Civil Motions
The Honorable Jennifer R. Langbehn
Noted for October 24, 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' REPLY BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

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I. INTRODUCTION

The Court should grant Plaintiffs' Motion For Summary Judgment (the "Motion") because no genuine issue of material fact is in dispute; only pure legal issues remain. And the answers to those legal issues are plain from this Court's own orders and binding authority. In short, a local initiative—like the Initiative, here—purporting to give local waterways new rights, and a private right of action to enforce those rights, is beyond the scope of the local initiative power. Standing For Nature's ("Intervenor's") Response to Plaintiffs' Motion For Summary Judgment ("Opposition" and "Opp.") cannot overcome these issues for several reasons:

First, this Court already expressly rejected Intervenor's standing and justiciability arguments when the Court denied Intervenor's Motion to Dismiss (the "Order").[1] Specifically, the Court held Plaintiffs have shown injury in fact because "[s]hould someone enforce the Initiative against Plaintiffs through a lawsuit, it would directly affect their activities with respect to the Watershed." *Id*. at 3-4. It likewise held that Plaintiffs have standing, regardless, under the public importance exception because Plaintiffs' complaint questions "whether municipalities have the power to confer rights on waterbodies within their borders." *Id.* at 4. Rejecting Intervenor's justiciability arguments, and consistent with uniform precedent allowing post- and pre-election challenges to local initiatives, the Court held that "no further factual development is necessary to sharpen the issue" regarding the scope of the Initiative, and accordingly, "Plaintiffs' UDJA claim is justiciable." *Id.* at 5-6. Thus, this Court already resolved Intervenor's standing and justiciability arguments in Plaintiffs' favor, and Plaintiffs' declarations filed in support of summary judgment further reinforce the propriety of the Court's previous conclusion.

Second, at its core, this case is no different from *Spokane Entrepreneurial Ctr. v. Spokane Moves to Amend Constitution*, 185 Wn.2d 97, 100 (2016). The Washington Supreme Court has already held that a local initiative cannot grant rights and a cause of action to waterways. *Id.* at 109. The rights created by the Initiative, like those at issue in the Spokane initiative, "conflict[]

[1] For the Court's convenience, the previous Order, which appears at Docket No. 19, is attached as Appendix A.

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with state law, which already determines the water rights" for waterways. *Id.* Moreover, the Initiative exceeds the local initiative power because it is both administrative in nature and intrudes upon matters delegated to the City Council which cannot be addressed by local initiative. *See id.*

Third, Intervenor misstates the governing legal standard for a challenge to a local initiative. Specifically, Intervenor quotes *City of Longview v. Wallin* for the proposition that the "the initiative power 'is to be liberally construed in favor of the people.'" Opp. at 23 (quoting 174 Wn. App. 763, 777 (2013)). But that quote does not exist in *City of Longview*. It is made up. And Intervenor's contention is wrong. The law is well settled that the ***statewide*** initiative power is liberally construed because it is granted by Article II, section 1 of the Washington State Constitution. *Jewels Helping Hands v. Hansen*, 4 Wn.3d 665, 686 (2025). This deference does not apply to the local initiative power, which is based on a statutory grant of powers by the legislature to localities. The law is plain that "[t]he local initiative power is more limited than the statewide initiative power." *Id.*[2] And Washington Courts regularly strike down local initiatives that, like this Initiative, exceed the scope of the local initiative power.[3]

For these reasons, and those discussed below, the Court should grant Plaintiffs' Motion.

II. ARGUMENT AND AUTHORITY

A. Plaintiffs Have Standing and This Case Is Justiciable.

1. This Court Already Held Plaintiffs Have Standing.

This Court already determined that Plaintiffs have standing under the Uniform Declaratory Judgment Act (UDJA) when it denied Intervenor Defendant's motion to dismiss. *See* Dkt. 19

[2] Outside of *City of Longview*, which Intervenor misquoted and mischaracterized, Intervenor discusses three local initiative cases that it claims "do[] not diminish the rule of liberal construction or the presumption that voter measures are valid when they can coexist with superior law." Opp. at 23-24 *(citing Seattle Bldg. & Constr. Trades Council v. City of Seattle*, 94 Wn.2d 740, 747 (1980); *Am. Traffic Sols., Inc. v. City of Bellingham*, 163 Wn. App. 427, 431-33 (2011); *Ford v. Logan*, 79 Wn.2d 147, 150-55 (1971)). All three of the cases do, in fact, diminish Intervenors' claims because none of the majority opinions cite, discuss, or apply this purported liberal construction for analyzing local initiatives.

[3] *Jewels Helping Hands*, 4 Wn.3d at 670; *Spokane Entrepreneurial*, 185 Wn.2d at 100; *City of Port Angeles v. Our Water-Our Choice!*, 170 Wn.2d 1 (2010); *City of Sequim v. Malkasian*, 157 Wn.2d 251 (2006); *Am. Traffic Sols., Inc.*, 163 Wn. App. 427; *City of Seattle v. Yes for Seattle*, 122 Wn. App. 382 (2004).

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Appx. A at 3. The Court held that Plaintiffs demonstrated an interest within the zone regulated by the Initiative and demonstrated concrete "injury in fact," or alternatively, could proceed under the public importance exception. *Id.* at 3-4.

Intervenor made the same arguments then that Plaintiffs' alleged harm is "speculative" and non-existent because the Initiative did not actually conflict with current laws. Dkt. 14 at 3. The Court rejected Intervenor's argument by explaining that the Initiative supplemented current laws and created a new cause of action stating that "[t]his exposure to new lawsuits through a 'supplementary' cause of action would adversely affect[] Plaintiffs' interest." Appx. A at 3. The Court noted that "[t]o show standing, a party must only show 'enforcement of the law will directly affect [them].'" *Id.* (quoting *Alim v. City of Seattle*, 14 Wn. App. 2d 838, 850 (2020)); *see also Spokane Entrepreneurial Ctr.*, 185 Wn.2d 97, 105 (2016) (holding petitioners had standing for a *pre-election* initiative challenge to a statute that gave rights to the Spokane River to "exist and flourish").

Ignoring the Court's prior holding, Intervenor argues that the Initiative "imposes no self-executing regulatory duties or automatic penalties; **it simply creates a cause of action** that operates subject to superior law." Opp. at 25 (emphasis added). But Plaintiffs' unrebutted declarations show the threat of litigation from the Initiative's new cause of action. *See, e.g.*, Declaration of Master Builders Association of King and Snohomish Counties in Support of Plaintiffs' Motion For Summary Judgment ("MBAKS Decl.") ¶¶ 13-14 ("The Initiative…harms MBAKS' interest because its Members may fully comply with all federal, state, and City statutes, codes, and regulations but nevertheless be subject to private suit under the Initiative claiming damage to the Snohomish River Watershed," and "[t]he Initiative further harms MBAKS' interests by increasing the threat of litigation [and] legal liability. . . .").

Instead of addressing the harms the Initiative's new cause of action creates for Plaintiffs, Intervenor attempts to side-step the issue by contending the Initiative will not be enforced: "any enforcement (*if at all*) arises only after activities occur and requires proof of a probable violation in court." Opp. at 21 (emphasis added). This is not a serious argument. Setting aside that

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Intervenor cannot control whether other parties avail themselves of the private right of action, Intervenor's argument contradicts its previous public statements embracing the chilling effect of potential litigation against developers. "[A] threat of a lawsuit . . . can happen prior to damage occurring." *See* Dkt. 29 (Declaration of Robert Maguire in Support of Plaintiffs' Motion for Summary Judgment ("Maguire Decl.")), Ex. B.

Backing away from its previous position, Intervenor now contends that only "abusive or frivolous suits enabled by the Ordinance" would cause injury in fact. Opp. at 22. But, as the Court already explained, "[s]hould someone enforce the Initiative against Plaintiffs through a lawsuit, it would directly affect their activities with respect to the Watershed." Appx. A at 3-4. That is a concrete injury.

Plaintiffs' declarations supporting their Motion confirm they are suffering injuries in fact. Intervenor has filed no evidence to the contrary.

2. This Court Already Applied the Public Importance Exception to This Case For Plaintiffs' Standing.

Intervenor also tries to re-litigate this Court's application of the public importance exception for Plaintiffs' standing. *Id.* Without any substantive reasoning, Intervenor simply states "[b]ecause the [Initiative] is expressly non-preemptive and non-regulatory, and because no concrete application is presented, the exception does not justify setting aside the voters' enactment here." Opp. at 26. But this Court already held that the questions involved in this lawsuit are of public importance, as the main question raised "affects every municipality and every person who uses a waterbody within the State." Dkt. 19, Appx. A at 4. The purported lack of "concrete application" of the statute is irrelevant because "whether the Initiative on its face exceeds the local initiative power is a question of law that requires no further factual development." *Id.*; *see also City of Edmonds v. Bass*, 16 Wn. App. 2d 488, 496 n.3 (2021), *aff'd*, 199 Wn.2d 403 (2022) ("Division One has previously held that justiciability is a question of law to be reviewed de novo.") (citing *Am. Traffic Sols., Inc. v. City of Bellingham*, 163 Wn. App. 427, 432 (2011)).

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3. The Court Already Held Plaintiffs' Request For Declaratory Relief Is Justiciable.

Similarly, this Court determined Plaintiffs have a justiciable request for declaratory relief. Dkt. 19, Appx. A at 5-6. Still, Intervenor contends that "Plaintiffs identify no enforcement action, permit denial, or specific project condition traceable to the [Initiative]; their asserted harms remain hypothetical and contingent." Opp. at 25. In support of this argument, Intervenor cites to *To-Ro Trade Shows v. Collins*, 144 Wn.2d 403, 411-416 (2001), *Walker v. Munro*, 124 Wn.2d 402, 411-412 (1994), and *Weden v. San Juan Cnty*, 135 Wn.2d 678, 696 (1998), *abrogated by Yim v. City of Seattle*, 194 Wn.2d 682 (2019). But none of those cases involves a local initiative let alone one seeking to change waterway rights that affect an entire city, its residents, and its businesses.

To-Ro Trade Shows involved a consumer show promoter's challenge to DOL's enforcement of a statute that required Washington licenses for any recreational vehicle dealers joining a trade show. The court found that *To-Ro* "did not prove that DOL's enforcement of the statute against unlicensed dealers had harmed (or would harm) To-Ro directly and substantially." *To-Ro Trade Shows*, 144 Wn.2d at 413. In contrast, Plaintiffs are challenging whether the Initiative is within the local initiative power—a claim that can be raised even pre-election before the Initiative takes effect. Moreover, Plaintiffs have proven direct injury with their declarations supporting summary judgment.[4]

Walker was a pre-election mandamus direct action in the Supreme Court seeking a writ directing the Secretary of State to block from the ballot a statewide initiative limiting the legislature's expenditures due to constitutional issues with the initiative. *See* 124 Wn.2d 402. The nature of the initiative (statewide) and the nature of the challenge (constitutional) are very

[4] *See* MBAKS Decl. (discussing threat of litigation under the Initiative despite compliance with federal and state law); *see also* Dkt. 27 (Declaration of Osprey Logistics, LLC In Support of Plaintiffs' Motion For Summary Judgment) (same); Dkt. 23 (Declaration of Building Industry Association of Washington In Support of Plaintiffs' Motion For Summary Judgment) ("BIAW Decl.") (same); Dkt. 24 (Declaration of Vitaliy Gutsalo on Behalf of Greencity Development, LLC In Support of Plaintiffs' Motion For Summary Judgment) ("Greencity Development Decl.") (same); Dkt. 25 (Declaration of Martin Robinett In Support of Plaintiffs' Motion For Summary Judgment) (same); Dkt. 28 (Declaration of Washington Aggregates & Concrete Association In Support of Plaintiffs' Motion For Summary Judgment) (same).

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different from this case. Indeed, the Court's analysis focused on the political nature of the issues raised. *Id*. at 413. In contrast, courts routinely consider and resolve pre- and post-election challenges to the scope of the local initiative power. *See supra* fn.3. And the *Weden* decision, which was abrogated, does not discuss justiciability or support Intervenor's argument that Plaintiffs' harm is "hypothetical and contingent." *See* 135 Wn.2d 678, 696 (1998), *abrogated by Yim v. City of Seattle*, 194 Wn.2d 682 (2019).

In any event, Intervenors are conflating standards for facial challenges to the constitutionality of a statute with the standard for challenging whether a local initiative exceeds the statutory local initiative power. The standards are not the same. Washington's Supreme Court plainly held that even pre-election challenges—essentially facial challenges—are permissible. *See Spokane Entrepreneurial Ctr*., 185 Wn.2d at 105 ("Requiring challengers to meet heightened standing requirements [for pre-election review of an initiative] does nothing to help the court avoid addressing the substantive validity of a statute before it is enacted, it only limits the groups of people who can challenge initiatives."). Whether a local initiative is beyond the scope of the local initiative power does not depend upon how that initiative is applied. Indeed, the Court already considered the post-election status of Plaintiffs' lawsuit, noting post-election events will not further sharpen the issue and the question remains the same: "conferring rights upon the Watershed either exceeds the local initiative power or it does not." Dkt. 19, Appx. at 6 (citing *Jewels Helping Hands*, 4 Wn.3d at 665). Of course, the Initiative's post-election status has not changed since the Court's previous Order, and the record supporting justiciability has only increased with Plaintiffs' declarations supporting their Motion. *See, supra*.

B. The Court Should Declare the Initiative Invalid.

The Washington Supreme Court's binding precent in *Spokane Entrepreneurial* applies here. *Spokane Entrepreneurial* weighed a pre-election challenge to a local initiative that sought to amend the charter of the City of Spokane, a first-class city like Everett, by creating new rights and a cause of action in a waterway. A simple side-by-side comparison of the rights provided by the Initiative and the initiative in *Spokane Entrepreneurial* show their similarities:

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Everett Initiative Rights	Spokane Initiative Rights
• Right to exist, regenerate, and flourish	• Right to exist and flourish
• Right to naturally recharge	• Right to sustainably recharge
• Right to naturally flow • Right to water quality necessary to provide habitat for plants and animals • Right to provide clean water	• Right to sufficient flows to support native fish and clean water
• Right to restoration	• Right of residents to access and use water in the city
• Right to be free from activities or projects which violate those rights	• Right to enforce new rights

Compare Maguire Decl., Ex. A., and *Spokane Entrepreneurial*, 185 Wn.2d at 101. The Washington Supreme Court found that the Spokane Initiative "conflicted with state law, which already determines the water rights for the Spokane River[,]" and "was administrative in nature because it would deal with how an existing regulatory scheme is implemented." *Spokane Entrepreneurial*, 185 Wn.2d at 109.

Intervenor now attempts to distinguish *Spokane Entrepreneurial* by asserting the holding only concerned "the state's exclusive water allocation framework" because the Spokane Initiative gave Spokane residents access and use rights to the river. Opp. at 9. This argument is simply wrong. Nowhere did the Washington Supreme Court cabin its opinion to that one right, nor did the opinion even mention the word "allocation." Instead, it held "***[t]his broad provision*** is directly contrary to the water rights system established by the State and is outside the scope of the city's authority." *Spokane Entrepreneurial*, 185 Wn.2d at 109 (emphasis added). This Court has already rejected Intervenor's effort to distinguish *Spokane Entrepreneurial* noting that the Initiative "expos[es Plaintiffs] to new lawsuits through a 'supplementary' cause of action [that] adversely affects Plaintiffs' interests." Dkt. 19, Appx. at 3. The two initiatives are materially the same and the Washington Supreme Court's opinion is binding precedent.

1. The So-Called "Preemption Savings" Clause Cannot Cure Invalidity.

Intervenor's argument that the Initiative's "preemption savings clause" saves the Initiative is also wrong.

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First, Intervenor contends the preemption savings clause ensures the Initiative will operate only within the bounds of valid local authority and that Washington law presumes ordinances are valid. Opp. at 14. To support these contentions, Intervenor cites to *Margola Associates v. City of Seattle*, 121 Wn.2d 625 (1993). *Id*. *Margola*, however, did not involve a local initiative. It involved a constitutional substantive due process and takings challenge to a landlord eviction statute. Thus, *Margola* is inapplicable. Moreover, the heightened scrutiny analysis discussed in *Margola* was expressly abrogated by the Supreme Court. *See Yim v. City of Seattle*, 194 Wn.2d 682 (2020). *Margola* is not good law and Intervenor's reliance on it is unavailing. Likewise, Intervenor includes a fictional quote from *City of Longview v. Wallin* for the proposition that the "the initiative power 'is to be liberally construed in favor of the people.'" 174 Wn. App. at 777. But it is well-settled that deference is given to statewide initiatives, which are granted by the Washington State Constitution, not local initiatives, which are a limited power granted by the legislature to localities by statute. *Jewels Helping Hands*, 4 Wn.3d at 686.

Second, Intervenor asserts the preemption clause "ensures non-application of [the supplementary cause of action] wherever it would be incompatible with superior law[.]" Opp. at 15. But the plain language of the preemption clause does not say that the clause applies based upon a case-by-case determination of whether a specific application of the Initiative "would be incompatible[]" with superior law. Opp. at 15. Instead, the plain language states the Initiative does not apply to "areas of law" that have been "preempted[.]" Maguire Decl. Ex. A, § E (1).

Third, Intervenor's contention that an otherwise invalid local initiative can be saved by waiting to see if there is an instance in which the Initiative might be enforced harmoniously with existing law defies common sense and misses the point. A local initiative cannot legislate in administrative areas or areas delegated to the City Council. Either the local initiative is entirely preempted and null and void as a result, or it has some effect that invalidly attempts to regulate administrative matters or matters delegated to the City Council.

The entire purpose of the Initiative, the creation of a new water rights system by a local initiative, "conflict[s] with state law, which already determines the water rights" for the

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Watershed. *Spokane Entrepreneurial*, 185 Wn.2d at 109. Nothing would be left of the Initiative if the rights were severed. *City of Seattle v. Yes for Seattle*, 122 Wn. App. at 393 (2004) (An "initiative may not be severed . . . if the valid and invalid portions are so connected that the valid portions would be 'useless to accomplish the legislative purpose.'"). And, presumably, the Initiative reflects an effort to make new law—creating new rights—and is not mere surplusage.

But even if Intervenor were correct—and it is not—that a preemption clause could somehow cure the Initiative's conflicts with federal and state water laws, it cannot cure the fact that the subject matter of the local initiative is administrative in nature and concerns matters delegated to the City Council and thus beyond the scope of the local initiative power. Again, Intervenor misstates both the administrative in nature and delegation tests, asserting that both are dependent upon finding a conflict with superior law. Specifically, with respect to the test for whether a local initiative is administrative in nature, Intervenor wrongly contends the preemption clause "preserv[es] existing regulatory authority[,]" because it "ensures the [Initiative] operates only ***where it does not conflict with superior law***, preventing any interference with established federal, state, or local regulatory frameworks." Opp. at 11 (emphasis added). And with respect to delegation, Intervenor contends "Initiatives are invalid only if they involve powers granted exclusively to the legislative body (as opposed to the city itself) ***and directly conflict with*** the exercise of that exclusive authority." Opp. at 12 (emphasis added) (citing *Mukilteo Citizens for Simple Gov't v. City of Mukilteo*, 174 Wn.2d 41, 51 (2012)) (quoting *City of Sequim v. Malkasian*, 157 Wn.2d 251, 261 (2006)). Intervenors' summary of the law is wrong. The question is whether the subject matter of a local initiative is administrative or a subject delegated to the City Council. If so, a local initiative may not address the subject matter—whether it purports to conflict with, extend, or gap-fill superior law.

Indeed, the tests for determining whether a local initiative is administrative or concerns a subject delegated to a city council do not refer to preemption whatsoever. Intervenor took the test set forth in *Mukilteo Citizens* and added "and directly conflict with" to it even though that phrase is not part of the test. Opp. at 12 (citing 174 Wn.2d at 51 ("An initiative is beyond the scope of

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the initiative power if the initiative involves powers granted by the legislature to the governing body of a city, rather than the city itself") (quoting *Malkasian*, 157 Wn.2d at 261)). Similarly, an initiative can be administrative in nature regardless of preemption. *See Jewels Helping Hands*, 4 Wn.3d at 689-92 (a local initiative is administrative if it merely "modifies details of," "tinkers with," and "hinders" the already-enacted administrative policy of the local government). Simply, the subject matter of the Initiative—whether it conflicts with state or federal law or not—is an administrative subject matter and a matter delegated to the City Council. As *Spokane Entrepreneurial* held, regulation of the waterways and the creation of new rights for waterways are not proper subjects for a local initiative.

2. The Initiative Is Administrative, Not Legislative.

Both precedent and unrebutted evidence show the Initiative is administrative in nature. There is a complex federal, state, and local policy scheme governing water rights, including those of the watershed. *See Spokane Entrepreneurial*, 185 Wn.2d at 109. The Initiative laments that "current legal frameworks may not adequately protect the Watershed's ability to exist and flourish." Maguire Decl., Ex. A. The Initiative, therefore, creates additional rights in the Watershed, expands standing, and lowers the burden of proof for violations by not allowing "lack of full scientific certainty" to delay or postpone enforcement of the Initiative. *Id.*

Intervenor argues that the Initiative's provisions "represent a fundamental policy shift[.]" Opp. at 11. Intervenor's comment implicitly concedes the existence of a present policy. Indeed, the regulatory regime for waterways in Washington is complex and expansive. The Initiative is quintessentially administrative in nature because it "furthers (or hinders)" that existing scheme. *Jewels Helping Hands*, 4 Wn.3d at 690 (quoting *Port Angeles v. Our Water-Our Choice!*, 170 Wn.2d 1, 10 (2010)). Plaintiffs presented unrebutted evidence that the Initiative harms existing administrative requirements because it subjects them to "conflicting regulations" and allows private individuals and organizations to "bring legal actions in the name of the Snohomish River Watershed" even where Plaintiffs and Plaintiffs' Members "fully comply with all federal, state,

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and City statutes, codes, and regulations[.]" MBAKS Decl. ¶¶ 12-13; BIAW Decl. ¶¶ 12-13; Greencity Development Decl. ¶¶ 12-13. Intervenor has provided no evidence to the contrary.

Consistent with Plaintiffs' evidence, the City of Everett provided supporting evidence that the Initiative harms multiple of its administrative programs. The City presented unrebutted evidence that "[a]ny collateral challenge" under the Initiative to the NPDES Permit for the City's wastewater treatment plan "would disrupt the City's planning and compliance efforts, undermining [the City's] substantial interest in regulatory certainty." Declaration of Jeff Marrs In Support of City of Everett's Response to Plaintiffs' Motion For Summary Judgment ("Marrs Decl.") ¶¶ 2-4. The City also presented unrebutted evidence that the Initiative also interfered with its administration of its Municipal Stormwater Permit, including implementing measures and plans. Declaration of Heather Griffin In Support of City of Everett's Response to Plaintiffs' Motion For Summary Judgment ("Griffin Decl.") ¶¶ 2-6. Intervenor presented no evidence to the contrary and no justifiable basis to distinguish *Spokane Entrepreneurial*. The Court should hold the Initiative is administrative in nature and beyond the scope of the local initiative power.

3. Local Authority Is Limited by the GMA and SMA.

Both precedent and unrebutted evidence show the Initiative interferes with powers delegated to the City Council, including those under the Growth Management Act (GMA) and the Shoreline Management Act (SMA). As discussed above, Intervenor provided an incorrect standard that conflated delegation with preemption. *Supra* § A.1. "'[A] grant of power to [the] city's' legislative authority or legislative body 'means exclusively the mayor and city council and not the electorate.'" *Mukilteo Citizens for Simple Gov't*, 174 Wn.2d at 51. (alterations in original) (quoting *Malkasian*, 157 Wn.2d at 265). A local initiative exceeds its permissible scope if it "involves powers granted by the legislature to the governing body of a city[.]" *Id.* at 51 (quoting *Malkasian*, 157 Wn.2d at 261).

Both the GMA and SMA delegate powers to the City Council. The GMA requires local legislative bodies to establish comprehensive plans and development regulations "to plan their growth, protect the environment, protect the property rights of individuals, and designate and

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protect 'critical areas[,]'" which includes wetlands, fish, and wildlife habitat conservation areas, and frequently flooded areas. *1000 Friends of Wash. v. McFarland*, 159 Wn.2d 165, 169 (2006) (citing RCW 36.70A.020; RCW 36.70A.030(12)). Courts recognize that referenda and local initiatives cannot apply to powers delegated under the GMA. *See Whatcom Cnty. v. Brisbane*, 125 Wn.2d 345, 350-52 (1994); *see also Yes for Seattle*, 122 Wn. App. at 388-93 (declaring a pre-election local initiative invalid because its subject, restoring and regulating creeks, was delegated exclusively to the Seattle City Council by the GMA). Like the GMA, the SMA requires that every local body's master program must "[r]ecognize and protect the statewide interest over local interest[,]" RCW 90.58.020, and details a complex process of developing master programs that includes notice and comment but not referenda, RCW 90.58.090.

The City presented unrebutted evidence that "Everett's 2044 Comprehensive Plan guides the City's growth and development . . . [and t]hese polices and plans squarely address the substance of the Initiative, including water quality of critical areas such as wetlands, and fish and wildlife areas." Declaration of Yorik Stevens-Wajda In Support of Everett's Response to Plaintiffs' Motion for Summary Judgment ¶ 5. An aggrieved party "must adhere to the appeals process established through the Growth Management Hearings Board . . . or file a LUPA action in superior court." *Id.* ¶ 6. And such appeals "must be filed within sixty days of publication of the local government's challenged final action." *Id.* ¶ 8. The Initiative, instead, usurps the established procedures of the GMA and SMA, including by allowing collateral challenges and upending the finality of the long-standing sixty-day appeal deadline.

Intervenors presented no evidence to rebut Plaintiffs' and the City's evidence and so the Court should hold that the Initiative interferes with powers delegated to the City Council.[5]

[5] Intervenor's opposition oddly contends that a genuine issue of material fact exists concerning whether the "Precautionary Principle" lowers the burden of proof in watershed enforcement actions. The Precautionary Principle has nothing to do with this case. It is, as Intervenor notes, a concept in WAC 365-195, which are rules adopted under the Growth Management Act serving as guidance to localities when adopting policies involving critical areas. Where there is a lack of evidence, the WAC guides localities to rely on the "best available science." WAC 365-195-900. If localities do so, they will meet their statutory obligations. The Precautionary Principle is an administrative regulatory concept, not a basis for private rights of actions involving civil liability. Moreover, a dispute over the burden that will exist in future civil lawsuits arising from

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III. CONCLUSION

Intervenor has not provided evidence creating a dispute concerning any genuine issue of material fact. This Court has already correctly decided that Plaintiffs have standing and the dispute is justiciable—and the undisputed evidentiary record supporting those determinations has only increased since that determination. Moreover, Washington's Supreme Court has already held that a materially similar local initiative is beyond the local initiative power, and Intervenor's arguments cannot distinguish the Initiative from the Supreme Court's holding in *Spokane Entrepreneurial*. The Initiative is beyond the scope of the local initiative power and must be declared invalid as a matter of law. The Court should grant Plaintiffs' Motion.

DATED this 17th day of October, 2025.

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the Initiative is not a genuine issue of material fact in dispute. It is a legal issue.

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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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DATED this 17th day of October, 2025.

/s/Robert Maguire
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APPENDIX A

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 "preelection 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.

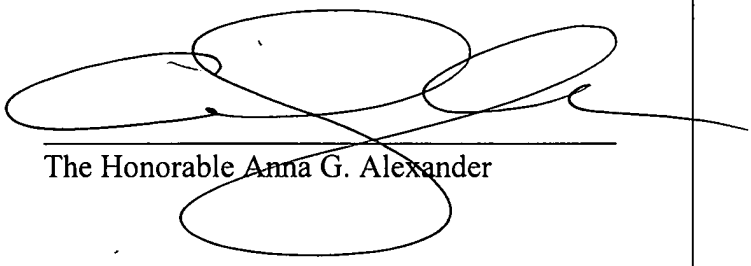
Plaintiffs have alleged a well-grounded fear their rights will be invaded through the Initiative's creation of a new cause of action. A party seeking an injunction must show "(1) that he has a clear legal or equitable right, (2) that he has a well-grounded fear of immediate invasion of that right, and (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.").