November16, 2017

**TO:** **WASHINGTON STATE ATTORNEY GENERAL ROBERT FERGUSSEN, PIERCE COUNTY PROSECUTOR MARK LINDQUIST, AND THE WASHINGTON STATE PUBLIC DISCLOSURE COMMISSION**

**RE:** **CITIZEN'S ACTION LETTER RE UNLAWFUL CAMPAIGN ACTIVITY BY THE PORT OF TACOMA IN MAKING INDEPENDENT CAMPAIGN RELATED EXPENDITURES AND EXPENDING PUBLIC FUNDS TO OPPOSE A LOCAL BALLOT MEASURE**



**FROM:** **ARTHUR WEST**
**120 State Ave. NE #1497**
**Olympia, Washington, 98501**

Please consider a formal citizen's action letter pursuant to RCW 42.17A.765 (4)[1] concerning unreported substantial campaign activity, and campaign related expenditures between January and November of 2016, to oppose Tacoma Citizen's Initiatives 5 and 6 by the Port of Tacoma, ***in addition to, and exclusive of, the actual filing of a lawsuit opposing these ballot propositions***.

As noted by the recent published opinion authored by the Honorable Judge Maxa of Division II of the Court of Appeals in Cause No. 50224-1-II:

> RCW 42.17A.255(2) requires a person to report to the PDC certain "independent expenditures," defined in RCW 42.17A.255(1) to include any expenditure made in support of a "ballot proposition." (See Cause No. 50224-1-II, Published Slip Opinion, November 7, 2017, at Page 1)

1 A person who has notified the attorney general and the prosecuting attorney in the county in which the violation occurred in writing that there is reason to believe that some provision of this chapter is being or has been violated may himself or herself bring in the name of the state any of the actions (hereinafter referred to as a citizen's action) authorized under this chapter.

The Court of Appeals further explained that the term "election campaign" was to be read broadly in accord with the intent of the FCPA:

> (A)n "election campaign" is defined in RCW 42.17A.005(17) to include "any campaign in support of, or in opposition to, a ballot proposition." (See Cause No. 50224-1-II, Published Slip Opinion, November 7, 2017, at Page 16)

The attached November 7, 2017 opinion clearly establishes that "independent" expenditures such as those made by the Port of Tacoma in opposition to Initiatives 5 and 6, ***in addition to the actual filing of a lawsuit opposing a ballot proposition,*** were unreported "campaign" related expenditures, made in violation of the Fair Capaign Practices Act.

RCW 42.17A.555 further provides...

> 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...

By making "independent campaign expenditures" between February and November of 2016 in an aggregat amout over $100 ***in addition to, and exclusive of the actual filing of a lawsuit opposing a ballot proposition,***

and by using public funds to oppose Tacoma Citizen's Initiatives 5 and 6 in an extraordinary manner that was not part of the regular and ordinary conduct of the Port of Tacoma, the Port also violated RCW 42.17A.555.

Attached to and incorporated by reference herein are true and correct copies of records responsive to the request of June 6, 2016, which the port has now, finally, disclosed on August 21, 2017, 10 months after it (incorrectly) informed plaintiff that it had provided all responsive records.

These previously undisclosed records that the port now admits were *"Incorrectly deemed Non Responsive"* and/or *"not released due to Misinterpretation"* include cover emails that, inexplicably, were withheld, while the attachments that were appended to them were disclosed, and a communication (at Bates No. 373) that states:

> ***"The EDB and Chamber both express urgency that the "messaging" is just as important as a legal victory"***

The communication at Bates No. 373 continues explaining that:

> ***"Tara, POT External affairs and EDM Communications are working on press release, talking points, etc."***

The Communication further discusses how to fund **outreach efforts** if a private consultant is hired by the consortium.

Documents Bates Stamped 430-436, which the port has now released after they were *"Incorrectly deemed Non Responsive"* and withheld for nearly a year demonstrate how the port made expenditures of attorney and

staff time to plan and execute a propaganda and "election campaign" oposing ballot propositions 5 and 6.

The port made expenditures aggregating more than $100 to "campaign" by soliciting and securing campaign partners[2], developing and distributing talking points and propaganda[3]) and conducting a media and public relations **"campaign"**.

All of this conduct and the related independent expenditures were in addition to, and exclusive of, the actual filing of a lawsuit in the Superior Court by the Port of Tacoma.

By making these expenditures, and by failing to register or report campaign related expenditures made to oppose ballot propositions (Tacoma Citizen's Initiatives 5 and 6), the Port of Tacoma violated the letter and intent of the FCPA, including section (1), That political campaign and lobbying contributions and expenditures be fully disclosed to the public and that secrecy is to be avoided.

Please investigate and take any necessary action in regard to this Complaint and Citizen's Action Letter within the statutory 45 day period.

I, Arthur West, certify the factual assertions above to be correct and true under penalty of perjury of the laws of the State of Washington.

Done November 16, 2017, in Olympia.

S/ Arthur West
ARTHUR WEST

2 "gathering friends to work with us", (See Bates Stamp No. 372)

3 "They (the Chamber and EDC) are anxious to receive our Press release and talking points as soon as possible...Their plan is to share a version with their membership this evening", (See Bates Stamp Nos. 380, 485)

**From:** Carolyn Lake
**To:** Wolfe, John
**Cc:** Mattina, Tara; Doremus, Judi
**Subject:** Attorney Client - Confidential - Litigation
**Date:** Thursday, June 2, 2016 9:59:43 AM
**Importance:** High

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Attorney Client – Confidential – Litigation

John:
This is an update on the status of the confidential litigation preparation re: challenge to the two Tacoma Water Initiatives.

**Coordination:**

We remain in coordination with COT attorney, who confirmed as recent as yesterday that the City is on track for their June 7 action.
We are gathering "friends" to serve as co-plaintiffs with us.

- This morning, the EBD Board voted that the EDB would join with us as co-plaintiff.
- The Chamber Board meets Monday 7:30 AM for this same purpose; we spoke to the Exec Board yesterday.
- Also met yesterday with Mark Martinez, Building and Construction Trades Council.
- He understands the time crucial nature of our ask, and we hope to hear from him today.

**Timing:**

- Based on City's request, we plan to file Monday June 6 or Tuesday AM June 7th, in advance of City announcement.
- Tara is scheduling a Ed Board meeting for Monday afternoon, or Tuesday AM at the latest.
- Attendees will be a representative from the Port and each "partner" in the suit, along with Tara and myself.

**Authority.**

- The Commission has delegated to the CEO via the Port's Master Policy Delegation of Authority "the responsibility for the Port policies and procedures necessary to oversee all legal services and litigation, in which the Port has an interest, direct or indirect" and affirmatively states that "The CEO may engage legal representation for the Port and such experts, investigators and/or independent counsel as may be necessary to the orderly preparation of potential and/or actual litigation in which the Port has a direct or indirect interest". See text below.
- The Monday filing is pursuant to that delegation.
- The expected filing date will be communicated to all Commission today and tomorrow, along with an update on friend raising.
- Commissioner Meyer, who attended the EDB Board meeting this AM, also expressed a desire to have Commission "ratify" the Port's decision to file the lawsuit at the Port's next meeting. Along with you, we'll notify Commissioner Bacon of this request.

**Resources:**

- EDB and Chamber both express urgency that the "messaging" is just as important as a legal victory.
- Tara/ POT External Affairs and EDM Communications are working on press release, talking points, etc.
- We've also suggested that EDB and Chamber are better conduits than the Port to fund the outreach efforts if it takes the form of outside consultant.
- EDB has hired Jason Whalen to serve as their legal counsel in support.
- The Chamber's attorney for this action is Valery Zeek.
- We are closely coordinating with both.

Please contact me 24/7 if any questions or concerns re: above. Thank you,

- CAL

## VI. POLICIES GOVERNING LEGAL ACTIVITIES

The CEO shall be responsible for the Port policies and procedures necessary to oversee all legal services and litigation, in which the Port has an interest, direct or indirect. For purposes of this section, "litigation" shall mean the assertion of any position, right or responsibility by or against the Port which may reasonably lead to or has been filed in any court of general jurisdiction, be it state or federal, or any quasi-judicial or administrative forum.

### A. Retaining Independent Counsel/Experts/Investigators

(1) The CEO may engage legal representation for the Port and such experts, investigators and/or independent counsel as may be necessary to the orderly preparation of potential and/or actual litigation in which the Port has a direct or indirect interest, without limitations otherwise prescribed in section III of this Resolution.

*Carolyn A. Lake*

Goodstein Law Group PLLC – **501 South "G" Street - Tacoma, WA 98405**
253.779.4000 office -253.229.6727 cell -253.779.4411 fax

**From:** Carolyn Lake
**To:** Doremus, Judi
**Cc:** Mattina, Tara
**Subject:** Atty Client - Litigaton- CONFIDENTIAL
**Date:** Tuesday, May 24, 2016 1:56:02 PM
**Attachments:** 160522. Memo on Initiative Challenge.pdf
**Importance:** High

**Atty Client – Litigation – CONFIDENTIAL**
Please print for JW.
Please also confirm if JW will be attending EDB Exec Board at 2:30 (Port Audit Committee is at 2 PM), but his attendance at EDB would be very helpful.

Timeline of planned Initiative Litigation events:

**Tuesday, Today 5/24 –** discussion planned with the attorney for **TPC Chamber**, to discuss whether the action is appropriate for the Chamber. Next steps would be signing a Joint Defense Agreement, and reviewing our draft Complaint.

**Tuesday, Today 5/24 –** Fife attorney advises Fife will not participate.

**Wednesday Tomorrow 5/25 at 2:30 PM-** **EDB** will hold a special Executive Board meeting to determine the Exec Board recommendation on partnering with the Port.
If Exec Board approves, the matter will be sent to the full Board for approval. The EDB attorney has "approved" the action as appropriate for the EDB and concurs in our identified Initiative defects.

**Friday – June 3 –** -Tentative **EDB Board** meeting

**Monday – June 6** -Tentative **TNT Editorial Board** to advise of planned litigation.
(attended by Port and confirmed partners)
-Filing of Litigation

**Tuesday- June 7** COT public announcement of TOC plans at workshop and CC mtg. (filing after that date)

**Other:**
Copy of Litigation Briefing Paper attached.
Tara Mattina is supporting with development of talking points, expected questions, Ed Board, etc.

*Carolyn A. Lake.*
Goodstein Law Group PLLC – **501 South "G" Street - Tacoma, WA 98405**
253.779.4000 office -253.229.6727 cell -253.779.4411 fax

**From:** Carolyn Lake
**To:** Mattina, Tara
**Subject:** ATTY CLIENT _ Confidential - Tom Pierson - Chamber , talking points and EDB meeting.
**Date:** Sunday, May 22, 2016 1:04:46 PM
**Attachments:** 160522. Memo on Initiative Challenge.pdf
**Importance:** High

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Tara –

Just FYI – see below on status of **connecting with Chamber**. Had a great meeting with Tom Pierson Friday.

**Also** - Please see attached a **"White Paper" on the Initiative Ballot Challenge – per EDB request.**
I didn't quite hit the one page goal, (its 2.5 pages) but it should be succinct enough to efficiently tell the story.

Although shared with some of our potential partners, I consider the Paper to be a work in progress and VERY MUCH welcome any and all suggestions you may have to help refine it (as basis for elevator speech, press release, talking points for Commission (which Commissioner Myer requested**),etc.**

FYI - I also copied Attorney Jason Whalen with it and the draft Complaint per a Thursday conversation with EDB.

**EDB also scheduled a Board meeting Wednesday May 25 at 230 to review and potentially approve EDB's participation in the suit.**
Thank you again for your support.

*Carolyn A. Lake .*

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253.779.4000 office -253.229.6727 cell -253.779.4411 fax


*"An appeaser is one who feeds a crocodile, hoping it will eat him last."*
**Sir Winston Churchill**

**From:** Carolyn Lake
**Sent:** Sunday, May 22, 2016 12:51 PM
**To:** 'vzeeck@gth-law.com'

Potential questions

**Why is the Port suing people who want to have more control over the types of developments that occur on the Tideflats?**

Similar initiatives in other parts of the state and country have been ruled invalid. Zoning is a complex—and vitally important—function of our city, and protecting our industrial core, which creates family-wage jobs and tax revenues that support education, roads and police and fire protection for our community, is paramount to our economic vitality.

Citizens have many avenues to weigh in on proposed developments. Port commissioners consider leases during public meetings that are noticed in advance and provide for public comment. Large developments also go through an environmental review process under the State Environmental Policy Act (SEPA), which includes public hearings and comment periods.

**Why doesn't the Port want a public vote on the issue?**

The initiatives have numerous legal defects. Why should the community go through taxpayer expense of a vote when we know the initiatives are legally flawed?

**Tacoma Public Utilities asked residents last summer to conserve water because of a drought. Why shouldn't industry have to cut back on its water use as well?**

Industry already has cut back on its water use. Industrial users in the Tideflats averaged 35.4 million gallons of water per day in 1985. In 2015, it was down to 16.9 million gallons of water per day—less than half what it used to use.

**Some say Tacoma should move past its industrial history and embrace a new future.**

Tacoma is fortunate because we can have it all. Our geography allows us to maintain an industrial core on the Tideflats away from residential neighborhoods, keeping industrial lands in highly productive use. These are valuable, skilled, family-wage jobs that provide options for people who might not graduate from college. We also have a vibrant downtown, as well as several educational institutions to provide a pipeline of qualified people for all types of jobs.

People have incorrectly compared today's industry to Asarco's past contamination. Washington state has among the most stringent environmental regulations in the country, and the Port, City and other partners have spent hundreds of millions of dollars cleaning up legacy contamination that occurred before the regulations were

Draft

**Water Ballot Initiative Communications Plan**
**Confidential and Pursuant to Joint Defense Agreement**
**June 2016**

**Objective:** To communicate our request that Pierce County Superior Court declare invalid two initiatives seeking to amend the Tacoma city charter and municipal code to require a public vote on any development using 1 million or more gallons of water per day.

## Key dates

| | |
|---|---|
| June 1, 2016 | Talking points to executives and commissioners |
| June 6, 2016 | Afternoon TNT ed board with attorney Carolyn Lake, Commissioner Connie Bacon, Bruce Kendall and Tom Pierson |
| | Afternoon: POT/et al file suit, post news release |
| June 7, 2016 | NOON- City Council announces at City Workshop meeting |
| | Evening: City Council announces at City Council meeting |
| June 8, 2016 | COT files suit |

## Partners

- **Economic Development Board for Tacoma-Pierce County**
- **Tacoma-Pierce County Chamber**
- **Port of Tacoma**
- **Private sector**
- **Local government**

## Key messages

- The Port of Tacoma has filed a complaint in Pierce County Superior Court to invalidate two initiatives currently gathering signatures.
- The two ballot initiatives seek a public vote on potential developments that would use 1 million gallons of water or more per day.
- These initiatives, similar to ones declared invalid in other parts of the state and country, are aimed at requiring public votes on developments that create economic opportunities and family-wage jobs for our community.

## Situation

A political action committee is gathering signatures to put two separate initiatives on the fall 2016 ballot. The initiatives seek to amend the Tacoma city charter and municipal code to require a public vote on any new development using 1 million gallons or more of water each day. These initiatives were in response to Northwest Innovation Works' now-canceled natural gas-to-methanol facility, but they would have much broader consequences to manufacturing, industrial and technological developments within and outside Tacoma city limits. The Initiatives and the hurdles they seek to impose sends a bad message to economic investors that Tacoma/Pierce County no longer welcomes economic investors and new jobs.

- These initiatives attempt to thwart the Port of Tacoma's mission to create jobs and economic opportunities for Pierce County.
- Many of the Port's tenants are industrial or manufacturing developers.
- 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 region's industrial employment. [PSRC Industrial Lands Analysis, 2015]
- These jobs pay an average $80,000 a year. [PSRC Industrial Lands Analysis, 2015]
- The environmental impacts, including water use, of specific developments are appropriately analyzed during the environmental review process under SEPA.

## Potential questions

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Similar initiatives in other parts of the state and country have been ruled invalid. Zoning is a complex—and vitally important—function of our city, and protecting our industrial core, which creates family-wage jobs and tax revenues that support education, roads and police and fire protection for our community, is paramount to our economic vitality.

Citizens have many avenues to weigh in on proposed developments. Port commissioners consider leases during public meetings that are noticed in advance and provide for public comment. Large developments also go through an environmental review process under the State Environmental Policy Act (SEPA), which includes public hearings and comment periods.

**Why doesn't the Port want a public vote on the issue?**

The initiatives have numerous legal defects. Why should the community go through the time and expense of a vote when we know the initiatives are legally flawed?

**Tacoma Public Utilities asked residents last summer to conserve water because of a drought. Why shouldn't industry have to cut back on its water use as well?**

- 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]
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- These jobs pay an average $80,000 a year. [PSRC Industrial Lands Analysis, 2015]
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## Potential questions

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Citizens have many avenues to weigh in on proposed developments. Port commissioners consider leases during public meetings that are noticed in advance and provide for public comment. Large developments also go through an environmental review process under the State Environmental Policy Act (SEPA), which includes public hearings and comment periods.

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**Tacoma Public Utilities asked residents last summer to conserve water because of a drought. Why shouldn't industry have to cut back on its water use as well?**

Industry already has cut back on its water use. Industrial users in the Tideflats averaged 35.4 million gallons of water per day in 1985. In 2015, it was down to 16.9 million gallons of water per day—less than half what it used to use.

**Tacoma should move past its industrial history and embrace a new future.**

participation.
Suggest that setting up some one on ones between Commission and their reps should be considered.
There may still be chance to salvage perhaps a "friend of the Court" participation if they can come around soon, as well as the long term benefits of some needed repair and explanation of the methanol situation.

We plan to file (electronically) this afternoon about 4 PM.
Service on the named Defendants will commence tomorrow.

Please advise if any questions. Thank you

*Carolyn A. Lake .*

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253.779.4000 office -253.229.6727 cell -253.779.4411 fax



*"An appeaser is one who feeds a crocodile, hoping it will eat him last."*
**Sir Winston Churchill**

**From:** Carolyn Lake
**To:** tmattina@portoftacoma.com
**Bcc:** Deena Pinckney
**Subject:** Atty Client – Update and time sensitive action request
**Date:** Monday, June 06, 2016 9:11:00 AM
**Importance:** High

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This morning Chamber voted to join the Port and EDB as a co-Plaintiff.
Tom Pierson will join us at Ed Board.

They are anxious to receive our Press release and talking points as soon as possible.
Don't know if you've had a chance to review the tweaks I provided Friday?
Thanks for sending your final versions as soon as you can.
Their plan is to share a version with their membership this evening.

I also updated all Commission by phone this weekend.
Is it your plan to provide the materials to Commission today?
They'd appreciate being armed with that information.

Last disappointed that Building and Construction Trades declined participation.
Suggest that setting up some one on ones between Commission and their reps should be considered.
There may still be chance to salvage perhaps a "friend of the Court" participation if they can come around soon.

*Carolyn A. Lake*.

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*"An appeaser is one who feeds a crocodile, hoping it will eat him last."*
**Sir Winston Churchill**

| | |
|---|---|
| **From:** | Carolyn Lake |
| **To:** | Mattina, Tara |
| **Subject:** | ATTY CLIENT _ CONFIDENTIAL litigation confidential |
| **Date:** | Friday, May 20, 2016 1:45:25 PM |
| **Attachments:** | 160307.Attachment A. Charter Initiative 5.pdf<br>160517.Attachment B. Code Initative 6.pdf<br>160520. COMPLAINT.docx |
| **Importance:** | High |

Per our discussion earlier today.
Draft Complaint and the 2 Initiatives are attached

May I receive contact for Troy Goodman, Denise Dwyer, Mark Martinez?
(and the industrial report?)
Thank you!

**Subject:** litigation confidential

http://www.spokesman.com/stories/2016/feb/04/state-supreme-court-rules-against-2013-envision-sp/
OLYMPIA – The city of Spokane and some local business organizations won the third and final round in the fight over a proposed ballot measure called the Community Bill of Rights.
A unanimous state Supreme Court ruled Thursday that the 2013 proposal – which included provisions to give neighborhoods the right to block proposed developments and would have declared the Spokane River has "a right to exist and flourish" – goes beyond things local citizens can decide at the ballot box.
The court doesn't usually approve challenges to initiatives before they go to voters, Justice Susan Owens wrote in the appeal. But there are exceptions, and the Community Bill of Rights was one.
"We hold that the initiative exceeded the scope of local legislative authority and thus should not be put on the ballot," she concluded.
A provision that would give neighborhoods the right to reject developments planned for their area is an attempt to modify zoning rules. But administrative matters like zoning aren't things that can be changed through initiative, she said.
Giving legal rights to the Spokane River conflicts with water rights law, which is established by the state, and the aquifer is located in Idaho, which is outside the city's authority.
A provision that would have given employees workplace rights conflicts with state and federal labor laws and tries to expand city law into a constitutional issue.
The final provision tried to strip the legal rights of a corporation that violated the rights in the city charter. That seems to be a response to the Citizen United ruling that says corporations have rights under the federal constitution, Owens wrote.
A city "cannot undo decisions of the United States Supreme Court," she said.

https://savetacomawater.org/2016/03/01/save-tacoma-water-withdraws-initiative-4/
With support and guidance from the Community Environmental Legal Defense Fund (CELDF), a national public interest law firm, Save Tacoma Water intends to file a new initiative this week. Kai Huschke is the Northwest Organizer from CELDF assisting Save Tacoma Water

http://www.inlander.com/Bloglander/archives/2015/10/08/is-an-east-coast-law-firm-

behind-the-latest-envision-initiative
Kai Huschke- same as Tacoma

http://energyindepth.org/national/lifting-the-curtain-on-the-pennsylvania-group-behind-ohios-local-anti-fracking-campaigns/
The public may not be familiar with CELDF itself, but its campaigns have become quite noticeable. More specifically, CELDF has been lobbying Ohio localities to adopt what it has termed "Community Bill of Rights Fracking Ban," "Anti-Fracking Bill of Rights" and "Charter amendments or home rule to ban fracking." It is by design that the CELDF remains behind the scenes, since its campaign is built on the illusion that individual communities are rising up.
Building on this mission, Linzey published a book entitled *Be the Change: How to Get What You Want in Your Community*, a mantra for teaching communities how to ignore laws, going so far as to claim a need for "rewriting" the U.S. Constitution.
...Within the past few years, the "right to self-govern" has been more noticeably named the Community Bill of Rights, which includes extreme anti-development language that prohibits oil and gas development. In addition to the "bill of rights" campaigns, CELDF also continues to set its sights on a host of other targets, using the model they developed post-2005 including:**agriculture, mining, industrial wind production, retail chains, corporate operations of all shapes and sizes, and even major** economic development projects. ...CELDF's efforts to shut down oil and natural gas development – which, again, are actually just a front for a broader campaign against American business – are built around a deceptive messaging strategy, which includes the group denying its intent and making promises to communities that it routinely fails to keep.
...The bait in Medina County is a pipeline, which CELDF used as a means of pushing a policy that it said would protect property rights. The switch is then **taking away constitutionally-protected property rights, and then granting those rights to ecosystems**.

http://energyindepth.org/mtn-states/leader-of-national-ban-fracking-campaign-calls-on-activists-to-ignore-the-law-and-fill-up-jails/

http://therightsofnature.org/tag/thomas-linzey/
Drafted with assistance from the Community Environmental Legal Defense Fund (CELDF), the Mora County Community Water Rights and Local Self-Government Ordinance establishes a local Bill of Rights – including a right to clean air and water, a right to a healthy environment, and the rights of nature – while prohibiting activities which would interfere with those rights, including oil drilling and hydraulic fracturing or "fracking," for shale gas.

http://energyindepth.org/ohio/columbus-community-bill-of-rights-ballot-measure-fails-as-activist-group-submits-thousands-of-invalid-signatures/
After campaigning for over a year in Columbus, the Pennsylvania based Community Environmental Legal Defense Fund (CELDF) turned in their petitions to get their anti-fracking "Community Bill of Rights" placed on the November Ballot – but *the vast majority of the signatures were not valid.* Therefore the petition effort has again failed.
The petition required 8,900 signatures, of which 5,500 were thrown out by the board of election, which means that 62 percent of the signatures were not valid!

http://www.inlander.com/Bloglander/archives/2013/06/21/county-three-city-council-members-sign-on-to-initiative-challenge

http://envisionspokane.org/celdf-statement-spokane-initiative
**Close to 200 communities across the U.S. have now partnered with CELDF to establish community rights to self-governance and say "no" to harmful corporate activities such as fracking.**

http://celdf.org/

http://www.inlander.com/Bloglander/archives/2016/02/04/wa-supreme-court-strikes-down-community-bill-of-rights-envision-spokane-not-giving-up

http://www.inlander.com/spokane/worked-up/Content?oid=2575007

**The Worker Bill of Rights is the fourth initiative** from Envision Spokane (now operating under an offshoot called "Envision Worker Rights") to qualify for the ballot. In 2009 and 2011, Envision placed versions of its Community Bill of Rights on the ballot that would have given residents more control over development in their neighborhoods, bestowed new protections on the Spokane River and restricted corporate rights. Both failed.

http://www.inlander.com/Bloglander/archives/2016/03/09/envision-gets-warning-letter-for-violation-of-state-election-laws

http://www.inlander.com/Bloglander/archives/2016/02/04/wa-supreme-court-strikes-down-community-bill-of-rights-envision-spokane-not-giving-up

http://www.inlander.com/Bloglander/archives/2015/03/20/envision-spokane-files-new-worker-bill-of-rights-initiative

http://readthedirt.org/author/community-environmental-legal-defense-fund

http://www.inlander.com/spokane/revenge-of-prop-4/Content?oid=2135696

yet, in fewer words, the new proposition still proposes large-scale changes. The first amendment would give neighborhoods the ability to prevent zoning changes that allow large developments to move in. (Low-income developments would not be subject to this rule.) The second would give Spokane's rivers and aquifer "inalienable rights," granting every Spokane resident the ability to sue to defend the waterways. The third would guarantee unionized workers collective bargaining rights. The fourth would stipulate that corporations in Spokane do not have the same rights as people.

*Carolyn A. Lake.*

Goodstein Law Group PLLC – **501 South "G" Street - Tacoma, WA 98405**
253.779.4000 office -253.229.6727 cell -253.779.4411 fax



*"An appeaser is one who feeds a crocodile, hoping it will eat him last."*
**Sir Winston Churchill**

**From:** Mattina, Tara
**To:** Anderson, Megan
**Subject:** backgrounder
**Date:** Monday, June 6, 2016 1:40:00 PM
**Attachments:** Backgrounder-BallotInitiative-June2016.docx
Tacoma Water Supply Fact Sheet 6.6.16.pdf

# Water Ballot Initiative backgrounder
June 6, 2016

## Key points

- The Port of Tacoma has filed a lawsuit in Pierce County Superior Court to invalidate two initiatives currently gathering signatures.
- The two ballot initiatives seek a public vote on potential developments that would use 1 million gallons of water or more per day.
- These initiatives, similar to ones declared invalid in other parts of the state and country, are aimed at requiring public votes on developments that create economic opportunities and family-wage jobs for our community.

Legal arguments:

- Initiatives cannot lawfully compel a vote on zoning or development projects, set conditions for the provision of water, interfere with existing city administrative management of water operations and city budgeting or conflict with local, state and federal laws.
- These initiatives fail on all fronts.
  - Tacoma has a legal obligation under state law to serve water demand in its service territories, which extends both within and outside Tacoma city limits, and to acquire supplies and develop facilities, if necessary, to do so.
  - The initiatives would require a vote of approval by city residents only, affecting hundreds if not thousands of customers outside the city.
  - State law considers zoning and development matters outside initiative power.
- The Washington Supreme Court struck down a similar Spokane initiative in February 2016, ruling that the measure:
  - cannot impose a "vote of the people" requirement on individual developments,
  - conflicted with state-established water rights law, especially where the city water system extends outside city limits,
  - improperly tried to expand city law into a constitutional issue, and
  - tried to strip the legal rights of a corporation.

Port objections:

- These initiatives attempt to thwart the Port of Tacoma's mission to create jobs and economic opportunities for Pierce County.
- Many of the Port's tenants are industrial or manufacturing developers.

- 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 region's industrial employment. [PSRC Industrial Lands Analysis, 2015]
- These jobs pay an average $80,000 a year. [PSRC Industrial Lands Analysis, 2015]
- The environmental impacts, including water use, of specific developments are appropriately analyzed during the environmental review process under SEPA.

## From Tacoma Water

- Tacoma Public Utilities has a legal obligation under state laws (RCW 80.28.110, 80.04.101, 80.04.380 and 80.04.385) to serve water and power demand in its service territories, and to acquire supplies and develop facilities, if necessary, to do so.

| Tacoma Water use | |
|---|---|
| Proposed methanol plan demand (submitted by applicant) | Average: 10.4 MGD |
| Current total system average day demand | 2015: 56 MGD<br>Peak day: 97 MG |
| Historical and current Tideflats average industrial demand | 1985: 35.4 MGD<br>2015: 16.9 MGD |

- Tacoma Water's supply source availability varies throughout the year, depending on season, weather, snowpack, inflows and water storage. The maximum amount of water available by source is shown below.
- Our average available supply is 110 million gallons per day. The average use is 55 million gallons per day.

| Water supply | |
|---|---|
| Green River | 72 MGD |
| 7 North Fork wells (alternative Green River supply) | 84 MGD |
| Local wells | 59 MGD max. |
| Interruptible Green River supply | 27 MGD additional |

Potential questions

**Why is the Port suing people who want to have more control over the types of developments that occur on the Tideflats?**

Similar initiatives in other parts of the state and country have been ruled invalid. Zoning is a complex—and vitally important—function of our city, and protecting our industrial core, which creates family-wage jobs and tax revenues that support education, roads and police and fire protection for our community, is paramount to our economic vitality.

Citizens have many avenues to weigh in on proposed developments. Port commissioners consider leases during public meetings that are noticed in advance and provide for public comment. Large developments also go through an environmental review process under the State Environmental Policy Act (SEPA), which includes public hearings and comment periods.

**Why doesn't the Port want a public vote on the issue?**

The initiatives have numerous legal defects. Why should the community go through taxpayer expense of a vote when we know the initiatives are legally flawed?

**Tacoma Public Utilities asked residents last summer to conserve water because of a drought. Why shouldn't industry have to cut back on its water use as well?**

Industry already has cut back on its water use. Industrial users in the Tideflats averaged 35.4 million gallons of water per day in 1985. In 2015, it was down to 16.9 million gallons of water per day—less than half what it used to use.

**Some say Tacoma should move past its industrial history and embrace a new future.**

Tacoma is fortunate because we can have it all. Our geography allows us to maintain an industrial core on the Tideflats away from residential neighborhoods, keeping industrial lands in highly productive use. These are valuable, skilled, family-wage jobs that provide options for people who might not graduate from college. We also have a vibrant downtown, as well as several educational institutions to provide a pipeline of qualified people for all types of jobs.

People have incorrectly compared today's industry to Asarco's past contamination. Washington state has among the most stringent environmental regulations in the country, and the Port, City and other partners have spent hundreds of millions of dollars cleaning up legacy contamination that occurred before the regulations were

in place. A development that pollutes land, water or air would never be allowed either by us or the regulatory agencies.

This is our community. Port of Tacoma commissioners and employees live here, too. Over the past 100 years, we have grown businesses here, raised children here and helped build this community through sweat and pride. We intend to continue fighting for its future.

| | |
|---|---|
| **From:** | Carolyn Lake |
| **To:** | Mattina, Tara |
| **Subject:** | Confidential litigation |
| **Date:** | Friday, June 3, 2016 4:46:30 PM |
| **Attachments:** | cal. WaterBallotInitiative-June2016 (2).docx<br>cal . BallotInitiative-CommunicationsPlan-June2016 (2r).doc<br>cal. Backgrounder-BallotInitiative-June2016 (3).docx |
| **Importance:** | High |

Thanks Tara !

All are tweaked - some not redlined though. (Sorry).
Contact me any time of questions!

*Carolyn A. Lake .*

Goodstein Law Group PLLC – **501 South "G" Street - Tacoma, WA 98405**
253.779.4000 office -253.229.6727 cell -253.779.4411 fax



*"An appeaser is one who feeds a crocodile, hoping it will eat him last."*
**Sir Winston Churchill**

**From:** Kathleen Cooper
**To:** Mattina, Tara
**Subject:** draft EDB backgrounder // JDA EDB atty-client privilege
**Date:** Friday, June 3, 2016 3:49:26 PM
**Attachments:** 2016-05-25 DRAFT boiled-down interview prep talking points.docx

Hi Tara,

I've attached our backgrounder. If we've screwed up or oversimplified the legal stuff, we can fix it.

K

**Kathleen Cooper**
Communications Manager, Economic Development Board for Tacoma-Pierce County
950 Pacific Ave., Suite 410, Tacoma, Wash., 98402
www.edbtacomapierce.org
253-284-5889 *direct* | 253-383-4726 *reception*

ECONOMIC DEVELOPMENT BOARD
FOR TACOMA–PIERCE COUNTY

**To:** EDB Board of Directors
**From:** Bruce Kendall
**Date:** June 2, 2016
**Re:** Water ballot initiative complaint backgrounder

## Key facts

- The EDB joined the Port of Tacoma to ask a Pierce County Superior Court judge to invalidate two initiatives currently gathering signatures.
- These initiatives seek a public vote on every potential development that would use 1 million gallons of water or more a day.
- Similar initiatives have been declared invalid in other parts of the country.
- The Washington State Supreme Court threw out a similar initiative just this February.

## Legal arguments

- In Washington, initiative and referendum powers cannot be used this way. State law says zoning and development matters are not subject to initiative power. The Tacoma ballot measures call for a public vote over what are essentially zoning and permitting decisions.
- State law requires utilities to meet water and power demand in their service territories, and to make sure the infrastructure exists to do it. There is no legal way for a utility to limit any legal use of water or power. The Tacoma ballot measures want to require Tacoma Public Utilities to limit access to its water.
- State law says only the City Council can change or adjust the city's budget. Putting water use up for a public vote would cause an adjustment to the city's budget because TPU accounts for almost half the city's budget.
- The state Supreme Court struck down a similar Spokane initiative just a few months ago, in February 2016. The court ruled, among other things, that the initiative cannot impose a "vote of the people" requirement on individual developments; and the initiative improperly tried to expand city law into a constitutional issue.

## EDB objections

- **These ballot measures will interfere with the EDB's ability to do its job.** Putting water use for industrial projects up for a public vote will interfere with the EDB's core mission: to recruit and retain primary businesses. Primary businesses make something here and sell it outside this market, thereby bringing new money into Pierce County. Businesses that make things – using industrial and/or manufacturing processes – require access to basic infrastructure.
- **These ballot measures put jobs at risk.** Tens of thousands of jobs are generated by the industrial sector in Pierce County and pay an average of $80,000 a year. (Source: PSRC Industrial Lands Analysis, 2015). We want more well-paying jobs. Large industrial/manufacturing businesses that are currently considering relocating to Pierce County will not open and grow here if water use is up for a public vote.
- **These ballot measures don't reflect the truth about industrial water use.** The EDB's members and investors believe in a sustainable water supply system. TPU has invested millions of dollars on conservation efforts. The EDB has encouraged businesses for years to avail themselves of the many conservation programs offered by TPU for large water users and hundreds have. Statistics show a smashing success: Industrial water use has been *decreasing* for the past 30 years.

  From 1985 to 2015, the average industrial water demand for businesses on the Tideflats dropped by more than half. Tideflat businesses combined used and average of 35.4 million gallons of water a day in 1985. In 2015 the average was 16.9 million gallons per day.
- **These ballot measures would have Tacoma voters deciding on water use in other cities and unincorporated areas across Pierce County.** Tacoma voters should not be in charge of water policy and zoning/permitting decisions for Lakewood, University Place, Puyallup, Bonney Lake, and the dozens of other cities in Pierce County whose water comes from TPU.

## Potential questions

**What is your response to accusations that this lawsuit is intended to suppress the public vote?** Preventing these fatally flawed initiatives from going to a vote will save taxpayers money. Good stewardship of public funds would include not spending money on an election to decide ballot measures that are plainly illegal. Good stewardship also would include not spending taxpayer money to defend laws that, even if approved, are guaranteed to lose in a court of law.

**What's the harm, anyway, in just allowing a vote? People should have a say.** Initiatives like these are the brainchild of a law firm from Pennsylvania that is running them all over the

country. In Tacoma, these initiatives are a solution in search of a problem. The idea that each commercial project should be voted on implies that this is the only way people can have an effect on commercial projects. That's simply not true. Permitting already has multiple layers for public involvement, from setting policy through the planning commission, to public invitations for comments on every re-zone, to an in-depth environmental impact process, to appeals of permits to a hearing examiner.

**Tacoma does have a checkered environmental past.** We know the history of our area, including dirty developments like Asarco – and we also know that we've moved past that.

Modern laws and regulatory regimes provide deep protections for land, water, and air that simply will not allow a return to the days of old. The local geography, particularly in Tacoma, allows us to maintain an industrial core on the Tideflats away from residential neighborhoods, keeping those industrial lands in a highly productive use.

Every member of the EDB board and staff live in Pierce County. We have grown businesses here, raised children here, and helped build our community. We care about the future of Pierce County as much as anyone else.

**What is your response to people who say that the anti-methanol campaign shows people want different kinds of jobs?** The EDB looks forward to helping shed light and intelligence on the value of a balanced portfolio of primary companies in the South Sound, including industrial manufacturing. The most successful regions in the world – with the highest quality of life, including environmental quality – are those that embrace the global economy and innovate better approaches to creating products and services across a variety clusters.

If successful at the ballot box, these initiatives will specifically harm large industrial water users already operating legally in Tacoma-Pierce County, jeopardizing the jobs they are providing to the community right now.

And, just as importantly, the initiatives send a chilling message to the marketplace that Tacoma is turning over development decisions to the popular vote. If citizens get to vote on this, what's next?

**From:** Kathleen Cooper
**To:** Mattina, Tara
**Cc:** Lake, Carolyn
**Subject:** edb talking points / EDB JDA atty-client privilege
**Date:** Friday, May 27, 2016 1:04:23 PM
**Attachments:** 2016-05-25 DRAFT talking points for board re water ballot lawsuit.docx

Hi Tara,

I've attached the draft talking points we discussed today. BK hasn't signed off yet, so I'll let you know if / when there are big changes.

K

**Kathleen Cooper**
Communications Manager, Economic Development Board for Tacoma-Pierce County
950 Pacific Ave., Suite 410, Tacoma, Wash., 98402
www.edbtacomapierce.org
253-284-5889 *direct* | 253-383-4726 *reception*

ECONOMIC DEVELOPMENT BOARD
FOR TACOMA–PIERCE COUNTY

**Date:** May 26, 2016
**To:** EDB staff
**From:** Kathleen Cooper
**Re:** DRAFT talking points requested by Exec. Committee re: Why is the EDB involved in this lawsuit?

**These ballot measures are illegal.**

1. In Washington, initiative and referendum powers cannot be used this way. State law says zoning and development matters are not subject to initiative power. The Tacoma ballot measures call for a public vote over what are essentially zoning and permitting decisions.
2. State law requires utilities to meet water and power demand in their service territories, and to make sure the infrastructure exists to do it. There is no legal way for a utility to limit any legal use of water or power. The Tacoma ballot measures want to require Tacoma Public Utilities to limit access to its water.
3. State law says only the City Council can change or adjust the city's budget. Putting water use up for a public vote would cause an adjustment to the city's budget because TPU accounts for almost half the city's budget.

**These ballot measures will interfere with the EDB's ability to do its job.**

Putting water use for every commercial project up for a public vote will interfere with the EDB's core mission: to recruit and retain primary businesses. Primary businesses make something here and sell it, thereby bringing new money into Pierce County. Businesses that make things – using industrial and/or manufacturing processes – require access to basic infrastructure. These businesses can get that everywhere else in the country without a public vote.

**These ballot measures put jobs at risk.**

Large industrial/manufacturing businesses that are currently considering relocating to Pierce County will not open and grow here if water use is up for a public vote.

**These ballot measures are unfair to every other city in Pierce County that uses water from TPU.**

Tacoma voters should not be in charge of water policy and zoning/permitting decisions for Lakewood, Bonney Lake, and the XX other cities in Pierce County whose water comes from TPU.

**These ballot measures don't reflect the truth about industrial water use.**

The EDB's members and investors believe in a sustainable water supply. TPU has invested millions*** on conservation efforts. The EDB has encouraged businesses for years to avail themselves of the many conservation programs offered by TPU for large water users. The statistics show a smashing success: Industrial water use has been *decreasing* for the past 30 years. From 1985 to 2015, the average industrial water demand for businesses on the Tideflats dropped by more than half.

**Our participation in this lawsuit has nothing to do with the methanol debate.**

The issue is much bigger now. The EDB's joining of this lawsuit reflects its deep concern for the future of the Pierce County economy and the quality of life for everyone who lives here. That includes us: Every member of the EDB board and staff live in Pierce County. We have founded businesses here, raised children here, and helped build our community. We care about the future of Pierce County as much as anyone else.

==========

Other points raised by the Executive Committee:

- If the measures pass, they will draw a legal challenge and the city will have to spend taxpayer money to defend an unconstitutional law.
- Suing now will save taxpayer funds being spent on an election over a clearly unconstitutional measure.
- There is no danger that business water use will ever be put above residential water use. TPU has policies in place now that prioritize people over industry. In the event of a true water shortage, drinking water supplies are No. 1 on the list.
- The idea that each commercial project should be voted on implies that this is the only way people can have an effect on commercial projects. That's simply not true. Permitting already has multiple layers for public involvement, from setting policy through the planning commission, to public invitations for comments on every re-zone, to an in-depth environmental impact process, to appeals of permits to a hearing examiner. There is no shortage of opportunity for public involvement.

**From:** Carolyn Lake
**To:** Mattina, Tara
**Subject:** FW: PORT OF TACOMA VS. SAVE TACOMA WATER
**Date:** Monday, June 6, 2016 4:34:57 PM
**Attachments:** 160606.f. Complaint with Attachments.SIGNED.pdf
160603.pldg.Summons.pdf
**Importance:** High

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*Carolyn A. Lake.*

Goodstein Law Group PLLC – **501 South "G" Street - Tacoma, WA 98405**
253.779.4000 office -253.229.6727 cell -253.779.4411 fax



*"An appeaser is one who feeds a crocodile, hoping it will eat him last."*
**Sir Winston Churchill**

**From:** Carolyn Lake
**Sent:** Monday, June 06, 2016 4:34 PM
**To:** 'Pauli, Elizabeth (Legal)'
**Subject:** PORT OF TACOMA VS. SAVE TACOMA WATER
**Importance:** High

Elizabeth:
Please see attached pleadings filed with the Superior Court this afternoon.
In addition to these pleadings, we'll send a proposed acceptance of service on behalf of the City for your consideration.
Please contact me if any questions. Thank you.

- Carolyn Lake, on behalf of Port of Tacoma.

Thank you. Your documents have been submitted to the Pierce County Clerks Office.

Case: 16-2-08477-5
PORT OF TACOMA VS. SAVE TACOMA WATER

The date and time of this submission was 06/06/2016 4:16 PM

The following Filing(s) were successfully submitted:

47017615 - Case Information Cover Sheet
47017616 - New Case Filing Fee Received $240.00 ($240.00)
47017617 - Order Assigning Case to Department and Setting Hearing Date
47017618 - Complaint
47017619 - Summons

*Carolyn A. Lake*.

Goodstein Law Group PLLC -- **501 South "G" Street - Tacoma, WA 98405**
253.779.4000 office -253.229.6727 cell -253.779.4411 fax



*"An appeaser is one who feeds a crocodile, hoping it will eat him last."*
**Sir Winston Churchill**

**From:** Carolyn Lake
**To:** Mattina, Tara
**Subject:** JDA - Atty Client - 2016-05-25 DRAFT talking points for board re water ballot lawsuit
**Date:** Friday, May 27, 2016 1:12:30 PM
**Attachments:** 2016-05-25 DRAFT talking points for board re water ballot lawsuit.docx

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Excellent! See one 'softening" suggestion?

to appeals of permits to a hearing examiner. There is no shortage of opportunity for public involvement.

**From:** Mattina, Tara
**To:** Anderson, Megan
**Subject:** review draft backgrounder, news release
**Date:** Wednesday, May 25, 2016 1:05:54 PM
**Attachments:** Backgrounder-BallotInitiative-June2016.docx
WaterBallotInitiative-June2016.docx

Before I send these for attorney review, would you take a look? I'm having a hard time simplifying the language and issues to make them clear to the general public, and I'd welcome your thoughts.

**From:** Tom Pierson
**To:** Mattina, Tara
**Subject:** RE: JDA & ATTY CLIENT -we are filed
**Date:** Monday, June 6, 2016 4:46:45 PM

My cell is 253-486-6159.

Tom

**From:** Mattina, Tara [mailto:tmattina@portoftacoma.com]
**Sent:** Monday, June 06, 2016 4:25 PM
**To:** Bruce Kendall <bruce@edbtacomapierce.org>; Kathleen Cooper <kathleen@edbtacomapierce.org>; Tom Pierson <TomP@tacomachamber.org>
**Subject:** FW: JDA & ATTY CLIENT -we are filed
**Importance:** High

News release is going live now.

**From:** Carolyn Lake [mailto:CLake@goodsteinlaw.com]
**Sent:** Monday, June 6, 2016 4:18 PM
**To:** Mattina, Tara <tmattina@portoftacoma.com>; vzeeck@gth-law.com; Jason@ledgersquarelaw.com
**Cc:** Deena Pinckney <DPinckney@goodsteinlaw.com>; Seth Goodstein <SGoodstein@goodsteinlaw.com>
**Subject:** JDA & ATTY CLIENT -we are filed
**Importance:** High

Thank you. Your documents have been submitted to the Pierce County Clerks Office.

Case: 16-2-08477-5
PORT OF TACOMA VS. SAVE TACOMA WATER

The date and time of this submission was 06/06/2016 4:16 PM

The following Filing(s) were successfully submitted:

47017615 - Case Information Cover Sheet
47017616 - New Case Filing Fee Received $240.00 ($240.00)
47017617 - Order Assigning Case to Department and Setting Hearing Date
47017618 - Complaint
47017619 - Summons

Your payment confirmation number is 295490819.

Filing Fees: $240.00
eCommerce Fee: $1.00
Total Fees: $241.00



*Carolyn A. Lake*

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253.779.4000 office -253.229.6727 cell -253.779.4411 fax



*"An appeaser is one who feeds a crocodile, hoping it will eat him last."*
**Sir Winston Churchill**

**From:** Mattina, Tara
**To:** Misterek, Matt
**Bcc:** Lake, Carolyn
**Subject:** RE: 2:30 ed board
**Date:** Monday, June 6, 2016 1:47:00 PM
**Attachments:** 160606. Summary Memo on Initiative Challenge.pdf
20160606-WaterBallotInitiativeComplaint.pdf

Documents are attached.

**From:** Misterek, Matt [mailto:matt.misterek@thenewstribune.com]
**Sent:** Monday, June 6, 2016 1:45 PM
**To:** Mattina, Tara <tmattina@portoftacoma.com>
**Subject:** Re: 2:30 ed board

# Yep, we agree.

On Mon, Jun 6, 2016 at 1:36 PM, Mattina, Tara <tmattina@portoftacoma.com> wrote:

> Matt, I will send you materials ahead of our 2:30 ed board if you and the newsroom will agree to embargo them until our 4 p.m. filing. Please reply to this email if you agree to those terms, and I will send the materials.
>
> **Tara Mattina**
> Communications Director | Port of Tacoma
> (253) 428-8674 | www.portoftacoma.com

--

Editorial Page editor
The News Tribune
matt.misterek@thenewstribune.com
(253) 597-8472

## The Initiative Actions

Signature gathering is under way for two proposed City of Tacoma Initiatives: Charter Amendment 5 ("Charter Initiative") **Attachment A** and "Code Initiative 6" ("Code Initiative") **Attachment B**. One Initiative seeks to amend the Tacoma Charter; the other to amend the Tacoma Municipal Code, but both are substantively the same. Both Initiatives seek: (1) to require a public vote on any land use proposal which consumes more than 1336 CCF (one million gallons) of water or more daily from Tacoma, (2) to overrule and or disavow the United States Constitution, along with "international, federal [and] state laws" that "interfere" with the proposed amendment, (3) to curtail the jurisdiction of state and federal courts, and certain rights under the Federal Constitution, including rights of corporations.

The Initiatives are driven by an entity called Save Tacoma Water (STW), a registered political committee. STW claims to exist for the sole purpose of advocating Tacoma Initiative No. 1 for the 2016 election year.[1] Donna Walters is listed as the "sponsor" and "treasurer" of STW.

## Flawed Initiatives Provide Strong Basis for Successful Challenge.

In Washington, local initiative and referendum powers may only be used to pass and repeal certain types of ordinances. Overall, local Initiatives cannot compel a vote on zoning or development projects, set conditions for the provision of water, interfere with existing city administrative management of water operations and city budgeting, or conflict with local, state and federal laws. The two Tacoma local Initiatives contain all these defects.

## Current Tacoma Water Operations.

Tacoma has operated a municipal water system for over one hundred twenty three years.[2] Under the Tacoma City Charter, Tacoma Water (TPU) is a regional water utility established in the City's Department of Public Utilities.

Tacoma has a legal obligation under state laws (RCW 80.28. 110, 80.04.010, 80.04.380, and 80.04.385) to serve water and power demand in its service territories, and to acquire supplies and develop facilities (if necessary) to do so. The proposed Initiatives include pronouncements that go beyond the scope of Tacoma's city limits, affecting hundreds if not thousands of customers outside the Tacoma City limits.[3]

Both the Charter and Chapter 35.33 RCW provide that the Tacoma city legislative authority (the City Council) alone is authorized to may make changes and adjustments to the budget. TPU, a division of the City of Tacoma accounts for ***forty-one percent*** of Tacoma's budget.

Tacoma has a lengthy history of administering the supply of water to commercial, manufacturing, technological and industrial consumers and has sufficient infrastructure, capacity and supply to serve future large water users:

---

[1] STW claims in its PDC Registration to handle less than $5,000. ("No more than $5,000 will be raised or spent and no more than $500 in the aggregate will be accepted from any one contributor"). State law requires SAVE OUR WATER AKA SAVE TACOMA WATER to register with the Public Disclosure Commission, and nominate "The names, addresses, and titles of its officers; or if it has no officers, the names, addresses, and titles of its responsible leaders...." RCW 42.17A.025(9)(c). The Plaintiffs may seek to name Jon and Jane Doe defendants meeting the description set forth in RCW 42.17A.0255, as those persons become known

[2] *Griffin v. Tacoma*, 49 Wn. 524, 526-7, 95 P. 1107 (1908) ("Under the terms of Ordinance No. 790 the electors of the city [of Tacoma] did hold an election in 1893 to determine, among other things, whether the city should purchase of the Tacoma Light and Water Company its water works and all sources of water supply then owned or operated by said company as part of its water system..").

[3] Save Our Water concedes: "Residents of Tacoma, Fife, Milton, Kent, Covington, Lakewood, Bonney Lake, Federal Way, the Muckleshoot and Puyallup Reservations and portions of Auburn and Des Moines are dependent on fresh water from Tacoma Public Utility...." Petitions, **Attachments A & B.**

**From:** Carolyn Lake
**To:** Tom Pierson
**Cc:** Zeeck, Valarie
**Subject:** RE: JDA & CONFIDENTIAL
**Date:** Sunday, June 5, 2016 3:39:22 PM
**Attachments:** 160602.PM. 2. clean Complaint.docx
160522. Memo on Initiative Challenge.pdf

Tom & Valerie:
Here are the latest and greatest . The Complaint has been revised, the Memo is the same.
– I am happy to bring copies if I know how many before about 8 PM this evening.
Thank you! See you tomorrow at 7:30 AM.

*Carolyn A. Lake*

Goodstein Law Group PLLC – **501 South "G" Street - Tacoma, WA 98405**
253.779.4000 office -253.229.6727 cell -253.779.4411 fax


*"An appeaser is one who feeds a crocodile, hoping it will eat him last."*
**Sir Winston Churchill**

**From:** Tom Pierson [mailto:TomP@tacomachamber.org]
**Sent:** Sunday, June 05, 2016 1:11 PM
**To:** Carolyn Lake
**Cc:** Zeeck, Valarie
**Subject:** RE: JDA & CONFIDENTIAL

Are there changes to any of the documents I will need for my board meeting tomorrow morning at Valarie's at 730am?

Maybe send me a clean packet of all the documents that I should have ready for my board members.

Thanks
Tom

**From:** Carolyn Lake [mailto:CLake@goodsteinlaw.com]
**Sent:** Thursday, June 02, 2016 6:39 PM
**To:** vzeeck@gth-law.com
**Cc:** Tom Pierson <TomP@tacomachamber.org>; Seth Goodstein <SGoodstein@goodsteinlaw.com>
**Subject:** JDA & CONFIDENTIAL

Folks:
Here is updated Complaint.
I'd send redlines but there have been a lot of intervening versions –

Better defines and narrows Plaintiffs, expands on injunctive relief and provides additional support for same.
Looking forward to Monday AM, ***or*** any updates you can divulge before then. Many thanks,

*Carolyn A. Lake*

Goodstein Law Group PLLC – **501 South "G" Street - Tacoma, WA 98405**
253.779.4000 office -253.229.6727 cell -253.779.4411 fax


*"An appeaser is one who feeds a crocodile, hoping it will eat him last."*
**Sir Winston Churchill**

Filed
Washington State
Court of Appeals
Division Two

November 7, 2017

# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

## DIVISION II

| | |
|---|---|
| STATE OF WASHINGTON,<br><br>Appellant,<br><br>v.<br><br>EVERGREEN FREEDOM FOUNDATION, d/b/a FREEDOM FOUNDATION,<br><br>Respondent. | No. 50224-1-II<br><br>PART PUBLISHED OPINION |

MAXA, J. – The State of Washington appeals the CR 12(b)(6) dismissal of its regulatory enforcement action against the Evergreen Freedom Foundation (the Foundation). The State filed suit after learning from a citizen complaint that the Foundation had provided pro bono legal services in support of local initiatives in Sequim, Chelan, and Shelton without reporting the value of those services to the Public Disclosure Commission (PDC).

RCW 42.17A.255(2) requires a person to report to the PDC certain "independent expenditures," defined in RCW 42.17A.255(1) to include any expenditure made in support of a "ballot proposition." RCW 42.17A.005(4) defines "ballot proposition" to include any initiative proposed to be submitted to any state or local voting constituency "from and after the time when the proposition has been initially filed with the appropriate election officer of that constituency before its circulation for signatures."

The language of RCW 42.17A.005(4) tracks the procedure for statewide initiatives, in which a proposition must be filed with election officials before any signatures are solicited. However, in many local jurisdictions – including in Sequim, Chelan, and Shelton – the initiative procedure requires that the appropriate number of signatures be obtained before a proposition is filed with election officials.

Here, the Foundation's pro bono legal services were provided after the Sequim, Chelan, and Shelton initiatives had been filed with local election officials but also after the initiatives had been circulated for signatures. The State argues that these initiatives were "ballot propositions" under the RCW 42.17A.005(4) definition. The Foundation argues, and the trial court ruled, that the initiatives were not "ballot propositions" when the legal services were provided because the initiatives already had been circulated for signatures. Under the Foundation's argument and the trial court's ruling, a local initiative filed in a jurisdiction where signatures must be obtained before filing could never constitute a "ballot proposition."

We hold that (1) under the only reasonable interpretation of RCW 42.17A.005(4), the Sequim, Chelan, and Shelton initiatives qualified as "ballot propositions" because the Foundation provided services after the initiatives had been filed with the local election officials, regardless of the additional qualification that the proposition had to be filed before its circulation for signatures; and (2) the disclosure requirement for independent expenditures under RCW 42.17A.255(2) does not violate the Foundation's First Amendment right to free speech. In the unpublished portion of this opinion, we reject the Foundation's additional arguments.

Accordingly, we reverse the trial court's dismissal of the State's regulatory enforcement action regarding the Sequim, Chelan, and Shelton initiatives, and we remand for further proceedings.

## FACTS

*Proposition Proposals*

In 2014, groups of citizens in Sequim, Chelan, and Shelton prepared initiatives concerning collective bargaining between municipalities and the bargaining representatives of their employees, circulated the initiatives, and obtained signatures in their communities. The proponents then submitted the initiatives and signatures to all three cities. The Sequim city council failed to take any action. The Chelan city council directed its city attorney to file an action to determine the initiative's validity. The Shelton city commission declared the initiatives invalid and took no further action.

In response, the proponents of each initiative filed a lawsuit against their respective cities. The lawsuits requested that the initiatives be placed on the ballot to be voted on by city residents. In each case, the proponents were represented by attorney staff members of the Foundation. Apparently, attorneys representing various labor unions opposed each lawsuit. All three lawsuits were dismissed and none were appealed.

*The State's Lawsuit*

In October 2015, the State filed a complaint against the Foundation. The complaint alleged that RCW 42.17A.255 required the Foundation to report to the PDC the legal services provided by its staff in support of the initiatives. The State sought the imposition of a civil penalty as well as temporary and permanent injunctive relief.

The Foundation moved to dismiss under CR 12(b)(6) for failure to state a claim. The trial court granted the Foundation's motion and dismissed the State's complaint. The court reasoned that the applicable statutes were ambiguous and vague as to whether the Foundation was obligated to report its legal services.

The State appeals the trial court's dismissal order.

## ANALYSIS

### A. STANDARD OF REVIEW

The Foundation filed its motion to dismiss the State's complaint under CR 12(b)(6), which provides that a complaint may be dismissed if it fails to state a claim upon which relief can be granted. We review a trial court's CR 12(b)(6) order dismissing a claim de novo. *J.S. v. Vill. Voice Media Holdings, LLC*, 184 Wn.2d 95, 100, 359 P.3d 714 (2015). We accept as true all facts alleged in the plaintiff's complaint and all reasonable inferences from those facts. *Id.* Dismissal under CR 12(b)(6) is appropriate if the plaintiff cannot allege any set of facts that would justify recovery. *Id.*

### B. STATUTORY BACKGROUND

#### 1. Fair Campaign Practices Act Reporting Requirements

In 1972, Washington citizens passed Initiative 276, which established the PDC and formed the basis of Washington's campaign finance laws. *Voters Educ. Comm. v. Pub. Disclosure Comm'n*, 161 Wn.2d 470, 479, 166 P.3d 1174 (2007). Initiative 276 is codified in portions of Chapter 42.17A RCW, which is known as the Fair Campaign Practices Act (FCPA).

RCW 42.17A.001 sets forth the declaration of policy of the FCPA. The public policy of the state includes:

> (1) That *political campaign* and lobbying *contributions and expenditures be fully disclosed to the public* and that secrecy is to be avoided.
>
> . . . .
>
> (5) That public confidence in government *at all levels* is essential and must be promoted by all possible means.
>
> . . . .
>
> (10) That the *public's right to know of the financing of political campaigns* and lobbying and the financial affairs of elected officials and candidates far outweighs any right that these matters remain secret and private.
>
> (11) That, mindful of the right of individuals to privacy and of the desirability of the efficient administration of government, full access to information concerning the conduct of government on every level must be assured as a fundamental and necessary precondition to the sound governance of a free society.

RCW 42.17A.001 (emphasis added). In addition, RCW 42.17A.001 states that "[t]he provisions of this chapter shall be liberally construed to promote complete disclosure of all information respecting the financing of political campaigns and lobbying."

The FCPA requires candidates and political committees to report to the PDC all contributions received and expenditures made. RCW 42.17A.235(1). A "political committee" includes any organization receiving donations or making expenditures in support of or in opposition to a ballot proposition. RCW 42.17A.005(37).

A person who violates any provision in chapter 42.17A RCW may be subject to a civil penalty of not more than $10,000 for each violation. RCW 42.17A.750(1)(c). In addition, a court may compel the performance of any reporting requirement. RCW 42.17A.750(1)(h). The attorney general and local prosecuting authorities "may bring civil actions in the name of the state for any appropriate civil remedy, including but not limited to the special remedies provided in RCW 42.17A.750." RCW 42.17A.765(1). The PDC also may refer certain violations for criminal prosecution. RCW 42.17A.750(2).

2. Statewide and Local Initiative Process

The requirements for reporting expenditures under chapter 42.17A RCW involve the processes for submitting ballot initiatives at the statewide and local levels. The initiative processes at each level are established by state law and involve somewhat different requirements.

At the state level, chapter 29A.72 RCW governs the process for submitting initiatives to the voters. A person who desires to submit a "proposed initiative measure" to the people must file a copy of the proposed measure with the secretary of state. RCW 29A.72.010. After review by the office of the code reviser, the proponent must file the proposed measure along with a certificate of review with the secretary of state for assignment of a serial number. RCW 29A.72.020. The attorney general also formulates a ballot title for the proposed initiative. RCW 29A.72.060.

After the proposed initiative has been filed with the secretary of state and a ballot title has been prepared, the proponent can prepare petitions for signature. RCW 29A.72.100, .120. The proponent must obtain a certain number of signatures from legal voters, after which the petitions are "submitted to the secretary of state for filing." RCW 29A.72.150. The secretary of state then verifies the signatures. RCW 29A.72.230. If the petition is sufficient, the secretary of state places the proposed initiative on the ballot. RCW 29A.72.250.

At the local level, RCW 35.17.260 allows ordinances to be initiated by petition of a city's registered voters filed with the city commission. But the initiative must receive a certain number of signatures from registered voters before being filed. RCW 35.17.260. The city clerk ascertains whether the petition is signed by a sufficient number of registered voters. RCW

35.17.280. The commission must decide whether to pass the proposed ordinance or submit the proposed ordinance to a vote of the people. RCW 35.17.260(1)-(2).

Chapter 35.17 RCW applies to cities incorporated under a commission form of government. *See* RCW 35.17.010. Although Sequim, Chelan, and Shelton are noncharter "code cities" subject to title 35A RCW,[1] RCW 35A.11.100 provides that, with a few exceptions, the initiative process set forth in chapter 35.17 RCW also applies to code cities.[2]

Under the statutes discussed above, the procedure for submitting statewide and local proposed initiatives is similar, but the first two preliminary steps are reversed. For a statewide initiative, the proponent must file the proposed measure and then circulate the measure for signatures. For a local initiative, the proponent must circulate the proposed measure for signatures and then file the measure.

C. REPORTING OF INDEPENDENT EXPENDITURES

The State argues that the trial court erred in dismissing its complaint for failure to state a claim because the Sequim, Chelan, and Shelton proposed initiatives qualified as "ballot propositions" under RCW 42.17A.005(4), and therefore the Foundation was required to report to the PDC its independent expenditures in support of the initiatives. We agree and hold that the

[1] Sequim Municipal Code 1.16.010; Chelan Municipal Code 1.08.010; Shelton Municipal Code (SMC) 1.24.010. Shelton also operates under a commission form of government. SMC 1.24.020.

[2] First class cities that have adopted a charter may elect to follow a different process as provided in the charter. RCW 35.22.200. For example, the initiative process in Seattle mirrors the statewide requirement and requires an initial filing with the city clerk before signatures are collected. *See* SEATTLE CITY CHARTER art. IV, § 1(B); Seattle Municipal Code 2.08.010.

local initiatives qualified as "ballot propositions" once they were filed with the appropriate election officials.

1. Statutory Interpretation Principles

Statutory interpretation is a matter of law that we review de novo. *Jametsky v. Olsen*, 179 Wn.2d 756, 761, 317 P.3d 1003 (2014). The primary goal of statutory interpretation is to determine and give effect to the legislature's intent. *Id.* at 762. To determine legislative intent, we first look to the plain language of the statute. *Id.* We consider the language of the provision in question, the context of the statute in which the provision is found, and related statutes. *Ass'n of Wash. Spirits & Wine Distribs. v. Wash. State Liquor Control Bd.*, 182 Wn.2d 342, 350, 340 P.3d 849 (2015).

If the statute defines a term, we must apply the definition provided. *Nelson v. Duvall*, 197 Wn. App. 441, 452, 387 P.3d 1158 (2017). To discern the plain meaning of undefined statutory language, we give words their usual and ordinary meaning and interpret them in the context of the statute in which they appear. *AllianceOne Receivables Mgmt., Inc. v. Lewis*, 180 Wn.2d 389, 395, 325 P.3d 904 (2014). And "[r]elated statutory provisions must be harmonized to effectuate a consistent statutory scheme that maintains the integrity of the respective statute." *Koenig v. City of Des Moines*, 158 Wn.2d 173, 184, 142 P.3d 162 (2006).

If a statute is unambiguous, we apply the statute's plain meaning as an expression of legislative intent without considering other sources of such intent. *Jametsky*, 179 Wn.2d at 762. If the language of the statute is susceptible to more than one reasonable interpretation, the statute is ambiguous. *Id.* We resolve ambiguity by considering other indications of legislative intent, including principles of statutory construction, legislative history, and relevant case law. *Id.*

We generally assume that the legislature meant precisely what it said and intended to apply the statute as it was written. *HomeStreet, Inc. v. Dep't of Revenue*, 166 Wn.2d 444, 452, 210 P.3d 297 (2009). When interpreting a statute, each word should be given meaning. *Id.* And when possible, statutes should be construed so that no clause, sentence, or word is made superfluous, void, or insignificant. *Id.* However, in special cases we can ignore statutory language that appears to be surplusage when necessary for a proper understanding of the provision. *Wash. Water Power Co. v. Graybar Elec. Co.*, 112 Wn.2d 847, 859, 774 P.2d 1199, 779 P.2d 697 (1989); *see also Am. Disc. Corp. v. Shepherd*, 160 Wn.2d 93, 103, 156 P.3d 858 (2007).

In addition, when construing two statutes, we assume that the legislature did not intend to create an inconsistency. *Filo Foods, LLC v. City of SeaTac*, 183 Wn.2d 770, 793, 357 P.3d 1040 (2015). Whenever possible, we read statutes together to create a harmonious statutory scheme that maintains each statute's integrity. *Id.* at 792.

Finally, we can avoid a literal reading of a statute if it leads to strained, unlikely, or absurd consequences. *Columbia Riverkeeper v. Port of Vancouver USA*, 188 Wn.2d 421, 443, 395 P.3d 1031 (2017). "We may resist a plain meaning interpretation that would lead to absurd results." *Univ. of Wash. v. City of Seattle*, 188 Wn.2d 823, 834, 399 P.3d 519 (2017); *see also Chelan Basin Conservancy v. GBI Holding Co.*, 188 Wn.2d 692, 705-08, 399 P.3d 493 (2017) (avoiding an absurd interpretation that would render a statute practically meaningless).

2. Statutory Language

RCW 42.17A.255(2) requires any person who makes an "independent expenditure" to file a report with the PDC if the expenditure by itself or added to all other such expenditures

made during the same "election campaign" equals $100 or more. RCW 42.17A.255(1) defines the term "independent expenditure" as "any expenditure that is made in support of or in opposition to any candidate or *ballot proposition* and is not otherwise required to be reported" under other provisions, with certain exceptions. (Emphasis added).

RCW 42.17A.005(4) defines "ballot proposition" to mean

> any "measure" as defined by RCW 29A.04.091, or any initiative, recall, or referendum proposition proposed to be submitted to the voters of the state or any municipal corporation, political subdivision, or other voting constituency from and *after the time when the proposition has been initially filed* with the appropriate election officer of that constituency *before its circulation for signatures*.

(Emphasis added.) RCW 29A.04.091 defines "measure" to include "any proposition or question submitted to the voters."

RCW 42.17A.255(2) also refers to an "election campaign." RCW 42.17A.005(17) defines "election campaign" to include "any campaign in support of, or in opposition to . . . , a ballot proposition."

3. Interpretation of RCW 42.17A.005(4)

a. Two Prongs of "Ballot Proposition" Definition

Under RCW 42.17A.005(4), there are two separate prongs of the definition of "ballot proposition." First, a ballot proposition is a "measure," RCW 42.17A.005(4), which under RCW 29A.04.091 is "any proposition or question submitted to the voters." In other words, under this prong an initiative becomes a "ballot proposition" only after it is actually placed on the ballot. The parties agree that the first prong does not apply here because none of the initiatives at issue were submitted to the voters.

Second, a ballot proposition is a proposition that is "proposed to be submitted to the voters" of any state or local voting constituency, but only "from and after the time when the proposition [1] has been initially filed with the appropriate election officer of that constituency [2] before its circulation for signatures." RCW 42.17A.005(4). The question here is whether this second prong applies to the Sequim, Chelan, and Shelton local initiatives.

b. Application to State Initiatives

For statewide initiatives, application of the second prong of the "ballot initiative" definition is straightforward and unambiguous. A state initiative must be submitted to the secretary of state both before signature collection can begin, RCW 29A.72.010, and again after the required number of signatures are collected. RCW 29A.72.150. Because there are two points at which "filing" must occur, the phrase "before its circulation for signatures" clarifies when an initiative becomes a "ballot proposition" – from and after the first filing, which is the one that occurs before circulation for signatures.

c. Application to Local Initiatives

For local initiatives, the second prong of the definition of "ballot initiative" is confusing. Unlike for statewide initiatives, in many local jurisdictions signatures must be gathered before any filing occurs. RCW 35.17.260. Therefore, for those local initiatives there can be no period that is both after filing but before circulation for signatures.

The Foundation argues that under the plain language of RCW 42.17A.005(4), the phrase "before circulation for signatures" means that the second prong of the "ballot initiative" definition can never apply to local initiatives in those jurisdictions – including in Sequim, Chelan, and Shelton – where obtaining signatures is required before a proposition can be filed.

Therefore, the Foundation asserts that only the first prong of the definition could possibly apply to the local initiatives here, and the first prong clearly is inapplicable.

The State argues that the phrase "before its circulation for signatures" in RCW 42.17A.005(4) applies only to statewide initiatives and does not limit the second prong of the definition for local initiatives where obtaining signatures is required before a proposition can be filed. According to the State, the second prong *at least* applies to a proposition that "has been initially filed with the appropriate election officer." RCW 42.17A.005(4). Otherwise, the second prong's express application to local jurisdictions would be meaningless.[3]

d. Analysis

On initial review, the second prong of RCW 42.17A.005(4) is ambiguous. However, we conclude that the only reasonable interpretation is the State's position that a local initiative becomes a "ballot proposition" once it is filed with the appropriate election official.

As noted above, applying the phrase "before its circulation for signatures" in RCW 42.17A.005(4) literally would mean that the second prong of the definition of "ballot proposition" could never apply to initiatives in many local jurisdictions. But that result is inconsistent with other language of RCW 42.17A.005(4), which expressly applies the second

[3] The State also proposes an interpretation under which the second prong would apply to the signature-gathering phase of a local initiative, even before the initiative has been filed with the appropriate election official. Under this interpretation, the second prong would apply completely different requirements for statewide initiatives (beginning after filing) and local initiatives (beginning before circulation for signatures). However, as the State concedes, we need not address this interpretation because here the local initiatives had been filed when the Foundation provided legal services.

prong to an initiative submitted not just to state voters, but also to the voters of "*any* municipal corporation, political subdivision, or other voting constituency." (Emphasis added.)

Further, the legislature amended RCW 42.17A.005(4) in 1975 to clarify that the second prong of the definition of "ballot proposition" applied to all jurisdictions, not just to statewide initiatives, and at the same time added the phrase "before its circulation for signatures." The language of Initiative 276 and the original language of RCW 42.17A.005(4) stated that the second prong applied to an initiative submitted to "any specific constituency which has been filed with the appropriate election officer of that constituency." LAWS OF 1973, ch. 1, § 2(2).

The 1975 amendment changed the language as follows:

> "Ballot proposition" means any "measure" as defined by RCW 29.01.110, or any initiative, recall, or referendum proposition proposed to be submitted to the voters of ((~~any specific~~)) the state or any municipal corporation, political subdivision or other voting constituency ((~~which~~)) from and after the time when such proposition has been initially filed with the appropriate election officer of that constituency prior to its circulation for signatures.

LAWS OF 1975, 1st Ex. Sess., ch. 294, § 2(2).[4]

We avoid a literal interpretation of a statute that would lead to unlikely or absurd results. *Columbia Riverkeeper*, 188 Wn.2d at 443. The Foundation's interpretation of RCW 42.17A.005(4) would lead to an absurd result. It would make no sense for the legislature to expressly extend the second prong to *all* local initiatives while *at the same time* adopting a requirement that precluded the application of the second prong to local initiatives where signatures must be collected before filing.

[4] The phrasing "prior to its circulation" was later changed to "before its circulation." LAWS OF 2010, ch. 204, § 101(4).

The Foundation argues that we cannot adopt an interpretation of RCW 42.17A.005(4) that ignores the phrase "before its circulation for signatures" because we must give effect to all the statutory language. In general, we must adopt an interpretation of a statute that does not render certain language superfluous. *HomeStreet*, 166 Wn.2d at 452. But this principle does not require adoption of the Foundation's position.

First, the Foundation fails to acknowledge that its interpretation ignores the part of RCW 42.17A.005(4) stating that the second prong applies to an initiative submitted to the voters of "any municipal corporation, political subdivision, or other voting constituency." The Foundation's position – that the second prong can never apply to most local initiatives – would render this language completely superfluous. But under the State's interpretation, the phrase "before its circulation for signatures" applies to and provides clarification for statewide initiatives, even though it does not apply to local initiatives.

Second, we can and must ignore statutory language when necessary for a proper understanding of the provision. *Am. Disc.*, 160 Wn.2d at 103. Here, the only way we can apply the second prong of the definition of "ballot proposition" to all local initiatives – which the legislature clearly intended – is if we disregard the phrase "before its circulation for signatures" in the context of local initiatives where signatures must be obtained before filing.

Third, we must be mindful of the directive in RCW 42.17A.001 that the provision of the FCPA "be liberally construed to promote complete disclosure of all information respecting the financing of political campaigns." And relevant here, RCW 42.17A.001(5) states that "public confidence in government *at all levels* is essential and must be promoted by all possible means." (Emphasis added.) As the State points out, adopting the Foundation's position would create a

large loophole in the FCPA's reporting requirements. The public would be precluded from receiving information regarding the financing of local initiatives at the most critical time – when signatures in support of the initiatives are being collected. On the other hand, the State's position is consistent with the primary purpose of the FCPA – to fully disclose to the public political campaign contributions and expenditures. RCW 42.17A.001(1).

We hold that the only reasonable interpretation of RCW 42.17A.005(4) is that the second prong of the definition of "ballot proposition" applies after a local initiative has been filed with the appropriate election official even though signatures already have been collected in support of that initiative. The phrase "before its circulation for signatures" applies only to statewide initiatives or to local jurisdictions that follow the statewide procedure.

4. Application of RCW 42.17A.005(4)

Here, the State's complaint alleged that the Foundation provided pro bono legal support for each of the Sequim, Chelan, and Shelton initiatives after those initiatives had been filed with the respective cities. The State further alleged that the Foundation failed to report that support as an independent expenditure in support of a ballot proposition. For purposes of CR 12(b)(6), we must assume that these allegations are true. *J.S.*, 184 Wn.2d at 100.

Based on our interpretation above, each initiative qualified as a "ballot proposition" under RCW 42.17A.005(4) once it was filed with the cities. As a result, under RCW 42.17A.255(2) the Foundation was required to file a report disclosing any independent expenditure that, alone or in combination with all other independent expenditures, equaled $100

or more.[5] If the State demonstrates that the Foundation violated RCW 42.17A.255(2), the Foundation will be subject to a civil penalty under RCW 42.17A.750.

The Foundation argues that any reporting obligations in this case could not be triggered because RCW 42.17A.255(2) requires that an independent expenditure was made "during [an] election campaign." The Foundation claims that there was never an election campaign in this case because the initiatives were never submitted to the voters. But an "election campaign" is defined in RCW 42.17A.005(17) to include "any campaign in support of, or in opposition to, a ballot proposition." The Foundation's pro bono legal services were rendered in support of the local initiatives – to assist their placement on the ballot. Therefore, because we conclude that the initiatives at issue here qualified as "ballot propositions," the Foundation's support occurred during an "election campaign."

By alleging that the Foundation failed to report its legal support of the Sequim, Chelan, and Shelton initiatives, the State stated a claim upon which relief could be granted. Accordingly, we hold that the trial court erred in dismissing the State's claim under CR 12(b)(6).

D. FIRST AMENDMENT RIGHT TO FREE SPEECH

The Foundation argues that if we interpret RCW 42.17A.255 to require disclosure here, the statute would impermissibly infringe on the Foundation's right of free speech under the First Amendment to the United States Constitution. We disagree.

[5] The Foundation does not contest that its pro bono legal services constitute an "independent expenditure," as defined by RCW 42.17A.255(1).

1. Legal Standard

Generally, a statute is presumed to be constitutional, and the party challenging its constitutionality bears the burden of proving it to be unconstitutional beyond a reasonable doubt. *Voters Educ. Comm.*, 161 Wn.2d at 481. However, in the First Amendment context the State typically has the burden to justify a restriction on speech. *Id.* at 482.

The applicable standard of review differs depending on whether a law limits speech outright or merely imposes disclosure requirements on the speaker. *Id.* Statutes that regulate speech based on its content must survive strict scrutiny. *Rickert v. Pub. Disclosure Comm'n*, 161 Wn.2d 843, 848, 168 P.3d 826 (2007). By contrast, disclosure requirements, although potentially a burden on the ability to speak, impose no ceiling on campaign-related activity and do not prevent speech. *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 366, 130 S. Ct. 876, 175 L. Ed. 2d 753 (2010).

Therefore, laws that impose disclosure requirements must survive the less stringent " 'exacting scrutiny' " test, which requires disclosure requirements to have a " 'relevant correlation' or 'substantial relation' " to a governmental interest.[6] *Voters Educ. Comm.*, 161 Wn.2d at 482 (quoting *Buckley v. Valeo*, 424 U.S. 1, 64, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976)); *see also Citizens United*, 558 U.S. at 366. We must determine whether (1) the disclosure requirements promote a sufficiently important government interest and (2) there is a substantial

[6] The Foundation argues that strict scrutiny review applies. But as the Ninth Circuit recently explained in detail, exacting scrutiny is the appropriate standard of review for disclosure requirements. *See Human Life of Wash. Inc. v. Brumsickle*, 624 F.3d 990, 1004-05 (9th Cir. 2010).

relation between the disclosure requirements and that interest. *See Voters Educ. Comm.*, 161 Wn.2d at 482; *Citizens United*, 558 U.S. at 366.

2. Governmental Interest

Disclosure requirements can further multiple governmental interests, including providing information to the public, deterring corruption and the appearance of corruption, and gathering the data necessary to enforce substantive election restrictions. *McConnell v. Fed. Election Comm'n*, 540 U.S. 93, 196, 124 S. Ct. 619, 690, 157 L. Ed. 2d 491 (2003), *overruled on other grounds by Citizens United*, 558 U.S. 310; *see also Voters Educ. Comm.*, 161 Wn.2d at 482. On that basis, courts that have addressed disclosure requirements and have consistently determined that they sufficiently further a governmental interest. And courts have done so when specifically addressing chapter 42.17A RCW.

For example, the Ninth Circuit in *Human Life of Washington Inc. v. Brumsickle* addressed the same "independent expenditure" disclosure requirement at issue here. 624 F.3d 990, 998 (9th Cir. 2010). The court stated that disclosure laws help shed light on contributors to and participants in public debate, providing voters with the facts necessary to evaluate the messages competing for their attention. *Id.* at 1005. In the context of voter-decided ballot measures, the voters act as legislators, making it important that they know who is lobbying for their vote. *Id.* at 1007. Therefore, the court concluded that finance disclosure requirements "advance the important and well-recognized governmental interest of providing the voting public with the information with which to assess the various messages vying for their attention in the marketplace of ideas." *Id.* at 1008.

Washington courts have reached the same conclusion. In *Voters Education Committee*, the Supreme Court noted as important the governmental interests in providing the electorate with information and deterring corruption. 161 Wn.2d at 482. The court acknowledged that the right to free speech held by organizations who engage in political speech includes a "fundamental counterpart" that is the public's right to receive information. *Id.* at 483 (quotation marks and citation omitted). The court explained that constitutional safeguards that protect the organization also apply to ensure that the public receives information, thereby encouraging uninhibited, robust, and wide-open political speech. *Id.*

Similarly, Division One of this court has determined that the state has a substantial interest in the disclosure of information to promote the integrity of its elections and prevent concealment that could mislead voters. *State ex rel. Pub. Disclosure Comm'n v. Permanent Offense*, 136 Wn. App. 277, 284, 150 P.3d 568 (2006).

The same governmental interests in those cases apply here. As the legislature expressly stated, chapter 42.17A adopted the policy of fully disclosing contributions and expenditures for political campaigns and lobbying. RCW 42.17A.001(1). The goal of disclosure was intended to improve public confidence in the fairness of elections and government processes and to protect the public interest. *See generally* RCW 42.17A.001(1)-(11). In addition to those express goals, the governmental interests in educating voters and preventing concealment noted by other courts apply with equal strength here.

3. Substantial Relationship

Under the second exacting scrutiny prong, our Supreme Court has stated that in most cases, disclosure requirements " 'appear to be the least restrictive means of curbing the evils of

campaign ignorance and corruption.' " *Voters Educ. Comm.*, 161 Wn.2d at 483 (quoting *Buckley*, 424 U.S. at 68). The United States Supreme Court in *Citizens United* emphasized that "disclosure is a less restrictive alternative to more comprehensive regulations of speech." 558 U.S. at 369. Disclosure requirements operate by requiring organizations to reveal their identity to allow the public to identify the source of funding that influences elections without actually limiting that funding. *Voters Educ. Comm.*, 161 Wn.2d at 483.

The reports required under RCW 42.17A.255 are substantially related to the government's interest in disclosure. The reports themselves include only the name and address of the person who provided an independent expenditure, the name and address of the person who received the independent expenditure, the amount and date of the independent expenditure, its purpose, and the sum of all independent expenditures during the campaign. RCW 42.17A.255(5). This information is consistent with the government's interests in providing the public with information, preventing corruption, and collecting data. In addition, by emphasizing disclosure, the reporting requirement imposes significantly less of a burden than spending limitations. *Permanent Offense*, 136 Wn. App. at 285. As a result, the requirement's relationship to the relevant governmental interests is sufficiently close to be valid.

The Foundation argues that the disclosure requirement is invalid because disclosure in this case violates the attorney-client privilege. For support, the Foundation cites RCW 5.60.060(2)(a), which privileges communication made by the client to an attorney or the attorney's advice given in the course of his or her professional employment. The privilege exists to allow a client to freely communicate with an attorney without a fear of compulsory discovery. *Dietz v. Doe*, 131 Wn.2d 835, 842, 935 P.2d 611 (1997). Generally, the privilege does not

protect the name of a client because that information is not a confidential communication. *Id.* at 846. A limited "legal advice" exception may privilege a client's identity where disclosure of the client's name would implicate the client in criminal activity. *Id.*

But the Foundation has not shown that disclosure of pro bono legal services violates its attorney-client privilege. The fact that the Foundation provided pro bono legal services is not itself a confidential communication. Disclosing the value of those services also does not reveal any confidential information. And the Foundation does not argue that the legal advice exception applies.

The Foundation also argues that under *Citizens United*, disclosure and reporting requirements are valid only if they are limited to speech that is functionally equivalent to express political advocacy. But *Citizens United* holds the opposite. The Court noted that it had previously limited restrictions on independent expenditures to express advocacy. *Citizens United*, 558 U.S. at 368. It then expressly "reject[ed] Citizens United's contention that the disclosure requirements must be limited to speech that is the functional equivalent of express advocacy." *Id.* at 369.

The disclosure requirement in RCW 42.17A.255(2) satisfies the exacting scrutiny standard and is not otherwise invalid as applied in this case. Accordingly, we hold that the Foundation has not shown that the FCPA violates the First Amendment either facially or as applied.

## CONCLUSION

We reverse the trial court's dismissal of the State's regulatory enforcement action regarding the Sequim, Chelan, and Shelton initiatives, and we remand for further proceedings.

A majority of the panel having determined that only the foregoing portion of this opinion will be printed in the Washington Appellate Reports and that the remainder shall be filed for public record in accordance with RCW 2.06.040, it is so ordered.

ADDITIONAL ANALYSIS

In the unpublished portion of the opinion, we address the Foundation's arguments that (1) RCW 42.17A.255(2) is unenforceable because (a) the definition of "ballot proposition" is unconstitutionally vague and (b) the disclosure requirement improperly infringes on the judiciary's authority to regulate the practice of law, and (2) the State's complaint should be dismissed because the State failed to join certain unions also involved with the local initiatives as indispensable parties under CR 19.

A. VAGUENESS CHALLENGE

The Foundation argues that the statutes applicable here – the definition of "ballot proposition" in RCW 42.17A.005(4) and the reporting requirement in RCW 42.17A.255 – are unconstitutionally vague and therefore cannot be enforced. We disagree.

Under the Fourteenth Amendment to the United States Constitution, a statute may be void for vagueness if it is framed in terms so vague that persons of common intelligence must guess at its meaning and cannot agree on its application. *Voters Educ. Comm.*, 161 Wn.2d at 484. The doctrine has two goals: to provide fair notice as to what conduct is prohibited and to protect against arbitrary enforcement. *Postema v. Pollution Control Hr'gs Bd.*, 142 Wn.2d 68, 114, 11 P.3d 726 (2000).

To determine whether a statute is sufficiently definite, we look to the provision in question within the context of the enactment, giving language a sensible, meaningful, and

practical interpretation. *Am. Legion Post No. 149 v. Dep't of Health*, 164 Wn.2d 570, 613, 192 P.3d 306 (2008). A statute is not invalid simply because it could have been drafted with greater precision. *Id.* A statute's language is sufficiently clear when it provides explicit standards for those who apply them and provides a person of ordinary intelligence a reasonable opportunity to know what is prohibited. *Voters Educ. Comm.*, 161 Wn.2d at 488.

Statutes are presumed to be constitutional. *Id.* at 481. The party asserting that a statute is unconstitutionally vague must prove its vagueness beyond a reasonable doubt. *Id.* In the First Amendment context, the asserting party may allege that a statute is either facially invalid or invalid as applied. *See Am. Legion Post No. 149*, 164 Wn.2d at 612. A facial challenge asserts that the statute cannot be properly applied in any context. *City of Spokane v. Douglass*, 115 Wn.2d 171, 182 n.7, 795 P.2d 693 (1990). In an as applied challenge, the statute must be considered in light of the facts of the specific case before the court. *Am. Legion Post No. 149*, 164 Wn.2d at 612.

Here, the Foundation argues that the definition of "ballot proposition" in RCW 42.17A.005(4) is impermissibly vague. The core of the Foundation's argument appears to be that the statute is inconsistent with the local initiative process, not that the statute itself or any of its terms are too vague.

But as our interpretation above establishes, RCW 42.17A.005(4) presents a single, clearly delineated definition for what constitutes a "ballot proposition." As we explained, the Foundation's argument that the definition cannot apply to local jurisdictions is not supported by the statute's express language or its statement that it is to be liberally construed in favor of disclosure. RCW 42.17A.001. The text also does not support the Foundation's suggestion that

the statute imposes a reporting requirement only "before its circulation for signatures," which when applied to local jurisdictions creates a nonexistent reporting period. As a result, RCW 42.17A.005(4) applies to a clearly defined period, beginning "from and after the proposition has been initially filed."

That language is not unconstitutionally vague as applied to this case. Whether the Foundation reported its independent expenditures in support of the initiatives in Sequim, Chelan, and Shelton after those initiatives were initially filed is clearly identifiable as a matter of fact. Likewise, the language is not facially invalid because it establishes a clear course of conduct, requiring persons to report their independent expenditures. Therefore, the Foundation has not shown that there are no set of facts, including the ones here, in which the statute could not be constitutionally applied. *Douglass*, 115 Wn.2d at 182 n.7.

Accordingly, we hold that RCW 42.17A.005(4) and RCW 42.17A.255 are not void for being unconstitutionally vague.

B. INFRINGEMENT ON SEPARATION OF POWERS

The Foundation argues that requiring disclosure of the provision of legal services infringes on the judicial branch's authority to regulate the practice of law. We disagree.

Authority to regulate the practice of law in Washington lies within the inherent power of the Supreme Court. *Chism v. Tri-State Constr., Inc.*, 193 Wn. App. 818, 838, 374 P.3d 193, *review denied*, 186 Wn.2d 1013 (2016). This regulatory authority includes the authority to regulate admission to the practice of law, to oversee conduct of attorneys as officers of the courts, and to control and supervise the practice of law as a general matter. *Wash. State Bar Ass'n v. State*, 125 Wn.2d 901, 908, 890 P.2d 1047 (1995). This power lies exclusively with the

judiciary. *Id.* at 909. The other branches of government cannot impair the judiciary's functioning or encroach on its power to administer its own affairs. *Id.* at 908-09.

But the judiciary's exclusive authority in overseeing the practice of law does not exempt attorneys from application of other laws. *See Short v. Demopolis*, 103 Wn.2d 52, 62-66, 691 P.2d 163 (1984); *Porter Law Ctr., LLC v. Dep't of Fin. Insts.*, 196 Wn. App. 1, 20, 385 P.3d 146 (2016). A law that applies to attorneys in their legal practice does not violate separation of powers principles as long as it does not usurp the judiciary's authority.

In *Short*, the plaintiffs were attorneys who sought to recover legal fees allegedly owed by the defendant. 103 Wn.2d at 53-54. In a counterclaim, the defendant alleged among other things that the attorneys had violated the Consumer Protection Act (CPA). *Id.* at 54-55. The trial court dismissed the defendant's CPA claims, in part on the basis that regulation of the legal profession through the CPA would unconstitutionally infringe on the judiciary's authority to regulate the practice of law. *Id.* at 55.

The Supreme Court reversed, holding that application of the CPA did not violate separation of powers principles. *Id.* at 65-66. It stated that the judiciary's power over the legal profession included the exclusive authority to admit, enroll, discipline, and disbar attorneys. *Id.* at 62. But this authority does not create an impenetrable barrier against the legislature. *Id.* at 63. Instead, legislation is proper as long as it does not infringe on the court's power over the practice of law, specifically to admit, suspend, or disbar attorneys. *Id.* This authority was not encroached on by the CPA, which addressed public concerns distinct from the judiciary's role in overseeing the practice of law. *Id.* at 64. The court concluded that the CPA could apply to the

entrepreneurial aspects of legal practice, but not claims that an attorney had engaged in legal malpractice or otherwise acted negligently in his role as an attorney. *Id.* at 65-66.

The court in *Porter Law Center* reached the same conclusion in the context of the Mortgage Broker Practices Act (MBPA). 196 Wn. App. at 20. There, the Department of Financial Institutions claimed that an Ohio attorney had provided mortgage modification services to several Washington residents in violation of the MBPA. *Id.* at 5-7. The MBPA required persons who engage in certain mortgage-related services to first obtain a license, but contained an exemption for attorneys licensed in Washington. *Id.* at 14-15.

The defendant argued that the MBPA infringed on the Supreme Court's authority to regulate the practice of law. *Id.* at 20. The court disagreed, stating that "application of consumer protection laws such as the MBPA to attorneys 'does not trench upon the constitutional powers of the court to regulate the practice of law.' " *Id.* (quoting *Short*, 103 Wn.2d at 65).

Under *Short* and *Porter Law Center*, laws may apply to attorneys acting in the practice of law without violating separation of powers principles. The question is whether the law properly regulates the entrepreneurial aspects of legal practice or improperly infringes on the judiciary's exclusive right to oversee legal practice in areas like admission, suspension, or disbarment of attorneys.

Here, the disclosure requirements do not improperly regulate the practice of law. Their purpose is to encourage transparency in political campaign and lobbying contributions and expenditures. RCW 42.17A.001(1). To do this, they require persons, including attorneys, to disclose their independent expenditures made in the support or opposition to ballot propositions. RCW 42.17A.255(2). Following the distinction drawn by *Short*, these requirements regulate the

entrepreneurial aspects of legal practice without imposing on the judiciary's oversight of the practice of law. 103 Wn.3d at 65-66.

Further, as a disclosure requirement instead of a substantive obligation, RCW 42.17A.255 does less to impose on the judiciary's role than the laws at issue in *Short* and *Porter Law Center*. Unlike with the CPA and MBPA, which establish limits on how attorneys are able to practice law, the requirements at issue here do not restrict the Foundation's legal practice. Instead, requiring disclosure obligates the Foundation, like any other person who makes an independent expenditure, to report its actions.

Accordingly, we hold that application of RCW 42.17A.255(2) to the Foundation does not improperly violate separation of powers principles.

C. JOINDER UNDER CR 19

The Foundation argues that the State's complaint should have been dismissed because the State failed to join the unions that opposed the ballot initiatives. The Foundation claims that the unions were indispensable parties under CR 19.[7] We disagree.

CR 19 concerns the joinder of persons needed for a just adjudication. Under CR 19(a), a person shall be joined in an action if

> (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (A) as a practical matter impair or impede the person's ability to protect that interest or (B) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the person's claimed interest.

[7] In the trial court, the Foundation moved to dismiss under CR 12(b)(7) for failure to join an indispensable party. The trial court stated that it did not need to reach that issue, but that it would have denied the Foundation's motion because the State's decision to bring a regulatory claim was a matter of discretion that should not be interfered with.

Under CR 19(b),

> If a person joinable under (1) or (2) of section (a) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable.

The rule provides four factors for the court to consider in making that determination.

A court reviewing a claim under CR 19 applies a three-step process. First, under CR 19(a), the court identifies whether absent persons are "necessary" to a just adjudication. *Lundgren v. Upper Skagit Indian Tribe*, 187 Wn.2d 857, 868, 389 P.3d 569 (2017), *petition for cert. filed*, No. 17-387 (U.S. Sept. 13, 2017). Second, if the person is necessary, the court determines whether it is feasible to order joinder of the absentees. *Id.* at 868-69. Third, if joinder is not feasible, the court must consider whether in equity and good conscience the action should proceed without the absent persons. *Id.* at 869.

The burden of persuasion is on the party seeking dismissal. *Auto. United Trades Org. v. State*, 175 Wn.2d 214, 222, 285 P.3d 52 (2012). Dismissal for failure to properly join a party, although allowed under CR 12(b)(7), is a drastic remedy. *Lundgren*, 187 Wn.2d at 869. Therefore, dismissal is appropriate only when the defect cannot be cured and the absent persons will face significant prejudice should the case continue. *Id.*

Here, the Foundation asserts that the unions are necessary parties for two reasons.[8] First, the Foundation argues under CR 19(a)(1) that in the absence of the unions, the trial court could

[8] The Foundation also suggests that it was prejudiced by the unions' absence because the State is seeking attorney fees and costs, which the Foundation and the unions could have split. But it does not attempt to relate this argument to CR 19 or provide support showing that the cost of defending litigation makes an absent person a necessary party. Accordingly, we do not address this issue. RAP 10.3(a)(6); *Linth v. Gay*, 190 Wn. App. 331, 339 n.5, 360 P.3d 844 (2015), *review denied*, 185 Wn.2d 1012 (2016).

not provide complete relief among persons who are already parties. The Foundation claims that any judgment in this action will necessarily affect the status of the unions. But the Foundation does not demonstrate how, in the unions' absence, the trial court will be unable to resolve whether the Foundation violated the RCW 42.17A.255(2) disclosure requirements. The unions' involvement opposing the Foundation's lawsuits is simply not relevant to the Foundation's obligation to report its independent expenditures. The unions are therefore not necessary parties under CR 19(a)(1).

Second, the Foundation argues under CR 19(a)(2)(B) that the State's decision to bring this lawsuit but not a similar one against the unions creates inconsistent obligations because the unions also did not comply with RCW 42.17A.255(2). But CR 19 does not address the risk that similar actions taken by different parties could result in different outcomes. Rather, as the Ninth Circuit explained regarding the federal rule,

> " '[i]nconsistent obligations' are not . . . the same as inconsistent adjudications or results. Inconsistent obligations occur when a party is unable to comply with one court's order without breaching another court's order concerning the same incident. Inconsistent adjudications or results, by contrast, occur when a defendant successfully defends a claim in one forum, yet loses on another claim arising from the same incident in another forum."

*Cachil Dehe Band of Wintun Indians of the Colusa Indian Cmty. v. California*, 547 F.3d 962, 976 (9th Cir. 2008) (alterations in original) (quoting *Delgado v. Plaza Las Americas, Inc.*, 139 F.3d 1, 3 (1st Cir. 1998)).[9]

[9] Because Washington's CR 19 is so similar to the federal rule, this court may look to federal cases for guidance. *Auto. United Trades Org.*, 175 Wn.2d at 223.

In addition, the Foundation's argument is not relevant here because CR 19(a)(2)(B) asks whether any person *already a party* to the lawsuit would be subject to inconsistent obligations. The rule looks to whether the Foundation itself would be subject to inconsistent obligations, not whether the obligations on the Foundation and the unions would be inconsistent.

The Foundation has not demonstrated that, in the unions' absence, the trial court could not afford complete relief under CR 19(a)(1) or that the Foundation would be subject to inconsistent obligations under CR 19(a)(2)(B). Accordingly, we hold that the unions are not necessary parties and that CR 19 does not require dismissal of the State's lawsuit.

## CONCLUSION

We reverse the trial court's dismissal of the State's regulatory enforcement action regarding the Sequim, Chelan, and Shelton initiatives, and we remand for further proceedings.

MAXA, J.

We concur:

WORSWICK, J.

BJORGEN, C.J.