Civil Motions
The Honorable Anna G. Alexander
Noted for April 4, 2025 at 9:30 AM

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

MASTER BUILDERS ASSOCIATION OF KING AND SNOHOMISH COUNTIES, BUILDING INDUSTRY ASSOCIATION OF WASHINGTON, WASHINGTON AGGREGATES & CONCRETE ASSOCIATION, GREENCITY DEVELOPMENT, LLC, OSPREY LOGISTICS, LLC, ROBINETT BROTHERS CONSTRUCTION, LLC, ROBINETT INVESTMENT COMPANY, LLC, and MARTIN ROBINETT, Plaintiffs, vs. THE CITY OF EVERETT, Defendant, and STANDING FOR NATURE, Intervenor Defendant.	No. 25-2-00902-31 PLAINTIFFS' OPPOSITION TO STANDING FOR NATURE'S MOTION TO DISMISS

I. INTRODUCTION AND RELIEF REQUESTED

This is a post-election, subject matter challenge to City of Everett Initiative No. 24-03 ("the Initiative") brought by businesses, or organizations promoting the interests of businesses that use or interact with the waters of the Snohomish River Watershed, including homebuilders

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and developers, a maritime logistics company that has a private port on the Snohomish River in the City of Everett, and an industry association that represents aggregate and concrete businesses. The Initiative exceeds the local initiative power and purports to give rights to the Snohomish River Watershed ("the Watershed") that may be enforced through a private right of action against Plaintiffs. Intervenor-Defendant Standing for Nature's Motion to Dismiss should be denied for the following reasons:

First, as the City of Everett acknowledged, Plaintiffs plainly have standing.[1] In a challenge by similar businesses, Washington's Supreme Court previously struck down a local initiative purporting to confer related rights on the Spokane River. Spokane Entrepreneurial Ctr. v. Spokane Moves to Amend Constitution, 185 Wn.2d 97, 110 (2016). This case is no different. Plaintiffs, or their members, use the Watershed and are, therefore, within the zone of interests affected by the Initiative. Moreover, they have suffered an injury in fact because their use of the Watershed pursuant to existing state and federal law is compromised by the Initiative's creation of additional, conflicting legal rights in the Watershed.

Second, even if any of the Plaintiffs did not meet traditional standing requirements, Washington's public importance standing exception applies and permits Plaintiffs to proceed. Under this exception, when a case "is of serious public importance and immediately affects substantial segments of the population and its outcome will have a direct bearing on the commerce, finance, labor, industry or agriculture generally, questions of standing to maintain an action should be given less rigid and more liberal answer." Wash. Nat'l Gas Co. v. Pub. Util. Dist. No. 1 of Snohomish Cnty., 77 Wn.2d 94, 96 (1969). Courts routinely recognize that challenges to local initiatives, such as this, meet this test.

[1] The City of Everett "shares some of the concerns raised by Plaintiffs[,]" Dkt. 11, and wants this matter heard on the merits, Answer at p. 5 ("The City asks the court to rule on the legal claims Plaintiffs have raised challenging the validity of City of Everett Initiative No. 24-03"). The Initiative Sponsors intervened, unopposed, and notwithstanding the City of Everett's request for this case to be heard on its merits, asked the Court to dismiss Plaintiffs' claims under CR 12(b). Plaintiffs and the City of Everett opposes Intervenor's Motion to Dismiss for lack of standing. Dkt 12 ("The City also opposes Standing for Nature's proposed motion to dismiss, particularly on standing.").

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Third, Plaintiffs' claims for declaratory and injunctive relief are justiciable. Plaintiffs allege the Initiative is unconstitutionally vague and exceeds the local initiative power, which is set forth by statute. RCW 35.22.200. "Subject matter challenges do not raise concerns regarding justiciability because postelection events will not further sharpen the issue (i.e., the subject of the proposed measure is either proper for direct legislation or it is not)." Am. Traffic Sols., Inc. v. City of Bellingham, 163 Wn. App. 427, 432 (2011) (quoting Coppernoll v. Reed, 155 Wn.2d 290, 299 (2005)). No additional facts are needed to adjudicate whether the Initiative either exceeds the local initiative power or is unconstitutionally vague. Thus, Plaintiffs respectfully request the Court deny Intervenor-Defendant's Motion to Dismiss.

II. STATEMENT OF FACTS/GROUNDS

In November 2024, voters of the City of Everett passed the Initiative, making it unlawful for any person to violate the rights of the Watershed, including "the rights to exist, regenerate, and flourish, which include the right to naturally recharge, the right to naturally flow, the right to water quality necessary to provide habitat for plants and animals, the right to provide clean water, and the right to restoration." Compl. ¶ 12. The Initiative defines the Watershed's geographic boundaries as encompassing all areas within the City of Everett, not limited to the Snohomish River, various creeks and tributaries, and Port Gardner Bay in Possession Sound. Id. at ¶ 13. Under the Initiative, any person with legal standing in the City of Everett can bring an action in the name of the Watershed to vindicate these rights, and "lack of full scientific certainty shall not be used as a reason for denying or postponing enforcement or defense of these rights[.]" Id. at ¶¶ 14-15. Any person found liable faces damages "measured by the cost of fully restoring the Snohomish River Watershed to its natural state before the violation[.]" Id. at ¶ 13.

Plaintiffs all use or interact with the waters of the Snohomish River Watershed. Osprey Logistics operates a private port on the Snohomish River in the City of Everett. Compl. ¶ 6. Greencity Development, Robinett Brothers Construction, Robinett Investment Company, and Martin Robinett are all homebuilders and developers who conduct business within the City of

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Everett and Snohomish River Watershed. Id. at ¶¶ 5, 7-9. MBAKS and BIAW are industry associations who promote the interests of homebuilders and developers in and whose members include those who operate in the City of Everett and Snohomish River Watershed. Id. at ¶¶ 2-3. WACA is an industry association that promotes the interests of sand, gravel, quarry rock, cement, and ready-mix concrete businesses in and whose members include those who operate in the City of Everett and Snohomish River Watershed. Id. at ¶ 4.

Plaintiffs initiated this matter in January 2025, seeking declaratory relief under RCW 7.24 and injunctive relief under RCW 7.40. Id. at p. 15. Plaintiffs allege the Initiative exceeds the local initiative power because: (1) it conflicts with federal and state law, including the Clean Water Act, Growth Management Act, and Shoreline Management Act; (2) involves administrative matters, including the City of Everett's Shoreline Master Program approved by Washington State Department of Ecology ("DOE"); (3) interferes with responsibilities delegated exclusively to local government, including critical areas regulations under the Growth Management Act; and (4) regulates matters outside the territorial jurisdiction of the City of Everett. Id. at ¶¶ 20-31. Plaintiffs also alleged the Initiative is unconstitutionally vague in its creation of rights for the Watershed to be free from substances, contaminants, or noise that may pose actual or potential harm to animals, plants, and water quality. Compl. ¶ 32; see also Answer ¶ 32 (admitting the City of Everett itself does not know what violates that right).

Plaintiffs alleged that they and their members are subject to federal, state, and local regulations concerning and directly or indirectly protecting the Watershed. Id. at ¶¶ 34-36.

- Osprey Logistics must comply with permits from the DOE, permits issued under Section 404 of the Clean Water Act for the discharge of dredged or fill materials, and other state and federal regulations. Id. ¶ 34.
- WACA represents the interests of members who have to comply with NPDES permits under the Clean Water Act related to surface water discharge management, DOE sand and gravel permits, shoreline permits under the Shoreline Management Act, wetland protection requirements under the Growth

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Management Act and State Environmental Policy Act, and other City of Everett regulations adopted pursuant to state laws. Id. ¶ 35.

- Greencity Development, Robinett Brothers Construction, Robinett Investment Company, and Martin Robinett, and the members of MBAKS and BIAW must comply with City of Everett critical areas regulations, City of Everett storm drainage requirements, the federal Clean Water Act, Washington State regulations that implement the Clean Water Act, and regulations that implement the Growth Management Act, Shoreline Management Act, and State Environmental Policy Act. Id. ¶ 36.

All Plaintiffs alleged "a well-grounded fear of the immediate invasion of their rights" because the Initiative creates new rights in the Watershed that can be vindicated through private lawsuits in the name of the Watershed. Id. at ¶ 33. Plaintiffs alleged this harm will impede their ability to use the Watershed's waters or conduct activities such as the use or development of real property that could arguably impact the Watershed. Id. Indeed, the Initiative Sponsors have publicly acknowledged the Initiative's private right of action can be used to stop development. One Sponsor stated publicly "if there is a threat of a lawsuit, then [considering any longterm harmful impacts] can happen prior to the damage occurring." Standing for Washington, Can A River have Rights? Everett Is Finding Out, https://standingforwashington.org/2025/01/14/can-a-river-have-rights-everett-is-finding-out/ (last visited Mar. 31, 2025) (emphasis added). There is no doubt that the Initiative Sponsors intend to use the Initiative to attack Plaintiffs and others in the Everett community that use or interact with the Watershed.

Further, all Plaintiffs specifically alleged that they or their associations' members are subject to conflicting regulation by the Initiative, on the one hand, and regulations by the City of Everett, DOE, Department of Health, and EPA, on the other. Id. at ¶¶ 34-36. Indeed, notwithstanding compliance with all of the applicable local, state, and federal laws and regulations cited above governing the conduct of Plaintiffs or their members, Plaintiffs face lawsuits – or the threat thereof – because of the Initiative. Thus, Plaintiffs alleged that "[t]he

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rights created by the Initiative [] threaten [their] ability to conduct business" in the City of Everett and the Watershed. Id.

III. STATEMENT OF ISSUES

A. When taking all facts alleged in the Complaint as true and when considering hypothetical facts, have Intervenors proven beyond a reasonable doubt that Plaintiffs cannot prove any set of facts that would show they have standing to bring a claim for declaratory relief under RCW 7.24.020?

B. When taking all facts alleged in the Complaint as true and when considering hypothetical facts, have Intervenors proven beyond a reasonable doubt that Plaintiffs cannot prove any set of facts that would show their claim for declaratory relief under RCW 7.24.020 is justiciable?

C. When taking all facts alleged in the Complaint as true and when considering hypothetical facts, have Intervenors proven beyond a reasonable doubt that Plaintiffs cannot prove any set of facts that would show their claim for injunctive relief is justiciable?

IV. EVIDENCE RELIED UPON

Plaintiffs rely upon the pleadings pursuant to CR 12(b)(6).

V. AUTHORITY

A. Civil Rule 12(b)(6) Provides the Applicable Standard.

Standing For Nature asks the Court to dismiss this case for lack of standing under CR 12(b)(1). Mot. at p. 2. That is not the correct standard, however. CR 12(b)(6) is the appropriate standard because standing is "not jurisdictional under the UDJA." Alim v. City of Seattle, 14 Wn. App. 2d 838, 850 (2020) (holding that a CR 12(b)(1) motion to dismiss for lack of subject matter jurisdiction was improper and that the motion should be reviewed under CR 12(b)(6)); see also City of Edmonds v. Bass, 16 Wn. App. 2d 488, 492-93 n.1 (2022) (explaining that a motion to dismiss for lack of standing under the UDJA should be brought under CR 12(b)(6), not CR 12(b)(1)). And Standing for Nature cannot meet the high bar for dismissal.

Courts should only grant CR 12(b)(6) motions "very sparingly and with care." State v.

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LG Electronics, Inc., 186 Wn.2d 169, 183 (2016) (internal quotations and citation omitted). Dismissal under CR 12(b)(6) is warranted only if a court concludes beyond a reasonable doubt that the plaintiff cannot prove any set of facts that would justify recovery. FutureSelect Portfolio Mgmt., Inc. v. Tremont Group Holdings, Inc., 180 Wn.2d 954, 962 (2014). When analyzing a motion under CR 12(b)(6), courts take as true all facts alleged in the complaint. Alim, 14 Wn. App. 2d at 851 (citing Kinney v. Cook, 159 Wn.2d 837, 842 (2007)). Courts also "may consider hypothetical facts not part of the formal record[.]" Id. (quoting Haberman v. Wash. Pub. Power Supply Sys., 109 Wn.2d 107, 120 (1987)). "Therefore, a complaint survives a CR 12(b)(6) motion if *any* set of facts could exist that would justify recovery." Hoffer v. State, 110 Wn.2d 415, 420 (1988) (citation omitted).

Intervenors never meet their steep burden under CR 12(b)(6). Intervenors must show Plaintiffs cannot prove any set of facts, including hypothetical facts, that would justify recovery. FutureSelect Portfolio Mgmt, Inc., 18 Wn.2d at 962. Intervenors point to additional details they contend should be in the complaint. Mot. at p. 3 (Plaintiffs "cite not specific, ongoing activity[.]"). But, Washington State has "liberal notice pleading rules intended 'to facilitate the full airing of claims having a legal basis.'" LG Electronics, Inc., 186 Wn.2d at 183 (quoting Berge v. Gorton, 88 Wn.2d 756, 759 (1977)). Plaintiffs were only required to set forth "a short and plain statement of the claim showing that the pleader is entitled to relief[.]" Id. (citation omitted).

B. Plaintiffs Have Standing to Challenge the Initiative.

Plaintiffs have alleged more than sufficient interests and injuries to satisfy standing under the UDJA, which "is not intended to be a particularly high bar." Bass v. City of Edmonds, 199 Wn.2d 403, 409 (2022) (quoting Wash. State House Fin. Comm'n v. Nat'l Homebuyers Fund, Inc., 193 Wn.2d 704, 712 (2019)). Courts consistently apply a two-part test to determine when a party may sue for declaratory judgment. First, the party must show that the "interest sought to be protected is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question." Spokane Entrepreneurial Ctr.,

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185 Wn.2d at 103 (cleaned up). Second, "the challenged action must have caused injury in fact, economic or otherwise, to the party seeking standing." Id. (cleaned up). Plaintiffs meet both parts of the test and, notably, the City of Everett agrees. Dkt 12.

1. Plaintiffs Are Arguably in the Zone of Interest.

Plaintiffs need only show they are "arguably" in the Initiative's zone of interest, and they have done so. Plaintiff Osprey Logistics operates an intermodal marine facility on the waters of the Snohomish River in the City of Everett. Compl. ¶ 34. This facility provides a suite of logistics services, including its own private port for breakbulk loading and unloading. Id. Plaintiffs MBAKS, BIAW, Greencity Development, Robinett Brothers Construction, Robinett Investment, and Martin Robinett are all homebuilders or homebuilder associations whose activities and interests are intertwined with local water regulations and, thus, are subject to and impacted by numerous federal or state regulations concerning water. Id. at ¶ 36. Finally, Plaintiff WACA's interests in promoting businesses engaged in aggregates and concretes are related to new water rights because, like homebuilding, these industries are subject to and impacted by numerous federal or state regulations concerning water. Id. at ¶ 35.

2. Plaintiffs Have Alleged Current and Future Injuries in Fact.

Plaintiffs have also met the injury in fact prong, which, again, is not a high burden. "[A] party need not show a particular level of injury in order to establish standing[.]" Chelan County v. Nykreim, 146 Wn.2d 904, 935 (2002) (quoting Suquamish Indian Tribe v. Kitsap County, 92 Wn. App. 816, 832 (1998)). And Plaintiffs only need to show the challenged law adversely affects them, not that they intend to violate it. Alim, 14 Wn. App. 2d at 597.

Intervenors attempt to increase the injury in fact burden by arguing Plaintiffs must show "immediate" harm, Mot. at p. 3, but Spokane Entrepreneurial Ctr. rejected that heightened standard. 185 Wn.2d at 106. The Court of Appeals had held plaintiffs needed to show they would be "impaired ***immediately*** upon passage of the initiative." Spokane Entrepreneurial Ctr. v. Spokane Moves to Amend Constitution, 185 Wn. App. 1039 (2015), rev'd, 185 Wn.2d 97 (2016) (emphasis added). The Washington Supreme Court reversed the Court of Appeals,

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holding, instead, that pre-election challengers "should have to meet only our traditional standing requirements[,]" Spokane Entrepreneurial Ctr., 185 Wn.2d at 105, which required petitioners merely to show "they would suffer an injury in fact if the law were to pass[,]" id. at 106. Spokane Entrepreneurial Ctr., thus, stands for the proposition that the same, generous standing test applies to pre-election and post-election challenges.

All Plaintiffs have alleged and suffered an injury in fact from the time the Initiative passed because the Initiative created new, conflicting legal rights held by the Snohomish River Watershed. See, e.g., Compl. ¶ 34 ("The Initiative subjects Osprey Logistics to conflicting regulation by the Initiative on the one hand, and regulation by the City of Everett, DOE, DOH, EPA, DOT, and other agencies, on the other hand.").[2] The federal government and Washington State control who has the right to use or conduct business involving the waters of the Snohomish River Watershed, and they exercise their authority through comprehensive federal and state statutory schemes, including the federal Clean Water Act and the Washington Growth Management Act. Compl. ¶¶ 21, 23. The Initiative, however, creates new rights beyond those of the federal government or Washington State and held by the Watershed itself. Plaintiffs, thus, can no longer rely upon the approval of the federal or state governments for use or development but, instead, have an added burden from the Watershed's new rights. Compl. ¶¶ 34-36. Upon the passing of the Initiative, these new rights created new risks and liabilities for Plaintiffs, meaning any projects that had received final approval under existing regulations were

[2] MBAKS, BIAW, and WACA further suffer injury in fact as associations because the Initiative harms their interests in promoting homebuilders and those engaged in businesses involving sand, gravel, quarry rock, and cement. See Compl. ¶¶ 3-4. Private associations have standing to bring post-election challenge to the constitutionality of an initiative. Washington Ass'n for Substance Abuse & Violence Prevention v. State ("WASAVP"), 174 Wn.2d 642, 653 (2012). The Supreme Court recognizes generous standing requirements under the UDJA for associations, reasoning: "[the association's] goal of preventing substance abuse and violence places it within the zone of interests of I–1183, which broadly impacts the State's regulation of alcohol. . . . [WASAVP's] goals of preventing substance abuse could reasonably be impacted by I–1183's restructuring of Washington's regulation of liquor . . . [and] the increase in liquor availability would injure WASAVP's goals." Id. at 653-54. The Initiative poses a threat to the members of the association Plaintiffs engaged in development projects that may be compromised by assertions under the Initiative of harm to the Watershed despite Plaintiffs compliance with state and federal laws.

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once again challengeable under these new rights. This is a continuing injury for all Plaintiffs.

This is not a novel issue. The injury alleged and suffered in this case is precisely the same as the potential injury at issue in Spokane Entrepreneurial Center. Plaintiffs in that matter brought a pre-election challenge to a sweeping initiative that included a provision giving the "Spokane River its own water rights, including the rights to sustainable recharge, sufficient flow to support native fish, and clean water." Spokane Entrepreneurial Ctr., 185 Wn.2d at 106. The Washington Supreme Court found that plaintiffs, including a utility company and a county entity "that use the Spokane River pursuant to existing state law [] would *certainly suffer harm if others were given conflicting water rights* related to the Spokane River." Id. at 107 (emphasis added). Here, Plaintiffs either use or interact with the Watershed pursuant to existing state and federal law, and the approved Initiative creates additional, conflicting water rights in the Watershed.[3]

Intervenors unsuccessfully try to cabin Plaintiffs' injuries by contending Plaintiffs do not have standing because Plaintiffs allege only a fear of future enforcement. Mot. at p. 3. As described above, Plaintiffs alleged they have suffered harm already through conflicting regulations. See, e.g., Compl. ¶ 34. And contrary to Intervenor's position, the UDJA does not require Plaintiffs to wait to be sued or prosecuted in order to have standing. See Alim, 14 Wn. App. 2d at 597-98 (quoting Crane Towing, Inc. v. Gorton, 89 Wn.2d 161, 172 (1977), overruled in part on other grounds by Yim v. City of Seattle, 194 Wn.2d 682 (1994)) (stating Plaintiffs do not need to prove they will violate the challenged law, only that the challenged law directly affects them).

Finally, fear can cause an injury in fact. Burien Communities for Inclusion v. Respect Washington, 10 Wn.App.2d 1013, 2019 WL 4262081 (2019) (unpublished) is persuasive. In that case, the Division One held plaintiffs had standing to bring a pre-election challenge to an

[3] Intervenors attempt to distinguish Spokane Entrepreneurial Center by referencing the "zoning burdens" in that matter. Mot. at p.4. But that is inapposite. The initiative at issue in that case contained multiple parts. One part mandated voter approval for large development zoning changes, a different part created legal rights in the Spokane River. Spokane Entrepreneurial Center, 185 Wn.2d at 101.

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initiative because "[t]he 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." 2019 WL 4262081, at *9. Division One reasoned that "decisions not to report crimes based on that fear would result in harm to the community" and was an injury in fact. Id. In this case, the new rights created by the Initiative and fear of future enforcement immediately affect business decisions by creating liability and, thus, cause injury in fact. Indeed, the Initiative Sponsors themselves have indicated this by stating the Initiative alone can be used as a *threat* to shape development decisions: "[I]f there is a threat of a lawsuit, then [considering any longterm harmful impacts] can happen prior to the damage occurring." Standing for Washington, Can A River have Rights? Everett Is Finding Out, https://standingforwashington.org/2025/01/14/can-a-river-have-rights-everett-is-finding-out/ (last visited Mar. 31, 2025).

Intervenors effectively ask the Court to apply a higher standing burden for post-election subject matter challenges than pre-election subject matter challenges. It is settled that the same standing rules apply for both, and the Washington Supreme Court's standing analysis in Spokane Entrepreneurial Ctr. is applicable to this post-election challenge. Plaintiffs have met their standing burden, including by both alleging and suffering an injury in fact from the Initiative.

C. The Public Importance Exception Justifies Standing.

Even if Plaintiffs did not meet traditional standing requirements, Washington's public importance standing exception would apply. Under this exception, when a case "is of serious public importance and immediately affects substantial segments of the population and its outcome will have a direct bearing on the commerce, finance, labor, industry or agriculture generally, questions of standing to maintain an action should be given a less rigid and more liberal answer." Wash. Nat'l Gas Co., 77 Wn.2d at 96. Standing exists under this test when an "issue is a matter of continuing and substantial interest, it presents a question of a public nature which is likely to recur, and it is desirable to provide an authoritative determination for the future guidance of public officials." Farris v. Munro, 99 Wn.2d 326, 330 (1983). Plainly, the

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business and homebuilder communities' ability to operate in compliance with state and federal laws without violating the Initiative is a matter of serious public importance.

Indeed, the Court of Appeals has frequently held that a proposed local initiative is an issue of substantial public importance that justifies applying the exception. In American Traffic Solutions., Inc. v. City of Bellingham, Division One held that "even if the question of . . . standing were debatable, we would still address the issues presented in this appeal, because they involve significant and continuing matters of public importance that merit judicial resolution." 163 Wn. App. at 433. Division Two reached the same conclusion: "even if [plaintiff] did not have clear standing, we would address its claims because they 'involve significant and continuing matters of public importance that merit judicial resolution.'" City of Longview v. Wallin, 174 Wn. App. 763, 783 (2013); see also Eyman v. McGehee, 173 Wn. App. 684, 688-89 (2013) (questions regarding local initiatives are "issues of substantial and continuing public interest," permitting a court to "exercise its discretion and decide an appeal").

This case meets the requirements of Washington Natural Gas and Farris. The passed Initiative has serious and substantial effects on thousands of people, a range of industries, and a body of water that the EPA designated as an estuary of national significance under Section 320 of the Clean Water Act. Compl. ¶ 22. Further, the City of Everett made the request for relief that this Court rule on the merits of the Complaint because of the public importance of the issues raised therein. Answer at p. 5 ("The City asks the court to rule on the legal claims Plaintiffs have raised challenging the validity of City of Everett Initiative No. 24-03"). As such, public importance standing applies.

D. Plaintiffs Have Alleged a Claim for Declaratory Relief.

The parties agree that a justiciable controversy exists when the following four elements are met: (1) "'an actual, present and existing dispute, or the mature seeds of one,'" rather than a "'possible, dormant, hypothetical, speculative, or moot disagreement, (2) between parties having genuine and opposing interests,'" (3) that involves direct and substantial interests, "'rather than potential, theoretical, abstract or academic'" interests, "'and (4) a judicial determination of

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which will be final conclusive.'" To-Ro Trade Shows v. Collins, 144 Wn. 2d 403, 411 (2001) (quoting Diversified Industr. Dev. Corp. v. Ripley, 82 Wn.2d 811, 814-15 (1973)). These four requirements encompass the doctrines of standing, mootness, ripeness, and the federal case-or-controversy requirement. Port of Tacoma v. Save Tacoma Water, 4 Wn. App. 2d 562, 570 (2018) (quoting To-Ro, 144 Wn.2d at 411).

Intervenors contend that Plaintiffs have not raised a justiciable controversy because the challenge is abstract, unripe, and lacks both facts and imminent harm. But, as discussed above, Plaintiffs have suffered and alleged standing. The other doctrines of justiciability are similarly easily met; and, in fact, they are not even applicable to pre- or post-election subject matter challenges. It is well-settled that "[s]ubject matter challenges do not raise concerns regarding justiciability because postelection events will not further sharpen the issue (i.e., the subject of the proposed measure is either proper for direct legislation or it is not)." Am. Traffic Sols., Inc., 163 Wn. App. at 432 (quoting Coppernoll, 155 Wn.2d at 299). No additional facts are needed to adjudicate whether the Initiative exceeds the local initiative power or is unconstitutionally vague. Plaintiff's post-election challenge, thus, is justiciable.

E. Plaintiffs Have Alleged a Claim for Injunctive Relief.

Both Plaintiffs and the Intervenor agree that a party seeking an injunction must show: (1) a clear legal or equitable right; (2) a well-grounded fear of immediate invasion of that right; and (3) the acts at issue are resulting in or will result in actual and substantial harm. Washington Fed'n of State Employees, Council 28, AFL-CIO v. State, 99 Wn.2d 878, 888 (1983) (quoting Tyler Pipe Indus., v. Dep't of Rev., 96 Wn.2d 785, 792 (1982)). To assess a clear legal right, courts "analyze the moving party's likelihood of prevailing on the merits." Washington Fed'n, 99 Wn.2d at 888.

Injunctive relief is a common remedy in subject matter challenges to initiatives. In Seattle Building & Construction Trades Council v. City of Seattle, the Washington Supreme Court held that the City of Seattle initiative conflicted with state law and, thus, affirmed the injunction issued by the Superior Court. 94 Wn.2d 740, 742 (1980). More recently, Division

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Three affirmed an injunction that prevented the City of Spokane from placing an initiative on the ballot because the proposed initiative was administrative in nature. Glob. Neighborhood v. Respect Washington, 7 Wn. App. 2d 354, 403-05 (2019).

Plaintiffs have adequately pleaded a claim for injunctive relief. Taking the pleadings as true, Plaintiffs are likely to prevail on the merits because the Initiative conflicts with state or federal laws, involves administrative matters, or interferes with responsibilities delegated exclusively to local government. Compl. ¶¶ 20-32; see e.g., 1000 Friends of Washington v. McFarland, 159 Wn.2d 165, 183-184 (2006), as amended (Jan. 8, 2007) (critical areas county ordinances regulating surface water flows were within the scope of the Growth Management Act and thus not subject to the local initiative process because the state delegated authority to the local government).

As described above, Plaintiffs alleged both present and future harm, and Plaintiffs alleged "a well-grounded fear of the immediate invasion of their rights[.]" Compl. ¶ 33. Though Intervenors argue that Plaintiffs cannot rely upon "hypotheticals" at the CR 12(b)(6) stage, that is not correct. Plaintiffs cite McCurry v. Chevy Chase Bank, FSB for this proposition, but the Washington Supreme Court in McCurry refused to adopt the federal pleading standard. 169 Wn.2d 96, 103 (2010). The CR 12(b)(6) standard, thus, remains extremely liberal: a court may consider "hypothetical facts not included in the record" and "dismissal is appropriate only if it appears beyond doubt that the plaintiff cannot prove any set of facts which would justify recovery." Keodalah v. Allstate Ins. Co., 194 Wn.2d 339, 345 (2019) (cleaned up). The Complaint's allegations supporting its request for injunctive relief, taken as true and considering hypothetical facts, easily survives this low bar.

VI. CONCLUSION

Plaintiffs respectfully request the Court deny Intervenor-Defendant's Motion to Dismiss.

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DATED this 2nd day of April, 2025.

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that I caused the document to which this certificate is attached to be delivered upon the following counsel via e-mail as follows:

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