APPENDIX A

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON

BURIEN COMMUNITIES FOR INCLUSION, a Washington political committee, Respondent, v. RESPECT WASHINGTON, a Washington political committee, Appellant, KING COUNTY ELECTIONS; JULIE WISE, King County Director of Elections, in her official capacity at King County Elections; and CITY OF BURIEN, Defendants.	No. 77500-6-I DIVISION ONE UNPUBLISHED OPINION FILED: September 9, 2019

APPELWICK, C.J.—On September 14, 2017, the trial court granted Burien Communities for Inclusion (BCI) a preliminary injunction, prohibiting Burien Initiative 1 (Measure 1) from being placed on the November 2017 ballot. Respect Washington appeals the preliminary injunction, arguing that (1) it violates the free speech rights of the city of Burien's (City) voters, (2) the trial court erred in altering the status quo, and (3) BCI failed to show substantial injury. It also contends that Measure 1 is within the scope of the City's initiative power. We affirm.

FACTS

On January 9, 2017, the Burien City Council passed Ordinance 651 (Ordinance). The Ordinance is now codified at Burien Municipal Code (BMC) 2.26.010-.030. BMC 2.26.020 provides that "a City office, department, employee, agency or agent shall not condition the provision of City services on the citizenship or immigration status of any individual," except as otherwise required by law. It prohibits City personnel from initiating any inquiry or enforcement action based solely on a person's civil immigration status, race, inability to speak English, or inability to understand City personnel or officers. BMC 2.26.020(4) And, it forbids City officials from creating a registry for the purpose of classifying people on the basis of religious affiliation, or conducting a study related to the collection of such information. BMC 2.26.030.

On July 7, 2017, Craig Keller, the campaign manager, treasurer, and officer of Respect Washington, a Washington political committee submitted an initiative petition to the City. The petition asked that an initiative repealing the Ordinance, Measure 1,[1] be submitted to a vote of the City's registered voters. In addition to repealing the Ordinance, Measure 1 would add the following chapter to the BMC:

> New Chapter 9.20 is hereby added to the Burien Municipal Code "Public Peace, Morals and Welfare" to read as follows:

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[1] Both parties refer to this initiative as "Measure 1."

> 9.20 Citizen Protection of Effective Law Enforcement: The City of Burien shall not regulate the acquisition of immigration status or religious affiliation unless such regulation is approved by a majority vote of the City Council and a majority vote of the people at a municipal general election.

Two weeks later, the King County Department of Elections found that a sufficient number of signatures had been submitted for Measure 1, and issued a certificate of sufficiency. The Burien City Council then voted to place Measure 1 on the November 7, 2017 ballot.

On September 8, 2017, Burien Communities for Inclusion (BCI), a Washington political committee, filed a complaint for declaratory and injunctive relief against Respect Washington, King County Elections, King County Director of Elections Julie Wise, and the City. It sought a declaratory judgment that Measure 1 is invalid, arguing in part that (1) it exceeds the scope of the City's initiative power, and (2) the petition used to gather signatures violates RCW 35.21.005. It also asked the trial court to enjoin Measure 1 from being included on the November 2017 ballot.

Three days later, BCI sought and obtained a temporary restraining order (TRO). The TRO prohibited King County Elections and Wise from placing Measure 1 on the November 7, 2017 ballot. As a result, King County removed Measure 1 from the ballot. In granting the TRO, the trial court ordered that, on September 13, the matter be heard on a motion for a preliminary

injunction, at which time the TRO would expire.[2] The deadline for King County Elections to send the ballots to the printer was the next day, September 14.

On September 14, 2017, the trial court granted BCI's motion for a preliminary injunction. In doing so, it ordered the following:

> 1. City of Burien Initiative Measure No. 1 ("Measure 1") is invalid on the grounds that (a) Measure 1 exceeds the scope of the initiative authority granted to the people of the City of Burien, that it is administrative in nature, and (b) the petition used to gather signatures for Measure 1 violated RCW 35.21.005 by deviating from the requirements for the contents and form of a petition, as set forth in RCW 35.17.240 through 35.17.360;
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> 2. Defendants King County Elections, Julie Wise, King County Director of Elections, and all agents of King County Elections are prohibited from including or placing Measure 1 on the November 7, 2017 ballot.

Respect Washington appeals.[3]

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[2] On September 12, 2017, BCI filed a motion for a preliminary injunction, asking the trial court to enjoin King County Elections and Wise from including Measure 1 on the ballot.

[3] Respect Washington did not seek a stay of the trial court decision. Instead, on October 27, 2017, it filed a motion with this court, asking the court to treat the order as an appealable order

DISCUSSION

Respect Washington makes six arguments.[4] First, it argues that BCI is not entitled to any relief because its complaint is barred by the statute of limitations and laches. Second, it argues that the preliminary injunction violated the free speech rights of the City's voters. Third, it argues that the trial court erred in granting a preliminary injunction that altered the status quo. Fourth, it argues that BCI failed to show that substantial injury would result from Measure 1's placement on the ballot. Fifth, it argues that Measure 1 does not exceed the scope of the City's initiative power, and is legislative in nature. And sixth, it argues

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under RAP 2.2(a)(3), or, alternatively, to grant discretionary review. On January 3, 2018, this court ordered that review would go forward as an appeal. The court explained that, despite not obtaining a declaratory judgment or permanent injunction, as a practical matter, BCI obtained the relief it requested.

[4] As an initial matter, BCI argues that all of Respect Washington's claims are moot. This case may be moot, because Measure 1 can no longer be placed on the November 2017 ballot. See Randy Reynolds & Assocs., Inc. v. Harmon, 193 Wn.2d 143, 152, 437 P.3d 677 (2019) (finding that an appeal was moot because the Court of Appeals could no longer offer effective relief). However, Respect Washington contends that Measure 1's placement on another ballot is relief that this court can provide. Even if a case becomes moot, "the court has discretion to decide an appeal if the question is of continuing and substantial public interest." Id. "Washington courts have repeatedly entertained suits involving the right of initiative or referendum despite possible mootness because the suits entail substantial public interest." Glob. Neighborhood v. Respect Wash., 7 Wn. App. 2d 354, 379, 434 P.3d 1024 (2019). Accordingly, regardless of whether Respect Washington's claims are moot, we reach the merits of this case.

that the petition used to gather signatures did not violate RCW 35.21.005.[5]

I. Statute of Limitations and Laches

Respect Washington argues that BCI was not entitled to any relief because its claims were "barred by the statute of limitations or laches." It points out that the Burien City Council voted to place Measure 1 on the November 2017 ballot at a public meeting on August, 7, 2017. BCI did not file its complaint until September 8, 2017.

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[5] Respect Washington also argues that the trial court "erred by shortening the time to respond to motions." It states that, on September 11, 2017, BCI filed its motion for a TRO, the trial court "scheduled a preliminary injunction hearing two days later," and this time frame "did not permit any party to comply with the rules governing the filing of motions." It relies on King County Local Civil Rule 7(b)(4)(a), which provides that "[t]he moving party shall serve and file all motion documents no later than six court days before the date the party wishes the motion to be considered." However, under King County Local Civil Rule 65(b)(2), a preliminary injunction hearing "shall be set in conformance with the timing requirements of CR 65(b)." Thus, Local Civil Rule 7(b)(4)(a) does not apply. Under CR 65(b), "[i]n case a [TRO] is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character." And, "[n]o preliminary injunction shall be issued without notice to the adverse party." CR 65(a)(1). Respect Washington does not argue that it lacked notice of the preliminary injunction. As a result, the trial court did not err in setting a preliminary injunction hearing two days after it granted BCI a TRO.

Respect Washington asserts first that BCI brought its claims under the Uniform Declaratory Judgments Act (UDJA), chapter 7.24 RCW. Because the UDJA does not have its own statute of limitations, it states that "courts are to apply an analogous statute of limitations." Respect Washington points to three election related statutes of limitations as examples.

First, a challenge to the ballot title or summary for a state initiative or referendum must be brought within 5 days from the filing of the ballot title. RCW 29A.72.080. Second, a challenge to the ballot title for a local ballot measure must be brought within 10 days from the filing of the ballot title. RCW 29A.36.090. Third, a challenge to the Secretary of State's refusal to file an initiative or referendum petition must be brought within 10 days after the refusal. RCW 29A.72.180.

This court recently considered an identical argument in Global Neighborhood v. Respect Washington, 7 Wn. App. 2d 354, 434 P.3d 1024 (2019). There, on February 22, 2016, the Spokane City Council placed Proposition 1 on the November 2017 ballot. Id. at 369. Global Neighborhood did not file its complaint addressing the validity of Proposition 1 until May 2017, and did not move fora declaratory judgment prohibiting Proposition 1 from being placed on the ballot until July 28, 2017. Id. at 372-73. The trial court declared Proposition 1 invalid because it was administrative in nature and exceeded the local initiative power and entered an injunction directing its removal from the ballot. Id. at 374.

On appeal, Respect Washington asserted the statute of limitations as a defense, and provided this court with the same election related statutes of limitations. Id. at 380-81. This court stated that "[s]ignificant differences lie between a challenge to the title of an initiative and a challenge to the substance of an initiative." Id. at 381. It explained,

> The initiative if adopted will take effect regardless of any defect in its title. If any lawsuit will remedy the flaw in the initiative's name, the lawsuit should be brought in advance of the election and in time for the secretary of state or local government official to place a proper title on the ballot. A challenge to a refusal to place an initiative on the ballot also should be brought quickly in order to remedy any wrongful refusal to consign the measure to the ballot.
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> A challenge to a local initiative as exceeding the scope of a municipality's legislative power may be brought after the initiative election. If the challenge can be brought after the vote, we should erect no impediment by reason of a statute of limitations applying before the effectiveness of initiative as an ordinance.

Id.

As a result, it deemed the preelection challenge to a ballot initiative "analogous to a challenge to an adopted ordinance or statute." Id. In Washington, "no statute of limitations applies to a challenge to the constitutionality of a statute or other action." Id. This

court held that, similarly, "no statute of limitations should apply to the challenge of an ordinance that exceeds the authority of the entity adopting the measure whether by its legislative body or the voters by initiative." Id. at 382. It also pointed out that many Washington decisions have "entertained preelection initiative challenges without suggesting a statute of limitations that applied before the election might bar such a challenge." Id. We adhere to that decision, and that find that BCI's claims were not barred by a statute of limitations.

Alternatively, Respect Washington argues that BCI's claims should have been barred by laches.

"Laches is an implied waiver arising from knowledge of existing conditions and acquiescence in them." Buell v. City of Bremerton, 80 Wn.2d 518, 522, 495 P.2d 1358 (1972). The elements of laches are: "(1) knowledge or reasonable opportunity to discover on the part of a potential plaintiff that he has a cause of action against a defendant; (2) an unreasonable delay by the plaintiff in commencing that cause of action; (3) damage to the defendant resulting from the unreasonable delay." Id. None of these elements alone raises a laches defense, Id.

Respect Washington also raised a laches defense in Global Neighborhood. 7 Wn. App. 2d at 380. There, the trial court issued its decision prohibiting Proposition 1's placement on the ballot a week before the deadline for printing ballots. Id. at 384. Respect Washington did not seek accelerated review by this court. Id. at 385.

This court determined that, even if Global Neighborhood's delay in filing its complaint was unreasonable, the delay did not harm Respect Washington. Id. at 384.

This court noted that Respect Washington failed to cite authority for the proposition that a delay in appellate review constitutes harm for purposes of laches. Id. at 384-85. Its claim also "assume[d] that this court would reverse the superior court's decision and allow Proposition 1 to be submitted for a vote." Id. at 385. And, it assumed that "it had the right to vote on an initiative that exceeded the initiative power." Id. This court pointed out that, "[i]f anything, the Spokane public is prejudiced by the expense incurred by the city of Spokane in conducting a special election for an initiative beyond the scope of the initiative power." Id. Last, it noted that Respect Washington assumed that "this court lacks authority to direct placement of Proposition 1 on a later ballot," and "fail[ed] to recognize the possibility of accelerated review by this court." Id.

Similarly here, Respect Washington argues that "[t]he delay until . . . the eve of printing the ballots—never before done in the context of an initiative challenge—was an unreasonable delay." Unlike Global Neighborhood, BCI sought a TRO three days before the printing deadline, sought a preliminary injunction two days before the printing deadline, and was granted a preliminary injunction on the same day as the printing deadline. Respect Washington makes the same assumptions that it did in Global Neighborhood. Its claim of harm assumes that this court would reverse the trial court's decision, and that it has the right to

vote on an initiative that exceeds the initiative power. And, again, it fails to recognize the possibility of accelerated review by this court.[6]

We adhere to our decision in Global Neighborhood and find that Respect Washington was not harmed by BCI's delay in seeking a TRO and preliminary injunction.

II. Preliminary Injunction

Respect Washington makes three arguments regarding the trial court's decision to grant a preliminary injunction.[7] It argues that the trial court (1) violated

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[6] In this case, Respect Washington did not seek accelerated review by this court, or a stay of the trial court's decision. Instead, on October 27, 2017, it filed a motion to determine whether the preliminary injunction was an appealable order, and, alternatively, a motion for discretionary review.

[7] Respect Washington also argues that the injunction is invalid because the trial court did not require BCI to post a bond. Under CR 65(c), "Except as otherwise provided by statute, no . . . preliminary injunction shall issue except upon the giving of security by the applicant." (Emphasis added.) Respect Washington agrees that BCI brought its complaint under the UDJA. Under that Act, "The court, in its discretion and upon such conditions and with or without such bond or other security as it deems necessary and proper may . . . restrain all parties involved in order to secure the benefits and protect the rights of all parties to the court proceedings." RCW 7.24.190 (emphasis added). Accordingly, under RCW 7.24.190, no bond was required. See Yamaha Motor Corp. v. Harris, 29 Wn. App. 859, 865, 631 P.2d 423 (1981) (holding that the trial court did not err in failing to require Yamaha to post a bond where RCW 4.44.480 provides that the court may order a party to deposit money into the court "with or without

the free speech rights of the City's voters, (2) improperly altered the status quo, and (3) failed to show substantial injury.

This court reviews a trial court's decision to grant a preliminary injunction and the terms of that injunction for an abuse of discretion. Resident Action Council v. Seattle Hous. Auth., 177 Wn.2d 417, 428, 327 P.3d 600 (2013). "A trial court necessarily abuses its discretion if the decision is based upon untenable grounds, or the decision is manifestly unreasonable or arbitrary." Kucera v. Dep't of Transp., 140 Wn.2d 200, 209, 995 P.2d 63 (2000).

A party seeking a preliminary injunction must show "'(1) that he has a clear legal or equitable right, (2) that he has a well-grounded fear of immediate invasion of that right, and (3) that the acts complained of are either resulting in or will result in actual and substantial injury to him.'" Tyler Pipe Industries, Inc. v. Dep't of Revenue, 96 Wn.2d 785, 792, 638 P.2d 1213 (1982) (quoting Port of Seattle v. Int'l Longshoremen's & Warehousemen's Union, 52 Wn.2d 317, 319, 324 P.2d 1099 (1958)). This listed criteria "must be examined in light of equity including balancing the relative interests of the parties and, if appropriate, the interests of the public." Id. If a party fails to establish any one of these requirements, "the requested relief must be denied." Kucera, 140 Wn.2d at 210.

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security"). The trial court did not err in failing to require BCI to post a bond.

A. Free Speech

Respect Washington argues that the preliminary injunction violates the First Amendment rights of the City's voters. Relying on Coppernoll v. Reed, 155 Wn.2d 290, 119 P.3d 318 (2005), it asserts that the State Supreme Court "has noted that there are free speech implications in even invalid initiatives."

The Coppernoll court examined the extent to which the Washington Constitution permits preelection review of a statewide initiative. Id. at 297, 299. In doing so, it explained that "[b]ecause ballot measures are often used to express popular will and to send a message to elected representatives (regardless of potential subsequent invalidation of the measure), substantive preelection review may also unduly infringe on free speech values." Id. at 298. But, it recognized that Washington courts have entertained preelection review of two types of challenges to statewide initiatives: (1) whether a ballot measure fails to comply with procedural requirements, and (2) whether a ballot measure exceeds the scope of the legislative power under article II, section 1 of the Washington Constitution. Id. at 298-99. Thus, the court recognized that some circumstances warrant preelection review.

Next, Respect Washington attempts to distinguish this case from Port of Tacoma v. Save Tacoma Water, 4 Wn. App. 2d 562, 422 P.3d 917 (2018), review denied 192 Wn.2d 1026, 435 P.3d 267 (2019). There, the trial court issued a permanent injunction preventing Save Tacoma Water (STW) from placing two initiatives on

the Tacoma municipal ballot that would limit the availability of Tacoma's water service. Id. at 566-67. It determined that the initiatives were beyond the scope of the local initiative power. Id. at 566.

On appeal, STW argued that the trial court's determination and issuance of an injunction violated its free speech rights under the federal and state constitutions. Id. at 576. This court disagreed. Id. at 577, 579. It explained that this argument was rejected by the Ninth Circuit in Angle v. Miller, 673 F.3d 1122 (2012),[8] and differentiated the injunction from one that classifies speech on the basis of subject matter or content. Port of Tacoma, 4 Wn. App. 2d at 577-78. It stated,

> [T]he injunction rests on the principles that a measure is beyond the local initiative power if it is administrative or in conflict with state law. Neither the injunction nor the principles on which it is based distinguish among measures or in associated speech activities on the basis of content or subject matter.

Id. at 578.

Similarly here, the preliminary injunction rests on the principle that a measure is beyond the local initiative power if it is administrative in nature. Respect Washington asserts that, unlike Port of Tacoma, "it is the First Amendment right of the people of Burien which has been violated." This distinction between Respect Washington's free speech rights, and the rights of

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[8] The Angle court held that "[t]here is no First Amendment right to place an initiative on the ballot" id. at 1133.

the City's voters, is not meaningful. Respect Washington cites no authority for the proposition that the City's voters have a free speech right under the federal or state constitutions to vote on an initiative that exceeds the scope of the local initiative power. Where no authorities are cited in support of a proposition, this court "may assume that counsel, after diligent search, has found none." DeHeer v. Seattle Post-Intelligencer, 60 Wn.2d 122, 126, 372 P.2d 193 (1962). Therefore, we do not consider this argument. RAP 10.3(a)(6) (requiring arguments to be supported by legal authority).

The preliminary injunction was based on the initiative exceeding the scope of the local initiative power, not the substance of the policy stance taken. It does not violate the free speech rights of the City's voters.

B. Status Quo

Respect Washington argues that the trial court improperly disposed of the entire case by granting BCI "all that they sought in their [c]omplaint." It states that, by issuing the preliminary injunction on the same date as the deadline for sending ballots to the printer, the trial court "ensured that Measure 1 would not appear on the ballot and thus disposed of the case under the guise of granting a preliminary injunction." Respect Washington also contends that, by removing Measure 1 from the ballot, the trial court improperly altered the status quo that existed prior to BCI filing its complaint.

First, Respect Washington asserts that the trial court erred by effectively disposing of this case on the merits when it granted the preliminary injunction. It relies on a proposition from a 1940 State Supreme Court case providing that, where a preliminary injunction would effectively grant all the relief that could be obtained by a final decree and would practically dispose of the whole case, it will not be granted. State ex rel. Pay Less Drug Stores v. Sutton, 2 Wn.2d 523, 532, 98 P.2d 680 (1940).

In BCI's complaint, it sought a declaratory judgment that "Measure 1 is procedurally and substantively invalid," an injunction preventing Measure 1's placement on the November 2017 ballot, attorney fees and costs, and "further relief as the [c]ourt deems just and proper." On September 14, 2017, the same day as the printing deadline, the trial court issued a preliminary injunction finding Measure 1 invalid and preventing its placement on the November 7, 2017 ballot. The court appeared to contemplate future action in the case, stating that "[t]he injury if Measure No. 1 is placed on the ballot now outweighs any delay in having the Measure on the ballot at a future point in time; mere delay is not the same as an outright denial."

After the trial court issued the preliminary injunction, Respect Washington did not seek a stay of the court's decision, or accelerated review by this court. Rather, it waited until October 27, 2017 to file a motion with this court, asking us to treat the order as an appealable order under RAP 2.2(a)(3), or, alternatively, to grant discretionary review. In January 2018, this court

found the order appealable, and, in July 2018, the trial court proceedings were stayed.

As a practical matter, the preliminary injunction granted BCI the relief it sought—a determination that Measure 1 is invalid, and an injunction preventing its placement on the November 2017 ballot. But, the preliminary injunction was not a final determination on the merits of the case. It was final only in the sense that the issue did not appear on the November 2017 ballot. But, the trial court appeared to contemplate future action in the case by referring to the "delay" in having Measure 1 "on the ballot at a future point in time." And, we agree that placing the measure on a future ballot was relief that remained available when the preliminary injunction issued.

Accordingly, because the preliminary injunction was not a final determination on the merits, the trial court did not improperly dispose of the case.

Second, Respect Washington argues that the trial court improperly altered the status quo by granting BCI a preliminary injunction. It states that the status quo as of August 7, 2017 "was that Measure 1 was to appear on the ballot."

A preliminary injunction is designed to preserve the status quo until the trial court can conduct a full hearing on the merits. Serv. Emps. Int'l Union Local 925 v. Univ. of Wash., 4 Wn. App. 2d 605, 621, 423 P.3d 849 (2018), review granted 192 Wn.2d 1016, 438 P.3d 111 (2019). But, the State Supreme Court has repeatedly upheld trial court decisions preventing an

initiative's placement on a ballot. See, e.g., Spokane Entrepreneurial Ctr. v. Spokane Moves to Amend Constitution, 185 Wn.2d 97, 100-01, 369 P.3d 140 (2016) (affirming trial court's instruction that initiative be struck from ballot after enough signatures were gathered to place it on ballot); Ruano v. Spellman, 81 Wn.2d 820, 821-22, 829, 505 P.2d 447 (1973) (affirming trial court's decision to enjoin initiative from being placed on ballot after it was certified that initiative had sufficient signatures).

The status quo was that the Ordinance was in effect. The initiative sought to alter the status quo. Its placement on the ballot was contingent upon satisfying the legal requirements for an initiative. Whether it had done so had not been established and was the subject of the litigation. Respect Washington does not cite authority to the contrary. Where a party fails to cite authority in support of a proposition, this court "may assume that counsel, after diligent search, has found none." DeHeer, 60 Wn.2d at 126.

The trial court did not improperly alter the status quo by issuing the preliminary injunction.

C. Substantial Injury

Respect Washington argues that BCI has not shown "any kind of substantial injury resulting from Measure 1 on the ballot." It asserts that, in BCI's motion, the only specific injury it identified was the "vague claim" of fear of and reluctance to engage with

City personnel, offices, and services if Measure 1 becomes law.

In issuing the preliminary injunction, the trial court stated,

> The Court has carefully balanced the relative interests of the parties and the interests of the public. The injury if Measure No. 1 is placed on the ballot now outweighs any delay in having the Measure on the ballot at a future point in time; mere delay is not the same as an outright denial. The Court finds that Plaintiff has established a clear legal right, a well-grounded fear of immediate invasion of that right, and that the action sought to be enjoined will result in actual and substantial injury.

BCI attached to its preliminary injunction motion several declarations addressing future injury. One BCI member, Hugo Garcia, stated that he has close friends who shared that "they have stayed home and limited the time they go out to restaurants or grocery shop due to the anxiety and fear [from] the uncertainty of the sanctuary city ordinance." Rich Stolz, another BCI member and Executive Director of OneAmerica, an immigrant and refugee advocacy organization, discussed the effects of Measure 1 on the immigrant and refugee community. He stated that the "polarizing debate over [Measure 1] has raised fears in the immigrant and refugee community that they should not contact local law enforcement if they need to report crimes or violations of their own rights or property."

Sandy Restrepo, another BCI member and attorney, discussed the effect of Measure 1 on her immigrant clients. She shared that many of her immigrant clients "have stated that they are afraid to send their children to school, go to the grocery store and even call the police to report a crime because the anti-immigrant sentiment has increased since Respect Washington began collecting signatures." She offered one example: undocumented immigrant parents came to her office seeking legal advice, because they were afraid to report to City police that their child was a victim of sexual assault. They went to Restrepo first to see if they would risk deportation if they spoke to police officers. She asserted that "[i]f these repeal efforts continue, our community will only continue to grow more afraid and not be able to access basic services they are entitled to."

Respect Washington argues that, even if BCI's claim of fear is not too vague, BCI's claimed injury "fails to support an injunction because of a lack of causation." It relies on Clapper v. Amnesty International, USA, 568 U.S. 398, 133 S. Ct. 1138, 185 L. Ed. 2d 264 (2013).

In Clapper, the plaintiffs sought an injunction against surveillance authorized by Section 702 of the Foreign Intelligence Surveillance Act of 1978, 50 U.S.C. § 1881 a. Id. at 401. They argued that they were suffering ongoing injuries fairly traceable to the law "because the risk of surveillance under § 1881 a require[d] them to take costly and burdensome measures to protect the confidentiality of their communications." Id. at 415. The United States Supreme Court rejected this

argument. Id. at 416. It found that "[r]espondents' contention that they have standing because they incurred certain costs as a reasonable reaction to a risk of harm is unavailing—because the harm respondents seek to avoid is not certainly impending." Id. Thus, the Court concluded that "respondents cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm." Id.

Unlike Clapper, the issue here is not standing, or manufacturing standing. At issue here is whether residents of the City will be harmed by Measure 1's placement on the ballot and passage. The declarations make clear that harm will result when residents need to contact City employees regarding services or assistance they are entitled to receive. Specifically, they make clear that, if Measure 1 is placed on the ballot, residents' fear of engaging with City personnel would persist. The mere possibility of Measure 1's placement on the November 2017 ballot made residents fearful of deportation and question whether they should report crimes to police. Even if the fear of deportation is a hypothetical future harm, residents' decisions not to report crimes based on that fear would result in harm to the community. And, if Measure 1 passes, residents risk forgoing City assistance they are entitled to receive in order to avoid inquiries into their immigration status. These harms are neither speculative nor manufactured.

The trial court did not abuse its discretion in finding that Measure 1's placement on the ballot would result in actual and substantial injury.

III. Local Initiative Power

Respect Washington argues that Measure 1 should not have been stricken from the ballot, because it is within the scope of the local initiative power and legislative in nature. The trial court determined that Measure 1 is invalid because it exceeds the scope of the initiative power and is administrative in nature. Whether an initiative is beyond the scope of the local initiative power is a question of law that this court reviews de novo. Protect Pub. Health v. Freed, 192 Wn.2d 477, 482, 430 P.3d 640 (2018).

This court generally disfavors preelection review. Id. But, there are narrow exceptions to this prohibition. Id. One exception "involves determining whether the 'proposed law is beyond the scope of the initiative power.'" Id. (quoting Seattle Bldg. & Constr. Trades Council v. City of Seattle, 94 Wn.2d 740, 746, 620 P.2d 82 (1980)). While statewide initiatives are subject to the scope of the state legislative power, local initiatives are subject to the scope of the local legislative power. Id. "These powers are not equivalent." Id.

Under Amendment 7 to the Washington Constitution, "the people secured for themselves the right to legislate directly." City of Port Angeles v. Our Water-Our Choice!, 170 Wn.2d 1, 7-8, 239 P.3d 589 (2010). However, Amendment 7 does not apply to municipal governments. Id. The scope of the local initiative power is instead governed by statutes and county charters, "and preelection challenges are subject to a different analysis." Protect Pub. Health, 192 Wn.2d at 482. The

State Supreme Court has recognized multiple limits on the local initiative power, including the limit that "a local 'initiative is beyond the scope of the initiative power if the initiative involves powers granted by the legislature to the governing body of a city, rather than the city itself.'" Id. at 482-83 (quoting City of Sequim v. Malkasian, 157 Wn.2d 251, 261, 138 P.3d 943 (2006)).

A municipality's governing body, also referred to as its "legislative authority," "includes the mayor and the city council, but not the electorate." Id. at 483. "When the legislature enacts a general law granting authority to the legislative body (or legislative authority) of a city, that legislative body's authority is not subject to 'repeal, amendment, or modification by the people through the initiative or referendum process.'" Mukilteo Citizens for Simple Gov't v. City of Mukilteo, 174 Wn.2d 41, 51, 272 P.3d 227 (2012) (quoting Malkasian, 157 Wn.2d at 265). This court looks to the language of the relevant statute to determine the scope of the authority granted by the legislature to the local governing body. Id.

BCI argues that the legislature has delegated to the City's governing body, not the City itself, "the powers that Measure 1 seeks to wield through initiative." The City is a code city. BMC 2.26.010. Under RCW 35A.11.020, "The legislative body of each code city shall have power to organize and regulate its internal affairs within the provisions of this title and its charter, if any; and to define the functions, powers, and duties of its officers and employees." (Emphasis added.)

Measure 1 seeks to repeal an ordinance that, under RCW 35A.11.020, the legislature granted the Burien City Council authority to pass—the power "to define the functions, powers, and duties of its officers and employees." Measure 1 would also add a chapter to the BMC providing that the City "shall not regulate the acquisition of immigration status or religious affiliation unless such regulation is approved by a majority vote of the City Council and a majority vote of the people at a municipal general election." This provision would further constrain the Burien City Council from exercising its authority to define the functions, powers, and duties of its officers and employees on the subject of immigration and religious inquiries.

Respect Washington argues that, in Our Water-Our Choice!, the State Supreme Court rejected a similar argument regarding RCW 35A.11.020. There, this court struck two initiatives relating to the regulation of Port Angeles's water supply on the grounds that the legislature intended Port Angeles's legislative body, not the city as a whole, to manage its water system. Our Water-Our Choice!, 170 Wn.2d at 5, 14-15 n.7. It relied on the provision in RCW 35A.11.020 that "'[t]he legislative body of each code city shall have all powers [necessary for] operating and supplying of utilities and municipal services commonly or conveniently rendered by cities or towns.'" Id. at 14 n.7 (alteration in original).

The State Supreme Court affirmed this court on an alternative grounds, finding that the initiatives were administrative in nature. Id. at 15-16. It did not

reach the issue of whether the legislature intended only for Port Angeles's legislative body to manage its water system. Id. at 14-15 n.7. But, it observed in a footnote that, when read out of context, the citation to RCW 35A.11.020 "could have unintended consequences." Id. It explained,

> Given that the same chapter of the RCW specifically authorizes noncharter code cities to "provide for the exercise . . . of the powers of initiative and referendum upon electing to do so," RCW 35A.11.080, reading RCW 35A.11.020 expansively strains the statutory fabric. In our view, RCW 35A.11.020 grants code cities broad, though specific, powers . . . and does not necessarily speak to whether the state legislature intended to grant those powers only to its municipal counterpart.

Id. (first alteration in original). Thus, the court indicated that the powers the legislature granted the legislative bodies of code cities in RCW 35A.11.020 may not be exclusive, and may be subject to a city's initiative power. If that is the case, BCI's argument fails.

Alternatively, the trial court here found that Measure 1 is invalid because it is administrative in nature. "[A]dministrative matters, particularly local administrative matters, are not subject to initiative or referendum." Our Water-Our Choice!, 170 Wn.2d at 8. Generally, "a local government action is administrative if it furthers (or hinders) a plan the local government or some power superior to it has previously adopted." id. at 10. The State Supreme Court has noted that

discerning whether a proposed initiative is administrative or legislative in nature can be difficult. Spokane Entrepreneurial Ctr., 185 Wn.2d at 107. In one case, it described the question as "whether the proposition is one to make new law or declare a new policy, or merely to carry out and execute law or policy already in existence." Ruano, 81 Wn.2d at 823-24.

Measure 1 seeks to repeal the Ordinance, which prohibits City employees from conditioning services on an individual's immigration status, and prohibits City personnel from initiating an enforcement action based solely on an individual's immigration status, race, and other factors. The Ordinance also states,

> A goal of this legislation is to foster trust and cooperation between city personnel and law enforcement officials and immigrant communities to heighten crime prevention and public safety.
>
> Since 1992, the King County sheriff's office has embraced this goal and outlined supporting policies in its operations manual, with which this ordinance is consistent.
>
> Another goal of this legislation is to promote the public health of City of Burien residents.
>
> On April 22, 2008, King County Superior Court affirmed the principle that our courts must remain open and accessible for all individuals and families to resolve disputes on the merits by adopting a policy that warrants for the arrest of individuals based on their immigration status shall not be executed within

> any of the superior court courtrooms unless directly ordered by the presiding judicial officer and shall be discouraged in the superior court courthouses, unless the public's safety is at immediate risk. Shortly after the affirmation's adoption, the King County Executive and Immigration and Customs Enforcement agreed to honor this policy.

In Global Neighborhood, this court found that a similar initiative was administrative in nature, because it hindered a plan previously adopted by the local government. See 7 Wn. App. 2d at 399-400. There, the Spokane City Council had enacted two ordinances prohibiting Spokane Police Department officers from engaging in bias-based profiling, and, unless required by law, from inquiring into a person's immigration status. Id. at 367-68. These ordinances codified two previously adopted Spokane Police Department policies. Id. at 367. One month later, Respect Washington submitted a proposed initiative, Proposition 1, that would (1) amend one of the ordinances to eliminate citizenship status from the list of prohibited factors for city police to consider during investigations, (2) repeal the other ordinance, and (3) add a new code section that would prohibit Spokane from limiting any city employee from collecting immigration status information and sharing that information with federal authorities. Id. at 360, 368.

In March 2017, Proposition 1 was placed on the November 2017 ballot. Id. at 369. But, before the election, the trial court entered an injunction removing it

from the ballot. Id. at 374. It determined that Proposition 1 was invalid because it was "administrative in nature and thereby exceed[ed] the local initiative power." Id.

This court affirmed the trial court on appeal. Id. at 405. In doing so, it recognized that Proposition 1 had at least one characteristic in common with legislative acts—it adopted "a rule of government permanent in nature." Id. at 398. And, it agreed with Respect Washington that Proposition 1 maintained some legislative character "in that the initiative modifie[d], if not reverse[d] in part, legislative policy established by the city council." Id. at 398-99. But, this court stated that in "analyzing the legislative or administrative nature of a municipal act, courts consider the framework of the action." Id. at 399. It explained that Proposition 1 challenged a Spokane policy, "whose framework's base consists of administrative building blocks." Id.

Specifically, this court noted that Proposition 1 interfered with "Spokane Police Department policy to limit the circumstances under which law enforcement officers inquire about immigration and citizenship status." Id. Thus, it determined that Proposition 1 hindered a policy previously adopted by the local government. Id. It also observed that, though it was unaware of any decision expressly holding that directions to employees constitute administrative policy, logic supports the conclusion that "directions to employees constitute administrative, not legislative, policy." Id. at 400. And, it emphasized "the need for expertise on the challenging and charged question of whether local government

agents should question individuals about immigration or citizenship status." Id. It concluded that questioning regarding one's citizenship status should "be reserved to the expertise of law enforcement administrators." Id. at 401.

Here, BCI does not argue that the Ordinance was based on policies adopted by the Burien Police Department, similar to the ordinances in Global Neighborhood. But, a goal of the Ordinance is to "foster trust and cooperation between city personnel and law enforcement officials and immigrant communities to heighten crime prevention and public safety." The Ordinance is consistent with policies supporting this goal in the King County Sheriff's Office operations manual.[9] The Ordinance also notes that the King County Superior Court has adopted a policy that "warrants for the arrest of individuals based on their immigration status shall not be executed within any of the superior court courtrooms unless directly ordered by the presiding judicial officer." And, it states that the Ordinance is "intended to be consistent with federal laws regarding communications between local jurisdictions and federal immigration authorities."

Measure 1's attempt to repeal the Ordinance and forbid the Burien City Council from regulating immigration and religious affiliation inquiries is an attempt to hinder a plan already adopted by the City. Rather

---

[9] Consistency with the King County Sheriff's Office operations manual is relevant, because the City contracts with the King County Sheriff's Office for police services.

than a new law or policy, it is an obstacle to implementing the Ordinance, which is meant to be consistent with King County policies and federal law.

The Ordinance also involves directions to City officials, employees, and agents. It forbids them from taking certain actions. Measure 1 would repeal these directions. At oral argument, Respect Washington agreed that Measure 1 is "untying [City staffs'] hands," and "saying . . . they are no longer prohibited from asking about immigration." As this court noted in Global Neighborhood, logic supports the conclusion that "directions to employees constitute administrative, not legislative, policy." 7 Wn. App. 2d at 400. Administrative matters are not subject to initiative or referendum. Our-Water-Our Choice!, 170 Wn.2d at 8.

And, as this court also noted, there is a need for expertise on the question of whether local government agents should question individuals about immigration or citizenship status. Global Neighborhood, 7 Wn. App. 2d at 400. The "need to weigh conflicting goals before establishing a policy of asking or withholding questioning regarding one's citizenship status" is recognized in case law and literature. Id. at 400-01. "Local law enforcement agencies must also navigate constitutional protections afforded residents before asking for information on one's status." Id. at 401. Because these factors implicate the success of law enforcement efforts, "questioning should be reserved to the expertise of law enforcement administrators." Id.

Accordingly, we hold that Measure 1 is invalid because it is administrative in nature.[10]

We affirm.

/s/ Appelwick, C.J

WE CONCUR:

/s/ Chun, J.

/s/ Verellen, J.

[10] Because we hold that Measure 1 is invalid, we need not reach Respect Washington's argument regarding the petition used to gather signatures for Measure 1.

APPENDIX B

The Court of Appeals
of the
State of Washington

RICHARD D. JOHNSON,
Court Administrator/Clerk

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CASE #: 77500-6-I

Respect Washington, Petitioner v. Burien Communities for Inclusion, Respondent

Counsel:

The following notation ruling by Commissioner Mary Neel of the Court was entered on January 3, 2018, regarding Petitioner's Motion for Discretionary Review:

In this pre-election challenge to an initiative petition, defendant Respect Washington seeks review of trial court order granting plaintiff Burien Communities for Inclusion's motion for a preliminary injunction, ruling that the petition is invalid and prohibiting King County from including or placing the measure on the November 2017 ballot. Review will go forward.

On January 9, 2017, the Burien City Council on a 4-3 vote adopted Ordinance 651 (codified at Burien Municipal Code 2.26). The ordinance, titled "Immigration Inquiries Prohibited," bars City employees from conditioning services on citizenship or immigration status and bars law enforcement and City officials from making inquiries or taking enforcement actions based only on a person's immigration status, race, or inability to speak or understand English, and prohibits the creation of a registry of religious affiliation. Respondent's Appendix (RA) at 23- 26. Among the goals of the legislation is to foster trust and cooperation between city personnel and law enforcement with immigrant communities to heighten crime prevention and public health and safety, consistent with policies of the King County Sheriff's Office and King County Superior Court.

Craig Keller, a West Seattle resident and campaign manager/treasurer/sole officer of Respect Washington, began an initiative campaign to repeal Ordinance 651 and amend another section of the Burien Municipal Code to prohibit the City from regulating the acquisition of immigration status or religious affiliation without the vote of a majority of the electorate (Measure 1). The initiative includes language that a "sanctuary city" breeds disrespect for the law and a "call to action" based on the premise that the ordinance chills deportation of criminals and threatens the safety of Burien residents. RA at 34-36. On July 7, 2017, Keller presented elections officials with signed petitions and requested that Measure 1 be placed on the November 2017 ballot. On July 21, 2017, the elections director certified that enough signatures were verified. RA at 41-43.

On August 2, 2017, the Council considered its two options: to adopt Measure 1 as set forth in the initiative petition, or adopt a resolution to place it on the ballot. RA at 58. On August 7, 2017, at the Council's regularly scheduled meeting, it adopted Resolution 395, voting to place Measure 1 on the ballot. RA 50-51. King County was prepared to place Measure 1 on the November 2017 general election ballot and was scheduled to send the ballots to the printer on September 14, 2017. RA at 90.

On September 8, 2017, Burien Communities for Inclusion (BCI), a political action committee, filed a complaint for a preliminary injunction. RA at 1-12. Respect Washington opposed the motion.

Courts generally disfavor reviewing initiatives prior to enactment and will not consider a challenge to the substantive validity of a statewide initiative prior to the election. Spokane Entreprenurial Center v. Spokane Moves to Amend the Constitution, 185 Wn.2d 97, 104, 369 P.3d 140 (2016). But courts will conduct preelection review of local initiatives in two instances: procedural challenges, such as the sufficiency of signatures and the ballot title, and challenges that the subject is beyond the scope of the local initiative power. Id. An initiative is beyond the scope of the initiative power if it involves powers granted by the legislature to the governing body of a city, rather than the city itself. In other words, a grant of power to the city's legislative authority/body means the mayor and city council, and not the electorate. Mukilteo Citizens For Simple Government v. City of Mukilteo, 174 Wn.2d 41, 51, 272 P.3d 227 (2012). An initiative is also beyond the scope of the initiative power if it involves administrative matters. Spokane Entreprenurial, 185 Wn.2d at 107. Generally, a local government action is administrative if it furthers or hinders a plan the local government has previously adopted. Id. Accord Port Angeles v. Our Water-Our Choice, 170 Wn.2d 1, 10, 239 P.3d 589 (2010). One way to phrase the issue is whether the ordinance makes new law or declares a new policy, or merely carries out or executes existing law or policy. Id.

A preliminary injunction is an equitable remedy, the purpose of which is to preserve the status quo until the trial court can conduct a full hearing on the merits of a claim. Northwest Gas Ass'n v. Wash. Utils. & Transp.

Comm'n, 141 Wn. App. 98, 115-16, 168 P.3d 443 (2007). To obtain injunctive relief, a party must show (1) that it has a clear legal or equitable right, (2) that it has a well-grounded fear of immediate invasion of that right, and (3) that the acts complained of are either resulting in or will result in actual and substantial injury. Kucera v. Dep't of Transportation, 140 Wn.2d 200, 209, 995 P.2d 63 (2000); Tyler Pipe Indus., Inc. v. Dep't of Revenue, 96 Wn.2d 785, 792, 638 P.2d 1213 (1982). To establish a clear legal or equitable right, the moving party must show that it is likely to prevail on the merits at trial. San Juan County v. No New Gas Tax, 160 Wn.2d 141, 154, 157 P.3d 831 (2007).

On September 11, 2017, a superior court commissioner granted a temporary restraining order, ruling that Measure 1 is invalid, prohibiting its inclusion on the general election ballot, and leaving the TRO in place until the motion for a preliminary injunction could be heard by a superior court judge on September 13, 2017. Respect Washington was ordered to appear and show cause why the TRO should be not converted to preliminary injunction. RA at 82-83.

On September 14, 2017, the trial court granted the motion for a preliminary injunction:

> The Court has carefully balanced the relative interests of the parties and the interests of the public. The injury if Measure No. 1 is placed on the ballot now **outweighs** any delay in having the Measure on the ballot at a future point in time; mere delay is not the same as an outright denial. The Court finds that

> Plaintiff [BCI] has established a clear legal right, a well-grounded fear of immediate invasion of that right, and that the action sought to be enjoined will result in actual and substantial injury.
>
> Being fully advised on the matter, the Court GRANTS Plaintiff's Motion for Preliminary Injunction and ORDERS that:
>
> 1. City of Burien Initiative Measure No. 1 ("Measure 1 ") is invalid on the grounds that (a) Measure 1 exceeds the scope of the initiative authority granted to the people of the City of Burien, that it is administrative in nature, and (b) the petition used to gather signatures for Measure 1 violated RCW 35.21.005 by deviating from the requirements of content and form of a petition, as set forth in RCW 35.17.240 through 35.17.360;
> 2. Defendants King County Elections . . . and all [its] agents are prohibited from including or placing Measure 1 on the November 7, 2017 ballot.

RA at 86-87.

Respect Washington seeks review of this order under RAP 2.2(a)(3), or alternatively under RAP 2.3(b)(2). Respect Washington argues that it has an appeal as of right under RAP 2.2(a)(3), which provides for appeal of "[a]ny written decision affecting a substantial right in a civil case that in effect determines the action and

prevents a final judgment or discontinues the action." Respect Washington argues that the trial court order did not merely find that BCI was *likely* to prevail on the merits, which is the standard for a preliminary injunction, but instead found that Measure 1 is invalid. Respect Washington argues that the trial court order granted BCI all of the relief it requested in its complaint, which was to "enjoin Measure 1 from being included on the November 2017 ballot," in effect determining and discontinuing the action.

Ordinarily a trial court order granting a preliminary injunction is not appealable because it is a final judgment. See Franklin County Sheriff v. Parmelee, 162 Wn. App. 289, 292-93, 253 P.3d 1131 (2011) (Franklin County filed notice of appeal/notice of discretionary review of tri court order issuing a preliminary injunction enjoining release of records until hearing could be held on request for permanent injunction; appellate court commissioner ruled the order was not appealable and granted discretionary review). Review instead is available if the petition meets the criteria for discretionary review. See Filo Foods LLC v. City of SeaTac, 179 Wn. App. 401, 405, 319 P.3d 817 (2014) (trial court order removing initiative from general election ballot substantially altered the status quo by depriving voters of chance to vote for or against it court of appeals reversed, and measure appeared on ballot). Respect Washington does not have an appeal of right under RAP 2.2(a) because there has been no final judgment.

BCI sought a declaratory judgment that Measure 1 is procedurally and substantively invalid and an

injunction preventing Measure 1 from being placed on the ballot. RA at 11. The trial court declared Measure 1 invalid and prohibited it from being placed on the ballot. BCI argues that it neither obtained a declaratory judgment nor a permanent injunction. And the trial court order, referring to mere delay in giving Burien citizens an opportunity to vote on Measure 1, appears to contemplate further action. But as a *practical matter*, BCI obtained the relief it requested. The trial court enjoined King County Elections officials from placing Measure 1 on the ballot. The superior court docket shows BCI has no taken further action in the trial court to obtain a permanent injunction or other relief. In this particular circumstance, Respect Washington makes a persuasive argument that the trial court order in effect determined and discontinued the action and is therefore appealable under RAP 2.2(a)(3). I need not consider whether the trial court order is probable error.

As BCI notes, during the same time frame, the City of Spokane adopted an ordinance similar to Burien Ordinance 651. Respect Washington obtained sufficient signatures on its initiative petition to delete the ordinance (Proposition 1). The trial court granted Global Neighborhood's motion for declaratory relief, declared Proposition 1 invalid (as administrative and therefore beyond the scope of the initiative power), and prohibited it from being placed on the November 2017 ballot. Respect Washington immediately appealed and sought a stay of the trial court order. Global Neighborhood v. Respect Washington, No. 35528-4-III. On September 1,

201 Commissioner Wasson denied a stay. I note that review in No. 35528-4-I is going forward as an appeal.

Therefore, it is

ORDERED that review will go forward as an appeal, and the clerk will set a perfection schedule.

Sincerely,

/s/ Richard D. Johnson
Richard D. Johnson
Court Administrator/Clerk

lls

APPENDIX C

THE HONORABLE ELIZABETH BERNS

SUPERIOR COURT OF WASHINGTON
IN AND FOR KING COUNTY

BURIEN COMMUNITIES FOR INCLUSION, a Washington political committee. Plaintiff, v. RESPECT WASHINGTON, a Washington political committee; KING COUNTY ELECTIONS; JULIE WISE, KING COUNTY DIRECTOR OF ELECTIONS, in her official capacity at KING COUNTY ELECTIONS; and THE CITY OF BURIEN, Defendants.	CASE NO. 17-2-23799-0 KNT **ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION** (Filed Sep. 14, 2017)

This matter came before the Court on Plaintiffs motion for preliminary injunction. The Court heard oral argument on the matter and considered the following when reaching its decision:

1. Plaintiff's Motion for Preliminary Injunction;
2. Declaration of Counsel Jennifer Robbins and exhibits attached thereto;
3. Declaration of Counsel Katelyn Sypher;
4. Declaration of Jennifer Fichamba;

5. Declaration of Hugo Garcia;
6. Declaration of Sandy Restrepo;
7. Declaration of Rich Stolz;
8. Dclaration of Janice Case in Response to Request for Injunctive Relief;
9. Respect Washington's Opposition to Motion for a Preliminary Injunction;
10. Second Declaration of Janice Case in Response to Request for Injunctive Relief.

The Court has carefully balanced the relative interests of the parties and the interests of the public. The injury if Measure No. I is placed on the ballot now outweighs any delay in having the Measure on the ballot at a future point in time; mere delay is not the same as an outright denial. The Court finds that Plaintiff has established a clear legal right, a well-grounded fear of immediate invasion of that right, and that the action sought to be enjoined will result in actual and substantial injury.

Being fully advised on the matter, the Court GRANTS Plaintiff's Motion for Preliminary Injunction and ORDERS that:

1. City of Burien Initiative Measure No. 1 ("Measure 1") is invalid on the grounds that (a) Measure 1 exceeds the scope of the initiative authority granted to the people of the City of Burien, that it is administrative in nature, and (b) the petition used to gather signatures for Measure 1 violated RCW 35.21.005

by deviating from the requirements for the contents and form of a petition, as set forth in RCW 35.17.240 through 35.17.360;

2. Defendants King County Elections, Julie Wise, King County Director of Elections, and all agents of King County Elections are prohibited from including or placing Measure 1 on the November 7, 2017 ballot.

IT IS SO ORDERED this 14 day of September, 2017.

/s/ Elizabeth Berns
The Honorble Elizabeth Berns
King County Superior Court Judge

Presented by:

s/Jennifer L. Robbins
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APPENDIX D

THE SUPREME COURT OF WASHINGTON

BURIEN COMMUNITIES FOR INCLUSION, Respondent, v. RESPECT WASHINGTON, Petitioner.	)	No. 97755-1 **ORDER** Court of Appeals No. 77500-6-I Filed Jan. 8, 2020

Department II of the Court, composed of Chief Justice Stephens and Justices Madsen, Wiggins, Gordon McCloud, and Montoya-Lewis (Justice Yu sat for Justice Madsen), considered at its January 7, 2020, Motion Calendar whether review should be granted pursuant to RAP 13.4(b) and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the petition for review is denied.

DATED at Olympia, Washington, this 8th day of January, 2020.

/s/ Stephens, C.J.
CHIEF JUSTICE

APPENDIX E

Constitutional Provisions at Issue

First Amendment to the United States Constitution:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Section 1 of the Fourteenth Amendment to the United States Constitution:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX F

Specification Regarding Federal Question

Petitioner raised the First Amendment issue in its Opposition to Motion for Declaratory Judgment, attached hereto as Appendix G. This was the only brief Petitioner filed in the Superior Court which was the first court involved in this proceeding. The Superior Court did not address the First Amendment-based argument at all. *See* Appendix C. The First Amendment argument was also raised in the Washington Court of Appeals which that Court rejected. *See* Appendix A. Petitioner also raised the First Amendment argument in its Petition for Review to the Washington State Supreme Court, which was denied without opinion. *See* Appendix G.

APPENDIX G

The Honorable Elizabeth Berns

September 13, 2017 at 8:30 a.m.

SUPERIOR COURT OF WASHINGTON
IN AND FOR KING COUNTY

BURIEN COMMUNITIES FOR INCLUSION, a Washington political committee, Plaintiff, v. RESPECT WASHINGTON, a Washington political committee; KING COUNTY ELECTIONS; JULIE WISE, KING COUNTY DIRECTOR OF ELECTIONS, in her official capacity at KING COUNTY ELECTIONS; and THE CITY OF BURIEN, Defendants.	CASE NO. 17-2-23799-0 KNT **RESPECT WASHINGTON'S OPPOSITION TO MOTION FOR A PRELIMINARY INJUNTION**

INTRODUTION

Defendant Respect Washington is the sponsor of Proposition 1 to the City of Burien. Counsel received a copy of Plaintiffs' Motion for Preliminary Injunction at around noon today. The Court should reject Plaintiffs' demand for a preliminary injunction at the last minute when Proposition 1 has been in the news and the subject of City Council meeting discussions for numerous weeks. The harm to Plaintiffs in having the election

and having their issues decided later, and only if the measure is adopted by the voters, is the better result than the burden this motion imposes on the Court and the other parties.

I

PLAINTIFFS ARE NOT ENTITLED TO A PRELIMINARY INJUNCTION

The law is clear that a preliminary injunction is not "proper in a doubtful case." *Tyler Pipe Indus., Inc. v. Department of Rev.*, 96 Wash.2d 785, 793, 638 P.2d 1213 (1982) (quoting *Isthmian S.S. Co. v. National Marine Eng'rs Beneficial Ass'n*, 41 Wash.2d 106, 117, 247 P.2d 549 (1952). Not only must there be a clear legal or equitable right at stake, there must be a clear showing of damage based on specific facts. *Kucera v. State Department of Transportation*, 140 Wn.2d 200 (2000). Plaintiffs have not met these requirements.

A. Plaintiffs are not Entitled to an Injunction Because of the Statute of Limitations or Laches

Plaintiffs' complaint is clear that they are bringing their claim under the Uniform Declaratory Judgments Act (UDJA), RCW 7.24.010. The UDJA does not have its own statute of limitations so Courts are to apply an analogous statute of limitations. *Schreiner Farms, Inc. v. American Tower, Inc.*, 173 Wn. App. 154 (2013).

For an election related challenge, the analogous statutes of limitations are quite short. For instance, a challenge to a ballot title must be commenced within 5 days. RCW 29A.72.080. A judicial challenge on refusal to file an initiative must be filed in court within 10 days. RCW 29A.72.180. A challenge to a ballot title for a City initiative is only 10 days. RCW 29A.36.090.

The City Council considered Proposition 1 at an open public meeting on July 31, 2017. It voted to place Proposition 1 on the ballot at an open public meeting on August 7, 2017. A challenge to this decision should have been made within 5 or ten days of August 7. It was not filed until a month later, at far later than the proverbial 11th hour.

Additionally, an injunction is an equitable remedy and laches is an equitable defense. Because laches applies, Plaintiffs are not entitled to an injunction at this late stage in the election process. There is no question that his injunction remedy is subject to laches. *See Ronberg v. Smith*, 132 Wash. 345, 232 P. 283 (1925). Laches is particularly applicable in election-related lawsuits. *See LaVergne v. Boysen*, 82 Wn.2d 718 (1973).

In *Buell v. Bremerton*, 80 Wash.2d 518, 522, (1972), the Court we set forth the general elements of laches.

> The elements of laches are: (1) knowledge or reasonable opportunity to discover on the part of a potential plaintiff that he has a cause of action against a defendant; (2) an unreasonable delay by the plaintiff in commencing that

> cause of action; (3) damage to defendant resulting from the unreasonable delay.

Lopp v. Peninsula School Dist. No. 401, 90 Wn.2d 754, 760 (1978).

Here, the Plaintiffs should have been aware, there was certainly a reasonable opportunity to discover that Proposition 1 would be placed on the ballot given the City's public decisions and deliberations over a month ago. The lawsuit was not filed until September 8, 2017. The first briefing in this case, the first filing for the temporary restraining order was not filed until September 11, 2017 and the preliminary injunction motion was emailed around noon today. The delay in commencing the case and briefing the motion is unreasonable.

Even if the five and ten day time limits are not treated as statutes of limitations for this UDJA claim, those time limits evidence that the delay in this case was unreasonable for purposes of laches.

The last minute nature of this action has caused Respect Washington damage. It was forced to send its attorney to Kent for a hearing on a TRO with no opportunity to read the moving papers. It submits a motion for a preliminary injunction in the same last minute manner, allowing for only minimal last minute briefing on important issues that impact the opportunity of the people of Burien to vote. It is far more consistent with the public interest to allow the vote to go forward and allow Plaintiffs' arguments to be thoroughly vetted

after the election, if the measure is even adopted by the voters.

B. Plaintiffs have not Shown the Requisite Substantial Injury to Obtain a Preliminary Injunction

While Plaintiffs have made allegations sufficient to confer standing for a timely filed complaint (which this is not), the law is clear that injunctive relief requires proof of substantial injuries in order to obtain the extraordinary relief of injunctive relief. In *Kucera v. State, Dept. of Transp.*, 140 Wn.2d 200 (2000), the Supreme Court held that Plaintiffs were not entitled to an injunction to stop a project that was required to undergo environmental review under the State Environmental Policy Act (SEPA), and did not, without proof of damages.

Here, Plaintiffs have alleged harms related to the initiative signature gathering stage, which is now over, alleged harms if the initiative were to be approved by the citizens of Burien, which are simply unripe and speculative in that there is no assurance that the measure will pass, and harms associated with the very fact that debate is going on in the public square about the initiative. This last group of harms is what reveals what this lawsuit is really about—a political device to shut down the opportunity for people to vote and is an infringement on free speech.

Plaintiffs have not proven that a mere vote of the people is damaging and they have timed the filing of

this suit is such a way that it is impossible for their allegations of harm to be tested. The motion should be denied.

C. The Initiative Process in Burien is a Public Forum Deserving of Protection under the First Amendment.

Statewide initiatives are authorized by Article II, Section 1 of the Washington Constitution. Local initiatives are authorized by state law and, in this case, by the municipal charter. Regardless of the legal origin of the right to petition government and have a public vote on a proposed law, the initiative process is an exercise of the right in Article I, Section 4 of the Washington Constitution to petition government. The right to petition government extends to all levels and departments of the government. *In re Marriage of Meredith*, 148 Wn. App. 887, 899 (2009) (citations omitted). The vote constitutes the opportunity for all voters, whether in favor or opposed to Proposition 1, to petition the City of Burien with their vote on these policies.

Likewise, the initiative process including the final step of a public vote is imbued with free speech considerations. While there may not be any right to have a local initiative process, when it does exist, as here, it must be remembered that it is a public forum for free speech.

Speech within the initiative and referendum process "is at the heart of the First Amendment's protection." *First National Bank of Boston v. Bellotti*, 435 U.S.

765, 776 (1978) (regarding a referendum proposal submitted to Massachusetts voters to amend the state constitution). As the U.S. Supreme Court said in Mills v. State of Alabama, 384 U.S. 214, 218 (1966), "there is practically universal agreement that a major purpose of [the First] Amendment was to protect the free discussion of governmental affairs."

Initiatives, by their very nature, typically discuss governmental affairs. As such, the initiative process, as a whole, is protected political speech under the First Amendment. *See Meyer v. Grant*, 486 U.S. 414, 442 (1988) ("the circulation of a petition involves . . . core political speech").

While there is no federal right that a state have an initiative process, the initiative process, once established, constitutes a public forum. Though the public forum doctrine first arose in the context of streets and parks, it has been extended to school publications (*Rosenberger v. Rector and Visitors of University of Virginia*, 515 U.S. 819 (1995)), charitable contribution programs, (*Cornelius v. NAACP Legal Defense and Educational Fund, Inc.*, 473 U.S. 788 (1985)), and school mail systems (*Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37 (1983)). Like a state funded publication, the initiative process "is a forum more in a metaphysical than in a spatial or geographic sense, but the same principles are applicable." *Rosenberger*, 515 U.S. at 830.

The free speech implications of prohibitions on initiative elections was also recognized by the

Washington Supreme Court in *Coppernoll v. Reed*, 155 Wn. 2d 290, 296-97 (2005).

> Because ballot measures are often used to express popular will and to send a message to elected representatives (regardless of potential subsequent invalidation of the measure), substantive preelection review may also unduly infringe on free speech values. For example, after voter passage of Initiative 695 requiring $30 vehicle license tabs, it was ruled invalid by the trial court. A nearly identical measure was quickly passed by the legislature and signed by the governor before an appeal could be heard.

Id. at 298. While the Court referred to "substantive preelection review" (which is not allowed), the reality is that any action which prohibits the vote infringes on free speech values.

Because of the free speech values at stake, the Court should be certain that Plaintiffs have proven sufficient injury to justify the prohibition on an opportunity to vote in addition to proving all other elements for obtaining the drastic relief of removing a matter from an election.

D. The City Cannot Collaterally Attack Judge Bowman's Prior Order.

It is not clear when the City was served with this lawsuit and Respect Washington has seen no response from the City. However, the City cannot join the Plaintiffs' arguments without collaterally attacking a prior Court order.

When the City failed to place Proposition 1 on the ballot by the August 1, 2017 deadline, Respect Washington filed a petition for writ of mandate against the City and naming the King County Elections Official, Julie Wise, as an interested party. In response, the City Council decided to notify the Julie Wise that Proposition 1 should be placed on the ballot and Ms. Wise agreed to place Proposition 1 on the ballot despite an August 1, 2017 deadline. Thereafter, Judge Bowman issued an order dismissing the petition for writ of mandate as being moot in light of these representations. A copy of the order is attached hereto as Exhibit 1.

E. Even if Plaintiffs had Proven Substantial Injury, they are not Clearly Likely to Prevail on the Merits.

Plaintiffs claim they are entitled to relief on the grounds that Proposition 1 exceeds the scope of the initiative power. While that is one of the narrow bases for pre-election review of initiatives, proof that exceeds the scope of the initiative power is not in itself sufficient to justify removing it from the ballot. There is plenty of opportunity to for judicial review in a less rushed fashion to consider these issues after the election.

1. Proposition 1 is not Purely Administrative.

"Generally speaking, a local government action is administrative if it furthers (or hinders) a plan the

local government or some power superior to it has previously adopted." *Our Water-Our Choice!*, 170 Wn. 2d at 10. "The power to be exercised is legislative in its nature if it prescribes a new policy or plan; whereas, it is administrative in its nature if it merely pursues a plan already adopted by the legislative body itself, or some power superior to it." *Our Water-Our Choice*, 170 Wn. 2d at 11 (quoting *Durocher v. King Cty.*, 80 Wn. 2d 139, 153 (1972)).

> **Discerning whether a proposed initiative is administrative or legislative in nature can be difficult.** Justice Brachtenbach suggested that at least for the case before the court at the time, the appropriate question was "whether the proposition is one to make new law or declare a new policy, or merely to carry out and execute law or policy already in existence." *Ruano* [*v. Spellman*], 81 Wn. 2d [820,] 823 [1973], 505 P.2d 447 (citing *People v. City of Centralia*, 1 Ill.App.2d 228, 117 N.E.2d 410 (1953)).

Our Water-Our Choice!, 170 Wn.2d at 10 (emphasis added). Here, it is quite clear that Proposition 1 seeks to make a new City law and thus to declare a new City policy.

In discussing *Ruano*, the Court in *Our Water-Our Choice!*, noted that the bonds for building the stadium had been authorized as an unchallenged legislative decision, but the initiative related to the implementation of the decision, namely, the construction of the stadium. *Ruano*, 81 Wn.2d at 824-25. Selecting a

contractor, the exact price of construction and terms of payment were administrative decisions implementing the legislative policy to build the stadium. *Id.* Here, the initiative's proposal about policy is just as much a legislative decision as is the decisions on the same subject made by the City Council, decisions which were not made by a City administrator, but only by the adoption of an ordinance—an inherently legislative act.

Proposition 1 is legislative because it would establish a new policy for the City of Burien if voters choose to adopt it. *See City of Port Angeles*, 170 Wn. 2d at 11. Plaintiffs have not proven a clearly likelihood of prevailing on the merits and the preliminary injunction should be denied.

2. The Legislature has not Given the City Council Exclusive Authority to deal with issues related to Immigration Status.

Although Plaintiffs complain that Proposition 1 would prohibit the legislative body from repealing the initiative, if passed, there is plenty of opportunity to determine the legality of such a provision, if in fact the measure is adopted by the voters. No statute is cited to prove such a provision is illegal. Nonetheless, the argument that RCW 35A.11.020 is a legislative direction that only the City council can make policy decisions regarding personnel activities is unconvincing.

The Court in *1000 Friends of Washington v. McFarland*, 159 Wn.2d 165 (2007) made clear that this particular issue is not simply a search for a reference to

the "legislative authority" in the statute to see if initiative and referenda are prohibited.

As Professor Trautman noted:

> One wonders whether the state legislature in delegating certain powers to local governments is very often thinking of the initiative and referendum when it authorizes the "city council" or the "legislative body" rather than the "city" to do something, or whether the particular choice of words is happenstance. One wonders whether the legislature is not more likely concerned with the subject matter of the particular legislation and the felt need for delegation of authority to the local level without thinking about who at the local level should exercise the power. . . .
>
> If, in reality, the legislature did intend that only the municipal legislative body should have power in a particular instance, that must control. The danger, of course, is that the wording in the statute will be taken at face value and will substitute for reasoning in the particular instance.

Trautman, supra, 49 Wash. L.Rev.. at 83 (footnotes omitted).

We agree. Reasoning is required. We also note that the phrase "legislative authority" does not have a monolithic meaning in our case law, but rather has long depended on the context and purpose. In *State ex rel. Linn v.*

> *Superior Court*, 20 Wash.2d 138, 155, 146 P.2d 543 (1944), for example, this court held that the "legislative authority" of a county could include the people acting in a legislative capacity and proposing an initiative, and thus the people were bound by the procedures laid down in the state constitution for the "legislative authority" when attempting to amend a municipal charter. *Id.* Again, the entire statutory schema must be read with care to determine the intent of the legislature.

McFarland, 159 Wn.2d at 177-78.

The difficulty with the Plaintiffs' request for an injunction is that there is not sufficient time to review the entire statutory schema, which is essential to determine whether the legislature intended to prohibit initiatives such as Proposition 1. The propriety of Proposition 1 on this issue should be deferred to an appropriate time after the election.

3. An Injunction is not Appropriate on the Grounds that the Petition failed to follow Format Requirements.

Plaintiffs complain that the petition must "include a concise statement of the action or relief." RCW 35.21.005(1). They actually do not dispute that Proposition 1 has a concise statement. Instead, they argue that this requirement means the petitions cannot contain campaign rhetoric. There is no Washington law to support that position, which is presumably why they look to cases from Alaska and Oklahoma. In fact, the Washington Supreme Court has readily acknowledged

that initiative petitions can contains what it euphemistically referred to as "policy fluff." "A preface or preamble stating the motives and inducement to the making of [the law] . . . is without force in a legislative sense. It is no part of the law." *Pierce Cty. v. State*, 150 Wn. 2d 422, 434 (2003) (quoting *State ex rel. Berry v. Superior Court for Thurston County*, 92 Wash. 16, 30-32 (1916)). Despite some language on a petition being merely designed to induce people to sign petitions or vote for the measure, there is no authority in the State of Washington that campaign rhetoric cannot be on an initiative petition. It often is.

II

IF A PRELIMINARY INJUNCTION WERE GRANTED, PLAINTIFFS SHOULD BE REQURIED TO POST A BOND

The law is clear:

> if an injunction is sought at the instance of a private party, then a bond must be posted throughout all preliminary injunctive proceedings and until the injunction is final. RCW 7.40.080.

Irwin v. Estes, 77 Wn.2d 285 (1969). If the Court were to grant the injunction, it should do so only upon the proper posting of a bond to be determined.

CONCLUSION

As the proponent of Proposition 1 which helped gather the signatures from thousands of Burien residents, Respect Washington urges the Court to deny the last minute request for an injunction that would deprive people of the right to vote. Never before has a court entered an injunction to stop a public vote on a matter so late in the process. The equitable balance tips in favor of allowing the citizens of Burien to vote and to address Plaintiffs' legal arguments after the election.

RESPECTFULLY submitted this 12th day of September, 2017.

STEPHENS & KLINGE LLP

By: /s/ Richard M. Stephens
Richard M. Stephens,
WSBA #21776
Attorneys for Defendant
Respect Washington

EXHIBIT 1

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON

IN AND FOR THE COUNTY OF ICING

CRAIG KELLER and CARLOS (CHUCK) WRANGEL Plaintiffs, vs. CITY COUNCIL of the CITY OF BURIEN, a municipal corporation, Defendant JULIE WISE, Director of King County Elections Department, Interested Party.	No. 17-2-205273 ~~**[PROPOSED]**~~ **STIPULATED ORDER ON APPLICATION FOR WRIT OF MANDATE** **URGENT ELECTION-RELATED MATTER**

Proposition 1 to the City of Burien (City) is an initiative to the City which was certified by the King County Elections Department on July 21, 2017 **as** having sufficient signatures. As of August 1, 2017, the City Council had not decided whether to adopt the proposed ordinance or to contact the King County Elections Department to cause Proposition 1 to be placed on the November ballot as provided in RCW 35.17,260.

On August 2, 2017, Petitioners filed a complaint and application for a writ of mandate to compel the

City of Burien and its City Council to choose under RCW 35,17,260 either to adopt ' Proposition 1 as an ordinance without alteration or to call for a special election on Proposition 1 for the November 2017 election. The matter was considered urgent by Plaintiffs because August 1, 2017 is the "day of the primary" referenced in RCW 29A.04,330(3) for submission by the City to the King County Elections Department for local matters to be placed on the November, 2017 ballot,

On August 7, 2017, the Burien City Council voted to submit Proposition 1 to the ballot and to notify the King County Elections Department of its decision, Interested Party, Julie Wise, the Director of the King County Elections Department, has stated that she will process Proposition 1 to the City of Burien for the November, 2017 ballot pursuant to Chapter 35.17 RCW, Since the King County Elections Department will place Proposition 1 on the November ballot, the Court concludes that the application for a writ of mandate is moot.

DONE IN OPEN COURT THIS 10th day of August, 2017

/s/ [Illegible]
The Honorable Bill Bowman
King County Superior Court
Judge

Presented by:

STEPHENS & KLINGE LLP

By /s/ Richard M. Stephens
Richard M. Stephens,
WSBA 21776
Attorneys for Plaintiff

By /s/ [Illegible] M. Kenyon
[for] Michael Kenyon,
WSBA 51598
Attorneys for Defendant

By /s/ Janine Joly
Janine Joly, WSBA 27314
Attorneys for Interested
Party, Julie Wise
Director of Kink County
Elections Department

APPENDIX H

Initiative Petition to REPEAL Burien's "Sanctuary City" Ordinance 651

TO: The City Council of the City Of Burien: Concise statement of the action or relief sought: We, the undersigned registered voters of the City of Burien, Washington require that, unless enacted by the City Council, this ordinance – on reverse – be submitted to a vote of the registered voters of the City of Burien, subject to the requirements of BMC 1.10 and RCW 35A11.080-.100.

Proposed Ballot Title: Burien Initiative No. 1 concerns immigration inquiries.

Proposed Ballot Summary and Concise Description: This measure would repeal BMC Chapter 2.26 "IMMIGRATION INQUIRIES PROHIBITED" [Ordinance 651], amend Chapter 9 Public Peace, Morals and Welfare and prohibit City of Burien from regulating the acquistion of immigration status or religious affiliation without majority votes of Council and voters.

REQUIRED WARNING:

Every person who signs this petition with any other than his or her true name, or who knowingly signs more than one of these petitions, or signs a petition seeking an election when he or she is not a legal voter, or signs a petition when he or she is otherwise not qualified to sign, or who makes herein any false statement, shall be guilty of a misdemeanor.

I am a legal voter of The City of Burien, State of Washington. My residence address is correctly stated. I have personally signed this petition.

	Voter's Signature – Burien only	Print Name	Burien Street Address & Zip Code	Date Signed
1.	X			___ / ___ / 2017
			eMail address (optional, to stay informed) Email:	phone (optional)
2.	X			___ / ___ / 2017
			eMail address (optional, to stay informed) Email:	phone (optional)

Please ask a friend or family member to join you in SIGNING <u>today</u> and then mail to: RESPECT WASHINGTON, P.O. Box 66634, Burien, WA 98166. Petitions <u>must be received by July 5th.</u> Questions? Please phone (206) 935-3505. Sign and mail IMMEDIATELY! Thank you!

CALL TO ACTION: Don't be fooled by Councilmember doubletalk about Ordinance 651. A mere four of them blocked our police from investigating whether criminals and gang members in their custody are here illegally. "Sanctuary city" ordinances chill the sharing of such information with U.S. Citizenship and Immigration Services which <u>works for us</u> to process criminals for deportation. Ord. 651 threatens the safety of every Burien citizen and legal resident by allowing criminal aliens, like the one who shot Kate Steinle in San Francisco, to prey upon others inside our once peaceful town. You have the right to live in a Burien which is safe! **Please sign today!**

BE IT ENACTED BY THE PEOPLE OF THE CITY OF BURIEN:

Section 1. New Chapter 9.20 is hereby added to the Burien Municipal Code "Public Peace, Morals and Welfare" to read as follows:

9.20 Citizen Protection of Effective Law Enforcement: The City of Burien shall not regulate the acquisition of immigration status or religious affiliation unless such regulation is approved by a majority vote of the City Council and a majority vote of the people at a municipal general election.

Section 2. Chapter 2.26 BMC (Ord. No. 651) relating to the prohibition of immigration inquiries, including "Findings" propaganda, is hereby repealed.

~~**Chapter 2.26**~~
~~**IMMIGRATION INQUIRIES PROHIBITED**~~

~~**Sections:**~~
~~**2.26.010 Findings.**~~
~~**2.26.020 Prohibition on inquiring into immigration status.**~~
~~**2.26.030 Prohibition on collecting information regarding religious affiliation.**~~

~~**2.26.010 Findings.**~~

~~The city of Burien is a code city organized under Chapter 35.02 RCW and Article 11, Section 10 of the Washington State Constitution. Under its police powers, the city may exercise any power and perform any function, unless preempted by state or federal law, relating to its government and affairs, including the power to regulate for the protection and rights of its inhabitants. To this end, the city is dedicated to providing all of its residents fair and equal access to services, opportunities and protection.~~

~~The enforcement of civil immigration laws have historically been a federal government responsibility through the Immigration and Naturalization Service. Since 2002, matters of immigration law have been handled by the Office of Immigration and Customs Enforcement, a branch of the Department of Homeland Security. Requiring local law enforcement agencies, which are not specifically equipped or~~

~~trained, to enforce civil immigration laws forces local governments to expend their limited resources to perform traditionally federal functions.~~

~~A goal of this legislation is to foster trust and cooperation between city personnel and law enforcement officials and immigrant communities to heighten crime prevention and public safety.~~

~~Since 1992, the King County sheriff's office has embraced this goal and outlined supporting policies in its operations manual, with which this chapter is consistent.~~

~~Another goal of this legislation is to promote the public health of city of Burien residents.~~

~~On April 22, 2008, King County superior court affirmed the principle that our courts must remain open and accessible for all individuals and families to resolve disputes on the merits by adopting a policy that warrants for the arrest of individuals based on their immigration status shall not be executed within any of the superior court courtrooms unless directly ordered by the presiding judicial officer and shall be discouraged in the superior court courthouses, unless the public's safety is at immediate risk. Shortly after the affirmation's adoption, the King County executive and Immigration and Customs Enforcement agreed to honor this policy.~~

~~This chapter is intended to be consistent with federal laws regarding communications between local jurisdictions and federal immigration authorities, including but not limited to United States Code Title 8, Section 1373. [Ord. 651 § 1, 2017]~~

~~**2.26.020 Prohibition on inquiring into immigration status.**~~

~~Except as provided in this section or when otherwise required by law, a city office, department, employee, agency or agent shall not condition the provision of city services on the citizenship or immigration status of any individual.~~

~~(1) Nothing in this chapter shall be construed to prohibit any city of Burien officer or employee from participating in cross-designation or task force activities with federal law enforcement authorities.~~

~~(2) The city of Burien personnel shall not request specific documents relating to a person's civil immigration status for the sole purpose of determining whether the individual has violated federal civil immigration laws. The documents include but are not limited to: passports; alien registration cards; or work permits.~~

~~(3) The city of Burien personnel may use documents relating to a person's civil immigration status if the documents are offered by the person upon a general, nonspecific request.~~

~~(4) The city of Burien personnel shall not initiate any inquiry or enforcement action based solely on a person's:~~

~~(a) Civil immigration status;~~
~~(b) Race;~~
~~(c) Inability to speak English; or~~
~~(d) Inability to understand city personnel or its officers.~~

~~(5) Except when otherwise required by law, where the city accepts presentation of a state-issued driver's license or identification card as adequate evidence of identity, presentation of a photo identity document issued by the person's nation of origin, such as a driver's license, passport or matricula consular, which is a consulate-issued document, shall be accepted and shall not subject the person to a higher level of scrutiny or different treatment than if the person had provided a Washington State driver's license or identification card. However, a request for translation of such a document to English shall not be deemed a violation of any provision of this chapter and any subsequent ordinance. This provision does not apply to documentation required to complete a federal I-9 employment eligibility verification form.~~

~~(6) This section does not create or form the basis for liability on the part of the city, its officers, employees or agents.~~

~~(7) Unless permitted by this chapter or otherwise required by state or federal law or international treaty, all applications, questionnaires and interview forms used in relation to the provision of city benefits, opportunities or services shall be promptly reviewed by each agency, and any question requiring disclosure of information related to citizenship or immigration status shall be, in the agency's best judgment, either deleted in its entirety or revised such that the disclosure is no longer required. [Ord. 651 § 1, 2017]~~

~~**2.26.030 Prohibition on collecting information regarding religious affiliation.**~~

~~(1) No Burien official, including any agent or contracted agent, may collect information or establish or otherwise utilize a registry, database, or similar for the purpose of classifying any person on the basis of religious affiliation, or conduct any study related to the collection of such information or the establishment or utilization of such a registry, database, or similar.~~

~~(2) Rule of Construction. Nothing in this section may be construed as prohibiting the collection of information that is voluntarily provided, including relating to the decennial census. [Ord. 651 § 1, 2017]~~

Section 3. Construction: The provisions of this measure are to be liberally construed to effectuate the intent, policies, and purposes of this measure.

Section 4. Severability: If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or he application of the provision to other persons or circumstances is not affected.

-END-

LEGISLATIVE HISTORY

Burien City Council passed Ord. 651 on Jan. 9, 2017

Voting "YES"

Berkowitz [sponsor]
Bell
Tosta
Armstrong

"Respect for Law" Realists Voting "NO":
Edgar
Krakowiak
Wagner

Dear Citizen:

A "sanctuary" city breeds disrespect for the rule of law. Illegal immigration is not a victim-less crime. It deprives unemployed citizens and legal residents of work opportunities, depresses wages, penalizes employers who obey the law, encourages the use of fraudulent documents and stolen Social Security numbers – particularly those of children. Please sign and mail immediately to earn yourself a vote!

INSTRUCTIONS:

STEP 1: Make 2-sided copies of this petition for friends. Or print 2-sided from a PDF downloaded from www.RespectWashington.us

STEP 2: Fill signature lines immediately. Signed petitions must be received at our P.O. Box by July 5th, 2017. Do not procrastinate. Fill petition this week.

STEP 3: Mail petition and contribution (checks please, no cash) to:

www.RespectWashington.us
P.O. Box 66634, Seattle, WA 98166
(206) 935-3505

Please help us cover the costs of this petition.
