purpose intended was to prohibit the use of public facilities for partisan campaign purposes. *Id.* at 248.

AGO 2006 No. 1 is in accord: “...the statute prohibits the use of public resources to aid one side or another of a ballot measure campaign; it does not prohibit efforts to provide information about a proposed measure where the office or agency providing the information would be affected, or where information is shared as part of its responsibilities. AGO 1994 No. 20, at 10 (citing *City of Seattle v. State*, 100 Wn.2d 232, 247-48, 668 P.2d 1266 (1983)); see also AGO 1975 No. 23, at 13 (noting that the statute does not prohibit the use of public resources to provide information simply to explain the measure in relation to the functions of a particular office or agency).”

The purpose of Washington’s campaign laws is to ensure that the financing of *political campaigns and lobbying* are fully disclosed to the public. RCW 42.17A.001. The laws are designed to let the voters know who is attempting to influence their vote.¹ Filing a lawsuit to determine the legality of a local initiative is not advertising, communicating with voters, campaigning, lobbying or electioneering.

Washington courts routinely exercise Declaratory Judgment power pursuant to Chapter 7.24 RCW in pre-election initiative challenges like that brought by the Port.²

Under the Uniform Declaratory Judgment Act, a Court has the "power to declare rights, status and other legal relations." RCW 7.24.010. That power includes declaring the pre-election status of a local initiative as beyond the scope of the local initiative power and the right of the Auditor to refrain from placing invalid measures on the ballot. See, e.g., *Seattle Bldg. & Constr. Trades Council v. City of Seattle*, 94 Wn.2d 740, 746 (1980)

¹ *Voters Educ. Comm. v. Washington State Pub. Disclosure Comm'n*, 161 Wn.2d 470, 488, 166 P.3d 1174 (2007).

² *Spokane Entrepreneurial Ctr. v. Spokane Moves to Amend the Constitution*, 185 Wn. 2d 97 (Feb. 4, 2016), See also *City of Longview v. Wallin*, 174 Wn. App. 763, 301 P.3d 45 (Div. 2 2013), *cert denied*, 178 Wn.2d 1020 (2013); *Eyman v. McGehee*, 173 Wn. App. 684, 294 P.3d 847 (Div. 1 2013);

(affirming declaratory judgment for private plaintiffs declaring local initiative exceeded initiative power); *Ford v. Logan*, 79 Wn.2d 147, 151 (1971) (affirming declaratory judgment for private plaintiffs declaring local initiative exceeded initiative power); *Am. Traffic Solutions, Inc. v. City of Bellingham*, 163 Wn. App.427, 432-33 (2011) (upholding pre-election challenge to scope of initiative as exceeding initiative power and therefore invalid); *City of Seattle v. Yes for Seattle*, 122 Wn. App. 382, 386 (2004) (affirming declaratory judgment "striking [initiative] from the ballot").

The Port sought judicial, and not political or campaign, resolution of the legal issues in accordance with the Washington State Supreme Court ruling in *Philadelphia II v. Gregoire*, 128 Wash.2d 707 (1996), which held that courts should determine whether a proposed initiative exceeds the scope of local initiative power.

The Port's legal action also is consistent with the long list of legal cases in which public agencies have properly sought judicial review of the legal sufficiency of a proposed Initiative (below); in no case were these action found to violate RCW 42.17A.555.

- *Spokane Entrepreneurial Ctr. v. Spokane Moves to Amend the Constitution*, 185 Wn.2d 97, 101-105 369 P.3d 140 (2016) ("The petitioners include Spokane County....Applying those existing standing requirements, we hold that petitioners in this case have standing to bring their challenge".)
- *City of Sequim v. Malkasian*, 157 Wn.2d 251, 259-60, 138 P.3d 943, (2006) (Supreme Court of Washington described "it is will settled that it is proper for cities to bring challenges that the subject matter is beyond the scope of the initiative power & "In this case, like many other cases, the local officials had a valid concern that the proposed initiative was outside the scope of the initiative power" 157 Wn.2d at 269)
- *Whatcom Cty. v. Brisbane*, 125 Wn.2d 345, 346, 884 P.2d 1326 (1994) (Whatcom County Superior Court sustains "a challenge by Whatcom County to a referendum petition to amend portions of a critical areas ordinance")
- *Snohomish Cty. v. Anderson*, 124 Wn.2d 834, 836, 881 P.2d 240 (1994) ("The Snohomish County Council (County or Council) commenced an action against the citizens seeking and successfully securing a declaratory judgment the ordinance was not subject to a referendum")
- *City of Longview v. Wallin*, 174 Wn. App. 763, 783, 301 P.3d 45 (Div. 2, 2013) (Cities have standing to bring court challenges to local initiatives that exceed the scope of initiative powers)
- *City of Seattle v. Yes for Seattle*, 122 Wn. App. 382, 387, 93 P.3d 176 (Div. 1, 2004) (City challenge to local initiative, "limited to whether the initiative was beyond the initiative power, was appropriate".)
- *City of Port Angeles v. Our Water-Our Choice!*, 170 Wn.2d 1, 6-7, 239 P.3d 589 (2010) ("The city council declined to either enact the initiatives or refer them to the ballot.

Instead, the council sought declaratory judgment that the initiatives were beyond the scope of the local initiative power because they concerned administrative matters; because the Washington State Legislature had vested the responsibility to run the water system to the council, not the city; and because the initiatives were substantively invalid.”)

- *King Cty. v. Taxpayers of King Cty.*, 133 Wn.2d 584, 592, 949 P.2d 1260 (1997) (“The County filed a complaint seeking a declaratory judgment under RCW 7.25.020 validating the bonds. Specifically, the County sought a declaration...determining that Initiative 16 is inapplicable to the issuance of the Bonds as authorized by the Bond....”)
- *Pierce Cty. v. Keehn*, 34 Wn. App. 309, 311, 661 P.2d 594 (Div. 2, 1983) (“the County filed an action to declare Initiative 1 invalid. In September the trial court granted the County's motion for summary judgment, holding that the auditor (and County Executive) properly refused ‘to accept, verify, register, or file the initiative petition under Article V, Section 5.40 of the [Pierce] County Charter.’”)
- *Spokane v. Taxpayers of Spokane*, 111 Wn.2d 91, 94, 758 P.2d 480 (1988). (“In response to the filing of this initiative, the City began this declaratory action on October 6. Named as defendants were Spokane's taxpayers, the ratepayers of the City's refuse utility, and the City's qualified and registered electors. In its suit, the City sought a declaratory judgment that the initiative did not apply to the waste-to-energy project and that the City Council could proceed with the issuance and sale of the revenue bond” & “We hold a justiciable controversy exists as to the ratepayers and electors”. 111 Wn.2d at 96)
- *Clallam Cty. v. Forde*, No. 28487-1-II, 2003 Wash. App. LEXIS 47, 3 (Unpublished Div. 1, 2003) (“Clallam County commissioners voted against holding public hearings on the petition, concluding that the proposed repeal was not within the initiative power of the people. The county subsequently moved for and was granted relief on summary judgment”.)
- *City of Monroe v. Wash. Campaign for Liberty*, No. 68473-6-I, 2013 Wash. App. LEXIS 378, 5 (Unpublished Div. 1, 2013) (“In July 2011, the City filed a complaint for declaratory relief against Seeds of Liberty and the other sponsors of Monroe Initiative No. 1. The City sought a declaration that the initiative, ‘in its entirety, is invalid because it is beyond the scope of the local initiative power, and therefore null and void.’”)

The Washington Supreme Court case of *King County Council v. Public Disclosure Commission*, 93 Wn.2d 559; 611 P.2d 1227(1980) is also instructive. There, the Supreme Court reviewed and reversed the Public Disclosure Commission's (commission) decision that four members of the King County Council (council) violated *RCW 42.17.130* by voting to endorse a ballot measure. That statute (predecessor to current *RCW 42.17A.555*) prohibited the use of the facilities of a public office to promote or oppose an individual's candidacy or a ballot proposition.

The Council to endorsed Initiative No. 335, a statewide anti-pornography ballot measure, after a public meeting where 12 citizens were heard. Some spoke for and

others against the motion. Council members debated and the motion passed by a 4-to-3 vote.

The Commission argued the county council's endorsement violated: (1) Const. art. 7, § 1 (amendment 14) because it amounts to an expenditure of public money for private purposes; (2) *Const. art. 1, § 19*, which states all elections shall be "free and equal"; and (3) the First Amendment and *Const. art. 1, § 4*, which guarantee the rights to petition and initiative. The Supreme Court disagreed as to all counts.

In rejecting the Commission's argument that the council action violated the prohibition against spending public money for a private purpose, the Court expressly found that the Council's vote (to support) the Initiative was **not** a campaign activity³:

A campaign was not waged in the instant case. The public hearing was not expenditure in support of the initiative so the constitution has not been violated.

2.2 Even if the Port was engaging in support of or opposition to the STW Initiatives (which it was not), the Port's public meeting and vote precisely complied with RCW 42.17A.555(1)'s exception⁴ to use of public office or agency facilities in campaigns.

³ The Appeals Court took into account (1) Const. art. 7, § 1 (amendment 14) which provides in part: ". . . All taxes . . . shall be levied and collected for public purposes only." The same limitation is imposed by this provision upon the *expenditure* of public money. *State ex rel. Collier v. Yelle*, 9 *Wn.2d* 317, 326, 115 *P.2d* 373 (1941), as well as (2) Attorney General opinions: "The Attorney General has advised that state expenditures for an individual's candidacy would not be for a public purpose. Attorney General Opinion, February 16, 1979, at 4; Attorney General Opinion, July 7, 1976, at 5-6. But these opinions evaluate the use of college facilities on behalf of candidates rather than ballot measure endorsements.

⁴ RCW 42.17A.555(1): "No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency. However, this does not apply to the following activities:

(1) Action taken at an open public meeting by members of an elected legislative body or by an elected board, council, or commission of a special purpose district including, but not limited to, fire districts, public hospital districts, library districts, park districts, port districts, public utility districts, school districts, sewer districts, and water districts, to express a collective decision, or to actually vote upon a motion, proposal, resolution, order, or ordinance, or to support or oppose a ballot proposition so long as (a) any required notice of the meeting includes the title and number of the ballot proposition, and (b) members of the legislative body, members of the board, council, or commission of the special purpose district, or members of the public are afforded an approximately equal opportunity for the expression of an opposing view;"

State campaign law provides an express exception to the otherwise express prohibition on use of public office or agency facilities in campaigns. The Port meeting notice and process satisfy the RCW 42.17A.555(1) criteria; no violation occurred.

RCW 42.17A.555(1) allows an elected legislative body or by an elected board, council, or commission of a special purpose district including, but not limited to, port districts to express a collective position and even vote to support or oppose a ballot proposition so long as (a) any required notice of the meeting includes the title and number of the ballot proposition and (b) public comments pro and against are allowed and taken.

On June 18, 2016, the Port Commission held a public meeting, which it noticed in advance the Commission's intention to take up a vote to "ratify the Port's action of filing a Declaratory Judgment and Injunctive challenge of two proposed local initiatives filed with the City of Tacoma—Charter Amendment 5 and Code Initiative 6 ("Initiatives").

See Port of Tacoma Commission Agenda for June 16, 2016, **Exhibit 1**. Staff provided a Commission Memo which was publically available. **Exhibit 2**. The Commission took public comment on the matter from over 20 persons, who spoke for and primarily against the action. The Commission voted unanimously to ratify filing the legal action. See Minutes of June 16, 2016 Port meeting, **Exhibit 3**. The Port meeting notice and process satisfy the RCW 42.17A.555(1) criteria; no violation occurred.

2.3 Even if the Port was engaging in support of or opposition to the STW Initiatives (which it was not), no violation occurred because the STW Initiatives are not "ballot propositions" as defined in Washington law.

The Port supports and adopts by reference as if fully set forth herein the analysis submitted by the Chamber and EDB, in PDC Cases 6627 (EDB) and Case 6628 (Chamber). This includes but is not limited to the analysis that because a "ballot proposition" is defined under RCW 42.17A.005(4) as an issue which is submitted to the secretary of state prior to the gathering of signatures (RCW 29A.72.010), a local initiative can never qualify as a "ballot proposition" as defined by RCW 42.17A.005(4). And only when the petition is submitted to the voters does it become a measure' under RCW 29A.04.091.

Here, any expenditures at issue were made prior to a ballot initiative campaign, and were in fact related to challenging the initiation of such a campaign on the grounds that the ordinance was facially unconstitutional. If a proposed local initiative is facially beyond the local initiative power and unconstitutional, it can logically never become part of a legitimate "ballot initiative campaign."

2.4. Legal challenges to patently invalid Initiatives are consistent with the public purpose of Washington's Campaign laws designed to protect the integrity of the Voting process.

Here, the initiative sponsors freely exercised their rights to petition the government and speak. The Port's actions in no way interfered with signature gathering, and indeed the Port meeting where the Port's legal action was publically noticed arguably beneficially gave the public, both for and against, an additional forum of expression, as was favorably observed by the Supreme Court in *King County Council v. PDC*, *Id* at 1231, ("The endorsement also served beneficial purposes, including generation of public interest and debate, informing citizens of their elected representatives' stands on the ballot issue and furtherance of *local* antipornography policy")

At the same time, it must be emphasized that "[t]here is *no* First Amendment right to place an initiative on the ballot." *Angle v. Miller*, 613F.3d 1122, 1133 (9th Cir. 2012) (emphasis added) (citing *Meyer v. Grant*, 486 U.S. 414, 424 (1988)).

Initiative supporters have no right to use the ballot as a forum for political expression. The purpose of the ballot is to elect candidates and enact law -not for political expression. As the U.S. Supreme Court explained in the Washington Top 2 Primary case, "[b]allots serve primarily to elect candidates, *not as forums/or political expression.*" *Wash. Grange v. WA Republican Party*, 552 U.S. 442, 453 n.7 (2008) (emphasis added) (citation and internal quotation marks omitted).

Washington law is the same. In *City of Longview v. Wallin*⁵, Initiative sponsors argued that they had a First Amendment right to have their initiative appear on the ballot. There, the defendant relied on *Coppernoll*⁶ to argue a pre-election challenge to the scope of a local initiative violated his free speech rights. 301 P.3d at 59. The Court rejected the argument that a pre-election challenge infringed on the sponsor's free speech rights and explained there was no constitutional right at issue. The local initiative power derives from statute, **not** the constitution, so "local powers of initiative do not receive the same vigilant protection as the constitutional powers addressed in *Coppernoll* [a statewide initiative case]." *Id.*

The Court in *Wallin* also concluded that where, as here, "the petition sponsors were permitted to circulate their petition for signatures and to submit that petition to the county auditor *to* have the signatures counted," the sponsors suffered no impairment of their right to political speech. 301 P.3d at 60.

The Court rejected the sponsors' argument that the First Amendment affords initiative sponsors the "right to have any initiative, regardless of whether it is outside the scope of local initiative power, placed on the ballot." *Id.* As in *Wallin*, including invalid

⁵ *City of Longview v. Wallin*, 174 Wn. App. 763, 301 P.3d 45 (Div. 2 2013), *cert denied*, 178 Wn.2d 1020 (2013).

⁶ *Coppernoll v. Reed*, 155 Wn.2d 290, 299 (2005).

initiatives on the ballot does not vindicate or protect any rights, rather it undermines the integrity of a system intended to enact laws. The Port's action in pursuing a legal determination from the neutral judicial system was not campaigning but instead was consistent with the underlying purpose of Washington campaign laws to protect the integrity of the voting process.

C. Reservation of Additional Analysis. The Port understands that the PDC set a very short deadline for the Port's response based on pending statutory deadlines. The Port complied with that directive, but also respectfully reserves the opportunity to present additional analysis and authority as may be warranted.

IV. CONCLUSION.

After consideration of the Complaint and our information provided herein, the Port respectfully urges the Commission to find that there is no evidence to establish a material violation of any laws or regulations under the jurisdiction of the Commission and to dismiss the Complaint.

Sincerely,

Goodstein Law Group PLLC

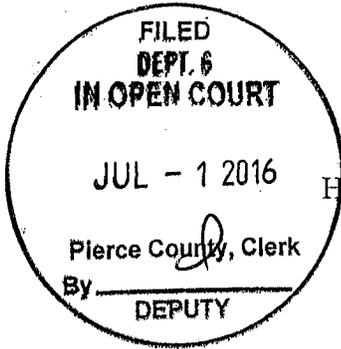
Carolyn A. Lake.

Carolyn A. Lake

CAL:dkl

Enclosures : Exhibits 1-8

cc: John Wolfe, CEO, Port of Tacoma
Port of Tacoma Commissioners



JUDGE Nevin
HEARING DATE: Friday, July 1, 2016
TIME: 10:00 a.m.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR PIERCE COUNTY**

PORT OF TACOMA, a Washington State
Municipal Corporation, ECONOMIC
DEVELOPMENT BOARD FOR TACOMA-
PIERCE COUNTY, a Washington State
Nonprofit Corporation,

Plaintiffs,

vs.

SAVE TACOMA WATER, a Washington
political committee, DONNA WALTERS,
sponsor and Treasurer of SAVE TACOMA
WATER, JON AND JANE DOES 1-5,
(Individual sponsors and officers of SAVE
TACOMA WATER), CITY OF TACOMA, a
Washington State Municipal Corporation,
and PIERCE COUNTY, a political subdivision
by and through JULIE ANDERSON, IN HER
CAPACITY AS PIERCE COUNTY AUDITOR

Defendants.

No. 16-2-08477-5
and City of Tacoma

[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR
DECLARATORY JUDGMENT &
PERMANENT INJUNCTIVE
RELIEF & *Dismissing*

STW's motion to Dismiss

1 CITY OF TACOMA,

2 Third-Party Plaintiff,

3 vs.

4 SAVE TACOMA WATER, an Washington
5 political action committee, DONNA
6 WALTERS, Co-Chair and Treasurer SAVE
7 TACOMA WATER; SHERRY BOCKWINKLE,
8 Co-Chair and Campaign Manager of SAVE
9 TACOMA WATER; JOHN AND JANE DOES
10 1-5, (Individual sponsors and officers of SAVE
11 TACOMA WATER); and Julie Anderson, in
12 her official capacity as Pierce County Auditor

13 Third-Party Defendants.

14 THIS MATTER came before the Court upon the Plaintiffs' Motion for
15 Preliminary and Permanent Injunction and for Declaratory Judgment, noted for
16 + Motion to Dismiss
17 consideration on July 1, 2016. The Court has considered the arguments of Counsel and
18 has reviewed the following pleadings:

- 19 1. CITY MOTION FOR PRELIMINARY INJUNCTION
- 20 2. DECLARATION OF KYMBERLY K EVANSON
- 21 3. DECLARATION OF PETER HUFFMAN
- 22 4. DECLARATION OF ROBERT MACK
- 23 5. DECLARATION OF TC BROADNAX
- 24 6. PORT & EDB MOTION FOR PRELIMINARY, PERMANENT AND
25 DECLARATORY JUDGMENT
7. DECLARATION OF JOHN WOLFE
8. DECLARATION OF COUNSEL CAROLYN LAKE
9. DECLARATION OF SUSAN SUESS
10. PIERCE COUNTY'S ANSWER AND AFFIRMATIVE DEFENSES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

- 11. CHAMBER MOTION FOR PRELIMINARY AND PERMANENT INJUNCTION AND DECLARATORY JUDGMENT
- 12. DECLARATION OF TOM PIERSON
- 13. CITY RESPONSE TO MOTIONS FOR PRELIMINARY AND PERMANENT INJUNCTION AND DECLARATORY JUDGMENT
- 14. AFFIDAVIT/DECLARATION OF COUNSEL
- 15. STW RESPONSE TO PRELIMINARY INJUNCTION MOTION
- 16. DECLARATION OF LINDSEY SCHROMEN-WAWRIN
- 17. DECLARATION OF SHERRY BOCKWINKEL
- 18. CHAMBER REPLY IN SUPPORT OF PRELIMINARY, PERMANENT AND DECLARATORY JUDGMENT
- 19. PORT REPLY IN SUPPORT OF PRELIMINARY, PERMANENT AND DECLARATORY JUDGMENT

20. STW'S MOTION TO DISMISS

The Court finds as follows:

- 1. A justiciable controversy exists. There is an actual, present, and existing dispute between parties with genuine and opposing interests that are direct and substantial. Post-election events will not further sharpen the issue whether Tacoma Code Initiative 6 and Tacoma Charter Initiative 5 (the "STW Initiatives) are beyond the scope of the local initiative power.
- 2. Plaintiffs have standing. Plaintiffs fall within the zone of interests the STW Initiatives seek to regulate and have demonstrated sufficient injury in fact. Further, this case involves significant and continuing issues of public importance that merit judicial resolution.
- 3. The STW Initiatives exceed the local initiative power and are invalid.

1 a. The requirement for a binding vote of Tacoma residents before providing
2 water utility service to an applicant that intends to use 1336 CCF (one
3 million gallons) of water daily from the City of Tacoma (“Water
4 Provision”) is a land use and development provision and exceeds the
5 local initiative power because it is administrative in nature and involves
6 powers delegated under RCW Title 35 to the legislative bodies of
7 municipalities. STW Initiatives’ Water Provisions also is administrative
8 because they seek to change or hinder Tacoma’s pre-existing water utility
9 management and operations.

10 b. The Water Provisions exceed the local initiative power because they
11 conflict with state law, and are administrative in nature. The Water
12 Provisions seek to interfere with water utility service requirements that
13 are subject to Washington's state water rights and service laws, and the
14 Growth Management Act. STW Initiatives’ Water Provisions would add
15 requirements to these pre-existing regulations, and would interfere with
16 pre-existing regulations. The Water Provisions therefore conflict with
17 state law and are outside the scope of the local initiative power. The
18 Water Provisions are also administrative because they seek to change or
19 hinder pre-existing water regulations. The Water Provisions are also
20 outside the scope of the local initiative power because they attempt to
21 impose rights on Tacoma residents regarding water usage outside the
22 boundaries of Tacoma City limits, and they attempt to create new

1 constitutional rights. The City of Tacoma lacks jurisdiction to enact such
2 legislation, ^{people of the} through the initiative.

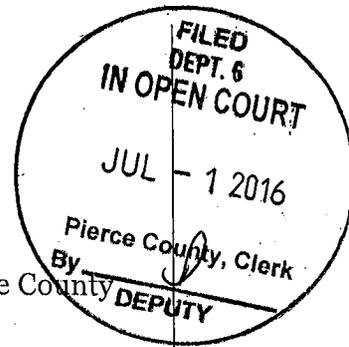
- 3 c. STW Initiatives' provisions which seek to invalidate any conflicting
4 Washington and state agency laws and rules exceed the local initiative
5 power because they conflict with state law and seek to elevate city
6 code/charter above state law which is beyond the City of Tacoma's
7 jurisdiction to enact.
- 8 d. The STW Initiatives' corporate rights provisions exceed the local
9 initiative power because they attempt to change the rights of
10 corporations under federal and state law. The provisions therefore
11 conflict with federal and state law, and are outside the scope of the local
12 initiative power. The local initiative power does not include the ability to
13 limit U.S. Supreme Court precedent, including *Citizens United v. Federal*
14 *Election Commission*, 558 U.S. 310 (2010). The local initiative power
15 does not include the ability to override the "personhood" rights to
16 corporations under federal and state law, including under the First and
17 Fifth Amendments of the United States Constitution and Wash. State
18 Const. art. XII, § 5. The STW Initiatives exceed the local initiative power
19 because they attempts to strip corporations of their First and Fifth
20 Amendment rights, which would conflict with U.S. Supreme Court
21 precedent.
- 22 e. The STW Initiatives provisions that seek to limit a court's authority to

1 interpret the law or to determine whether a "permit, license, privilege or
2 charter" is valid are outside the scope of the local initiative power
3 because they conflict with federal and state law and seek to elevate city
4 code/charter above state law which is beyond the City of Tacoma's
5 jurisdiction to enact.

- 6 4. The STW Initiatives are not severable. All substantive provisions of both
7 Initiatives are invalid. Once the Initiatives' substantive provisions A-C are held
8 invalid, the enforcement, severability, and effect sections are moot.
- 9 5. Plaintiffs ^{+City} have established clear, legal or equitable rights to prevent invalid
10 Initiatives, which exceed the scope of local initiative power, from appearing on
11 the official ballot for the November 2016 election or any ballot thereafter;
- 12 6. Plaintiffs ^{+City} have established a well-grounded fear of immediate invasion of those
13 rights because the Pierce County Auditor, at the direction of the City, will place
14 the STW's Tacoma Code Initiative 6 on the official ballot in September 2016
15 absent contrary direction from this Court; and
- 16 7. Plaintiffs ^{+City} have established that placing invalid initiatives on the ballot will
17 result in actual or substantial injury to Plaintiffs.

18 **Now, therefore, it is hereby ORDERED:**

- 19 1. Plaintiffs' ^{+City} Motion for Declaratory Judgment is GRANTED.
- 20 2. The Court DECLARES that the STW Initiatives are invalid as outside the scope
21 of the local initiative power.
- 22 3. The Court further DECLARES that neither STW Initiative shall appear on the



- 1 November 2016 election or any ballot thereafter, and directs the Pierce County
- 2 Auditor not to include them on that or any ballot.
- 3 4. Plaintiffs' ^{City} Motions for Preliminary and Permanent Injunction is GRANTED.
- 4 5. The motion to consolidate the hearings on the motions for preliminary and
- 5 permanent injunctive relief and the merits is GRANTED.
- 6 6. This Order shall serve as the Court's final Order and Judgement adjudicating
- 7 the merits of this action.
- 8 7. The Pierce County Auditor is hereby enjoined from including the STW
- 9 Initiatives on the ballot for the November 2016 election or any other election

10 ballot.

11 *B. Court has subject matter jurisdiction & STW's Motion to Dismiss is denied.*

12 DATED this 1 day of ^{July} ~~June~~, 2016.

13 Jack Nevin
 Jack Nevin, Superior Court Judge

14 Presented By:

15 GOODSTEIN LAW GROUP PLLC
 By /s/ Carolyn A. Lake
 By /s/ Seth Goodstein
 Carolyn A. Lake, WSBA #13980
 Seth Goodstein, WSBA #45091
 Attorneys for Plaintiff Port of Tacoma

PACIFICA LAW GROUP
 BY Kyberly K. Evanson
 KYBERLY K. EVANSON # 39973
 Counsel for City of Tacoma

17 LEDGER SQUARE LAW, P.S.
 18 By: /s/ Jason M. Whalen
 Jason M. Whalen, WSBA #22195
 Attorneys for Plaintiff EDB

MARK LINDQUIST, PRES. ATTY
 BY [Signature] #8292
 DAVID PRATTIER, DEPUTY

20 GORDON THOMAS HONEYWELL LLP
 By: /s/ Warren E. Martin
 Warren E. Martin, WSBA # 17235
 Shelly Andrew, WSBA # 41195
 Attorneys for Plaintiff Chamber

22 Approved as to form:
 by [Signature]
 Lindsey Schramm-Wawrin 46352
 GOODSTEIN LAW GROUP PLLC

23 ORDER GRANTING PLAINTIFFS' MOTIONS FOR
 24 DECLARATORY JUDGMENT & PERMANENT
 INJUNCTIVE RELIEF 7 of 7
 160629.pldg.Port EDB Chamber PR'SD ORDER. PERMANENT Injunction &
 DEC JUD 253.779.4000

Approved as to form:
 7. Michael Morris STW
 701 South G Street
 Tacoma, WA 98405
 253.779.4000