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

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
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.

Case No.: 25-2-00902-31

INTERVENOR-DEFENDANT STANDING FOR NATURE'S REPLY TO OPPOSITION TO MOTION TO DISMISS

Standing for Nature, Intervenor-Defendant, respectfully submits this Reply to Plaintiffs' and the City of Everett's Oppositions to Standing for Nature's Motion to Dismiss.

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I. INTRODUCTION

The Opposition briefs submitted by Plaintiffs and the City of Everett mischaracterize both Initiative 24-03 ("Initiative") and the legal requirements for standing under Washington law. Plaintiffs and the City fail to establish a basis for this Court to hear their challenge for two key reasons. First, the Initiative creates a cause of action, not a regulatory system that conflicts with state or federal law. Second, the Initiative includes an express preemption clause that acknowledges its subordination to state and federal law, directly undermining any claim of immediate harm. These features of the Initiative defeat Plaintiffs' theory of immediate harm sufficient to invoke this Court's jurisdiction. Accordingly, Standing for Nature respectfully requests dismissal of the Complaint under Civil Rule 12(b)(6).

II. ARGUMENT AND AUTHORITY

A. Standard of Review and the Fundamentals of Standing

Plaintiffs correctly cite *Alim v. City of Seattle*, 14 Wn. App. 2d 838, 849-50 (2020) for the proposition that standing challenges under the Uniform Declaratory Judgments Act (UDJA) should be analyzed under CR 12(b)(6), not CR 12(b)(1) (Plaintiffs Opp'n at 6-7). However, *Alim* is readily distinguishable and actually highlights why Plaintiffs lack standing here.

In *Alim*, the court found standing because the ordinance directly imposed new, specific legal obligations on gun owners: mandatory storage requirements and automatic civil liability (a civil infraction with a $500-$10,000 fine) if their firearms were accessed by prohibited persons. These were not merely potential lawsuits that plaintiffs might face—they were definite, immediate legal consequences imposed by the ordinance itself.

By contrast, the Initiative here creates no automatic liability or regulatory violation. It creates a cause of action that might be brought in the future, with plaintiffs bearing the burden

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of proof and defendants retaining all traditional defenses. This potential for future litigation is fundamentally different from the immediate, concrete legal consequences present in *Alim*.

While *FutureSelect Portfolio Mgmt, Inc. v. Tremont Group Holdings, Inc.*, 180 Wn.2d 954, 962 (2014) allows consideration of hypothetical facts under CR 12(b)(6), Plaintiffs still cannot establish the kind of immediate, concrete harm required for standing, even with hypothetical facts. Their allegations remain speculative, and as this Reply will demonstrate, no set of facts justifies relief here.

B. The Initiative Creates a Cause of Action, Not Conflicting Regulations

Plaintiffs' opposition fundamentally mischaracterizes the Initiative as creating a regulatory framework in conflict with state and federal law (Plaintiffs Opp'n at 9-12; Compl. ¶ 25). This is incorrect. The Initiative does not establish a competing regulatory system but rather provides a cause of action that supplements existing environmental protections, operating within the bounds of current legal framework.

The Initiative defines rights of the Snohomish River Watershed and establishes a legal mechanism to enforce those rights through litigation (Initiative 24-03, Sections 2-3). It does not, however, create regulatory obligations enforced by government agencies through permits, inspections, or other regulatory processes. This is a crucial distinction that undermines Plaintiffs' theory of standing based on allegedly conflicting regulatory obligations (Plaintiffs Opp'n at 9-12).

Furthermore, the Initiative's preemption clause in Section 4 explicitly states that if any portion of the Initiative "be validly preempted by state or federal law or regulations, such decision or preemption shall not affect the validity of the remaining portions of this Ordinance." This clause ensures that the Initiative does not conflict with state or federal laws, such as the

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Clean Water Act or the Washington Shoreline Management Act (RCW 90.58). It directly prevents the kind of contradictory obligations Plaintiffs claim to face (Compl. ¶¶ 21-23, 34). Because of this preemption provision, Plaintiffs' assertion of immediate harm from regulatory conflict collapses.

C. Plaintiffs Fail to Establish an Actual, Present Dispute Required for Justiciability

Both Plaintiffs and the City acknowledge that a justiciable controversy under the UDJA requires four elements, as set forth in *To-Ro Trade Shows v. Collins*, 144 Wn.2d 403, 411 (2001): (1) an actual, present dispute or the mature seeds of one; (2) between parties with genuine, opposing interests; (3) involving direct and substantial interests, not merely theoretical ones; and (4) capable of a judicial determination that will be final and conclusive (Plaintiffs Opp'n at 12-13; City Opp'n at 2). They focus heavily on their interests but gloss over the first element—an actual, present dispute—which is dispositive here.

Plaintiffs' reliance on *Spokane Entrepreneurial Center v. Spokane Moves to Amend Constitution*, 185 Wn.2d 97 (2016) is misplaced. That case involved an initiative that established rights for the Spokane River that directly conflicted with state water law. Critically, unlike here, the Spokane initiative contained no preemption clause acknowledging the supremacy of state and federal law. That initiative attempted to directly override state-granted water rights with no saving clause. The Initiative here creates a cause of action that operates within the existing legal framework, explicitly acknowledging the primacy of state and federal law through its preemption clause.

The Supreme Court's standing analysis focused on the direct conflict with state water law, not merely the existence of rights (*Spokane,* 185 Wn.2d at 107). The absence of a

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preemption clause in the Spokane initiative—a feature prominently present in the Initiative here—created the direct legal conflict that established standing in that case.

Plaintiffs' citation to *American Traffic Solutions, Inc. v. City of Bellingham*, 163 Wn. App. 427, 432 (2011) and *Coppernoll v. Reed*, 155 Wn.2d 290, 299 (2005) for the proposition that "[s]ubject matter challenges do not raise concerns regarding justiciability" requires closer examination. While Plaintiffs are indeed challenging whether the Initiative exceeds local initiative authority, this doesn't automatically create justiciability without concrete harm.

In both *American Traffic Solutions* and *Coppernoll*, the subject matter challenges involved initiatives that would have immediately altered existing legal relationships in concrete ways—invalidating camera contracts in one case and changing medical malpractice laws in the other. The courts found justiciability because the initiatives would have directly disrupted specific existing legal frameworks, creating immediate concrete impacts.

Here, despite Plaintiffs' characterization, the Initiative's creation of a cause of action with an express preemption clause doesn't present the same type of immediate, concrete conflict with state and federal authority. Plaintiffs cannot identify any specific current activity that would simultaneously comply with state and federal law yet violate the Initiative, particularly given its preemption clause. Ripeness still applies, even to subject matter claims, when the initiative's impact is not self-executing but contingent, as *Walker v. Munro*, 124 Wn.2d 402, 411-12 (1994), confirms.

D. The Potential for Future Litigation Does Not Create Present Standing

Plaintiffs argue that the Initiative injures them because it creates a "threat" of future lawsuits, even if they comply with existing regulations (Plaintiffs Opp'n at 10-11; Compl. ¶¶ 33-36). The potential for liability despite regulatory compliance is not new—it is a standard feature

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of our legal system, as recognized in *Tiegs v. Watts*, 135 Wn.2d 1 (1998). In *Tiegs*, the Supreme Court upheld common law duties to avoid harming water quality, duties that businesses like Plaintiffs already navigate. The Initiative's cause of action in Section 3 adds no new risks beyond these pre-existing liabilities. Businesses routinely assess and manage the possibility of lawsuits—whether under nuisance law or other statutes like RCW 7.48. The mere existence of a potential claim, which no one has yet brought against Plaintiffs, does not create the direct, immediate harm required for standing.

Plaintiffs insist they have "suffered an injury in fact from the time the Initiative passed" (Plaintiffs Opp'n at 9). Yet, their Complaint uses future-tense language, claiming the Initiative "will impede" or "threatens" their operations (Compl. ¶¶ 33-36). This reveals the speculative nature of their concerns. They point to *Burien Communities for Inclusion v. Respect Washington*, 10 Wn. App. 2d 1013, 2019 WL 4262081, at *9 (2019) (unpublished), arguing that fear can be an injury (Plaintiffs Opp'n at 10). In *Burien*, however, residents had already changed their behavior under threat of action by the government—avoiding police due to deportation fears and loss of liberty—before the election. Plaintiffs here allege no such concrete changes, just business risks they already face. Without an actual lawsuit or enforcement action, their fear does not rise to an injury in fact.

E. Specific Plaintiffs' Claims of Injury Are Too Speculative

Plaintiffs highlight specific entities to bolster their standing claim, but these examples fall short. Osprey Logistics claims its maritime operations face immediate harm from the Initiative (Compl. ¶ 34; Plaintiffs Opp'n at 9). Yet, Osprey admits it is already subject to "industrial stormwater permits issued by DOE, permits issued under Section 404 of the Clean Water Act... and many other state and federal regulations" (Compl. ¶ 34). Given the non-regulatory nature of

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the Initiative, Osprey cannot explain how it faces any additional, immediate legal burden beyond what it already manages. The preemption clause in Section 4 ensures that compliance with these laws aligns with the Initiative—no conflict arises.

Similarly, WACA and the developer Plaintiffs acknowledge they already comply with extensive environmental regulations, including the City's critical areas rules, storm drainage requirements, Clean Water Act permits, and laws like the Growth Management Act (GMA), Shoreline Management Act (SMA), and State Environmental Policy Act (SEPA) (Compl. ¶¶ 35-36; Plaintiffs Opp'n at 4-5). They claim they "still face the immediate and considerable threat of damages" despite this compliance (Plaintiffs Opp'n at 5). This mischaracterizes the Initiative. It does not impose new regulatory duties—just a potential lawsuit risk, akin to the common law liabilities in *Tiegs* that they already assess and mitigate as part of doing business. Without an actual enforcement action, their claims remain too speculative to support standing

F. The Public Importance Exception Does Not Apply

Plaintiffs and the City lean heavily on the public importance exception to standing, citing *Washington Natural Gas Co. v. PUD No. 1*, 77 Wn.2d 94, 96 (1969) and *Farris v. Munro*, 99 Wn.2d 326, 330 (1983) (Plaintiffs Opp'n at 11-12; City Opp'n at 4). However, they overlook crucial limitations on this doctrine.

Plaintiffs cite *American Traffic Solutions*, *City of Longview v. Wallin*, 174 Wn. App. 763, 783 (2013), and *Eyman v. McGehee*, 173 Wn. App. 684, 688-89 (2013) for the proposition that "questions regarding local initiatives" are inherently "issues of substantial and continuing public interest" (Plaintffs Opp'n at 12). But each of these cases involved initiatives that would have created immediate, systemic impacts—traffic cameras, tax limits, or voting rules—that disrupted government operations upon passage. Initiative 24-03 is different. It creates a supplemental cause

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of action, not a regulatory overhaul. It has not been enforced against anyone, so it lacks the immediate effect seen in those cases.

More importantly, public importance should respect the will of the people, not undermine it. As the Supreme Court emphasized in *1000 Friends of Washington v. McFarland*, 159 Wn.2d 165, 172 (2006), courts hesitate to restrict the initiative process out of deference to its constitutional role in Washington's democracy. Initiative 24-03 passed with the support of Everett's voters, reflecting their choice to protect the Snohomish River Watershed. If public importance applies, it weighs in favor of enforcing that democratic decision, not invalidating it based on Plaintiffs' hypothetical fears about future lawsuits.

G. Plaintiffs' Vagueness Challenge and Injunction Claim Are Premature

Plaintiffs' argument that Initiative 24-03 is unconstitutionally vague cannot create standing where none otherwise exists (Plaintiffs Opp'n at 13). The Supreme Court in *City of Spokane v. Douglass*, 115 Wn.2d 171, 182 (1990), held that vagueness challenges typically require a specific application, not a facial, pre-enforcement attack like this one. Without an actual case applying "unreasonable interference" (Section 3), Plaintiffs' vagueness claim is not ripe.

For their injunction claim, Plaintiffs cite *Washington Federation of State Employees v. State*, 99 Wn.2d 878, 888 (1983), and *Seattle Building & Construction Trades Council v. City of Seattle*, 94 Wn.2d 740, 742 (1980), asserting they meet the test for relief (Plaintiffs Opp'n at 13-14). That test requires a clear legal right, a well-grounded fear of immediate invasion, and actual, substantial harm. Yet, both cited cases involved initiatives with immediate, concrete impacts on existing rights—a labor law conflict and a direct statutory override. Initiative 24-03 lacks such impacts. Its preemption clause (Section 4) avoids conflict, and no enforcement

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threatens Plaintiffs (Compl. ¶¶ 33-36). Their fear of lawsuits is not immediate—businesses always face such risks under *Tiegs* (135 Wn.2d at 13)—and no harm has occurred. Even under CR 12(b)(6)'s liberal standard, no plausible claim exists (*FutureSelect*, 180 Wn.2d at 962).

III. CONCLUSION

Plaintiffs and the City of Everett ask this Court to strike down Initiative 24-03, a measure passed by Everett's voters, but their case faces a fatal flaw: they cannot show standing or a justiciable controversy. Initiative 24-03 creates a cause of action, not a regulatory scheme, and its preemption clause in Section 4 ensures it does not conflict with state or federal law. Plaintiffs' fears about potential lawsuits are speculative—they reflect risks businesses already manage under common law, as in *Tiegs*, not new, immediate harms like those in *Alim* or *Spokane*. Without a real dispute, their challenge fails under CR 12(b)(6).

If this Court accepted Plaintiffs' theory, virtually any initiative could be challenged after an election without proof of specific, concrete harm. This would seriously erode the initiative right that has been a cornerstone of Washington's democratic process. Public importance, if relevant, supports respecting the people's will—here, the passage of Initiative 24-03—not rushing to invalidate it.

The proper time to assess the Initiative's validity would be if and when it is applied in a specific case. Until then, the Court should respect both the voters' decision and principles of judicial restraint by dismissing this premature challenge.

Standing for Nature therefore respectfully requests that this Court grant its Motion to Dismiss Plaintiffs' Complaint with prejudice.

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Respectfully submitted,

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