SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY

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,

v.

THE CITY OF EVERETT,

Defendant,

and

STANDING FOR NATURE,

Intervenor-Defendant.

NO. 25-2-00902-31

ORDER DENYING INTERVENOR-DEFENDANT'S MOTION TO DISMISS FOR LACK OF STANDING AND FAILURE TO STATE A CLAIM

[CLERK'S ACTION REQUIRED]

THIS MATTER came before the Court on Standing for Nature's ("Intervenor-Defendant's") Motion to Dismiss for Lack of Standing and Failure to State a Claim. The Court reviewed the Motion, the City of Everett's ("Defendant's") and Plaintiffs' Opposition,

Intervenor-Defendant's Reply, and the records on file herein. The Court also held oral argument on this matter on April 4, 2025.

For the reasons explained below,

IT IS HEREBY ORDERED that Intervenor-Defendant's Motion to Dismiss for Lack of Standing and Failure to State a Claim is **DENIED.**

The Court finds Plaintiffs have standing to challenge Initiative 24-03, and their claims for declaratory and injunctive relief are justiciable.

STANDARD OF REVIEW

CR 12(b)(6) governs motions to dismiss for lack of standing and justiciability because justiciability is nonjurisdictional. *Alim v. City of Seattle*, 14 Wn. App. 2d 838, 850, 474 P.3d 589 (2020). "A CR 12(b)(6) motion challenges the legal sufficiency of the allegations in a complaint." *McAfee v. Select Portfolio Servicing, Inc.*, 193 Wn. App. 220, 226, 370 P.3d 25 (2016). "The motion must be tested in light of CR 8(a)(1) which requires a short and plain statement of the claim showing that the pleader is entitled to relief[.]" *Orwick v. City of Seattle*, 103 Wn.2d 249, 254, 692. P.2d 793 (1984). Dismissal based on failure to state a claim is only warranted if the court concludes, beyond reasonable doubt, that the plaintiff cannot prove any set of facts which could justify recovery. *Kinney v. Cook*, 159 Wn.2d 837, 842, 154 P.3d 206 (2007). The court presumes all facts alleged in the plaintiff's complaint are true and may even consider hypothetical facts supporting the plaintiff's claims. *Id.*

ANALYSIS

1. **Plaintiffs have alleged an "injury in fact" sufficient to establish standing under the Universal Declaratory Judgment Act (UDJA).**

Taking all facts alleged in the Complaint as true, enforcement of Initiative 24-03 would directly affect Plaintiffs' activities in relation to the Snohomish River Watershed. The test for standing under the UDJA has two requirements. *Spokane Entrepreneurial Center v. Spokane*

Moves to Amend Constitution, 185 Wn.2d 97, 103-04, 369 P.3d 140 (2016). "First, the interest sought to be protected must be arguably within the zone of interests to be protected or regulated by the statute . . . in question." *Id.* Second, the plaintiff must demonstrate they have suffered or will suffer an "injury in fact." *Alim*, 14 Wn. App. at 852. "The test under the UDJA is not whether a party intends to violate the law being challenged but merely whether their rights are adversely affected by it." *Id.* at 854. In *Spokane Entrepreneurial Center v. Spokane Moves to Amend Constitution*, the Supreme Court held companies that use the Spokane River would suffer harm if an initiative passed that would give others "conflicting water rights related to the [river]." 185 Wn.2d 97, 106, 369 P.3d 140 (2016).

Intervenor-Defendant argued Plaintiffs only advanced a speculative fear of future enforcement that is insufficient for standing. It argued the Initiative's preemption clause, which provides it does not apply to "areas of law that have been validly preempted by state or federal law," means it "adds no new risks beyond [ ] pre-existing liabilities."[1] Plaintiffs responded the Initiative creates new rights and liabilities because "any projects that had received final approval under existing [state and federal] regulations were once again challengeable under these new rights."[2]

Intervenor-Defendant seems to assume as long as the Initiative does not directly contradict state or federal laws governing the Watershed, there can be no injury in fact. However, it admits the Initiative at least "supplements" current laws that apply to Plaintiffs by creating a new cause of action.[3] This exposure to new lawsuits through a "supplementary" cause of action would adversely affects Plaintiffs' interests. To show standing, a party must only show "enforcement of the law will directly affect [them]." 14 Wn.App.2d at 854. Should someone

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[1] Intervenor-Defendant's Reply to Opposition to Motion to Dismiss at 6.

[2] Plaintiff's Opposition to Motion to Dismiss at 9-10.

[3] Intervenor-Defendant's Reply to Opposition to Motion to Dismiss at 3.

enforce the Initiative against Plaintiffs through a lawsuit, it would directly affect their activities with respect to the Watershed. Plaintiffs have therefore shown an injury in fact.

2. Even if Plaintiffs lack standing, the public importance exception applies.

There is an exception to the standing requirement "when a party raises an issue of broad overriding public import." *City of Edmonds v. Bass*, 16 Wn. App.2d 488, 496, 481 P.3d 596 (2021) (internal quotations omitted). "Whether an issue is one of major public importance depends on the extent to which public interest would be enhanced by reviewing the case." *Id.* In *City of Edmonds*, Division I held the public importance exception applied to a lawsuit regarding a municipality's gun regulations for two reasons. *Id.* First, whether municipalities could enact gun regulations affected every gun owner and every municipality in the state. *Id.* Second, whether state law preempted municipal regulation was a question of law that required no further factual development. *Id.* at 497.

These same reasons apply here. The main question raised by Plaintiffs' Complaint is whether municipalities have the power to confer rights on waterbodies within their borders. That question affects every municipality and every person who uses a waterbody within the State. And Everett is not the only municipality to enact this kind of Initiative. *See Spokane Entrepreneurial Center*, 185 Wn.2d 97. Second, whether the Initiative on its face exceeds the local initiative power is a question of law that requires no further factual development.[4]

[4] *See* Defendant's Opposition to Motion to Dismiss at 1-2 ("Were the Court to grant the motion to dismiss, it would only postpone the inevitable legal challenge to the Initiative, creating great uncertainty during the interim period.").

Intervenor-Defendant argued the public importance exception does not apply because the Initiative has not been enforced against anyone, and "courts hesitate to restrict the initiative process out of deference to its constitutional role in Washington's democracy."[5] The fact the Initiative has not yet been enforced does not matter because the question of whether it exceeds the municipality's power does not require factual development. Further, the case cited by Intervenor-Defendant to supports its argument that public importance requires deferring to the Initiative, *1000 Friends of Washington v. McFarland*, does not discuss standing issues. 159 Wn.2d 165, 149 P.3d 616 (2006). Whether a court should "hesitate to restrict the initiative process" is a question regarding the merits of the claim, not standing.

3. Plaintiffs' claim for declaratory relief is justiciable.

Plaintiffs' claim relates to the scope of the local initiative power, and thus no further factual development is necessary to sharpen the issue. For declaratory judgment purposes, a justiciable controversy is:

> (1) an actual, present and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement [ripeness prong], (2) between parties having genuine and opposing interests, (3) which involves interests that must be direct and substantial, rather than potential, theoretical, abstract or academic [standing prong], and (4) a judicial determination of which will be final and conclusive.

Walker v. Munro, 124 Wn.2d 402, 411, 879 P.2d (1994); *Alim*, 14 Wn. App.2d at 847.

In the context of "preclection challenges," Washington courts have held lawsuits questioning the "scope of the initiative power" "do not raise justiciability concerns because postelection events will not further sharper the issue." *American Traffic Solutions, Inc. v. City of Bellingham*, 163 Wn. App. 427, 432, 260 P.3d 245 (2011) ("[T]he subject of the proposed

[5] Interventor-Defendant's Reply to Opposition to Motion to Dismiss at 7-8.

measure is either appropriate for direct legislation or it is not."), *quoting Coppernoll v. Reed*, 155 Wn.2d 290, 299, 119 P.3d 318 (2005). Although this is a postelection challenge, the question is the same here: conferring rights upon the Watershed either exceeds the local initiative power or it does not. *See also Jewels Helping Hands v. Hansen*, 2025 WL 1132148, at *10, No. 102814-8 (Apr. 17, 2025), (internal quotations omitted) ("The fact that the Hansen Initiative passed at the general election last November does not affect the nature of our review: Postelection events do not further sharpen the issues[.]"). Plaintiffs' UDJA claim is justiciable.

4. Plaintiffs' claim for injunctive relief is justiciable.

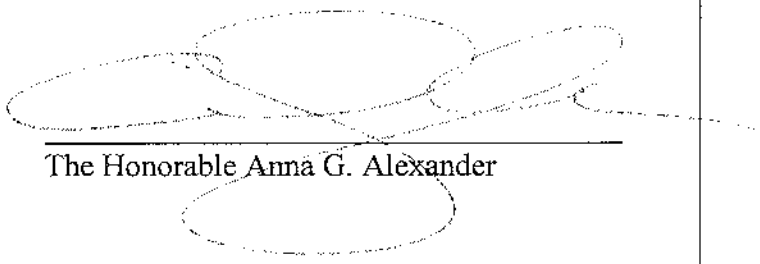
Plaintiffs have alleged a well-grounded fear their rights will be invaded through the Initiative's creation of a new cause of action. A party seeking an injunction must show "(1) that he has a clear legal or equitable right, (2) that he has a well-grounded fear of immediate invasion of that right, and (3) that the acts complained of are either resulting in or will result in actual and substantial injury to him." *Washington Federation of State Employees, Council 28, AFL-CIO v. State*, 99 Wn.2d 878, 888, 665 P.2d 1337 (1983).

Intervenor-Defendant argues Plaintiffs have no clear legal right or immediate fear of injury because they assert only a speculative fear of future lawsuits and the Initiative imposes no "immediate, concrete impacts on existing rights."[6] This argument is similar to the argument it made regarding the lack of an "injury in fact" and fails for the same reasons. Washington law is clear courts should consider "hypothetical," i.e., speculative facts on a CR 12(b)(6) motion. *Kinney*, 159 Wn.2d at 842. Assuming all alleged facts in the Complaint are true, Plaintiffs are exposed to new risks because they now face liability for violating the rights of the Watershed,

[6] Intervenor-Defendant's Reply to Opposition to Motion to Dismiss at 8-9; Intervenor-Defendant's Motion to Dismiss at 5-6.

and those rights can be enforced through a lawsuit by any person with standing in the City of Everett.[7]

DONE IN OPEN COURT this 1st day of May, 2025.



The Honorable Anna G. Alexander

[7] Complaint at ¶ 25 ("The Initiative purports to create new rights in the Snohomish River Watershed . . . [and] further purports to grant private citizens the rights to enforce these rights and regulate the quality, flow, and other aspects of the Snohomish River Watershed through civil lawsuits in the name of the Snohomish River.").