

COURT OF APPEALS
THE STATE OF WASHINGTON
DIVISION I

COMPASSION SEATTLE,
Defendant/Appellant,

v.

SEATTLE/KING COUNTY
COALITION ON
HOMELESSNESS,
ACLU OF WASHINGTON, and
TRANSIT RIDERS UNION,

Plaintiffs/Respondents,

and

KING COUNTY, and JULIE WISE,
in her official capacity,

Defendants.

No. _____

King County Superior Court
No. 21-2-10563-3 SEA

COMPASSION SEATTLE'S
EMERGENCY MOTION FOR
STAY

[RAP 1.2(a), 7.3, 8.1(b)(3), 8.3,
17.4, & 18.12]

APPELLANT'S EMERGENCY MOTION FOR STAY

I. NAME & DESIGNATION PARTY FILING THIS MOTION

[RAP 17.3(a)(1)]

This motion is filed by Compassion Seattle – the Sponsor of Seattle Charter Amendment 29.

The full text of this Charter Amendment is printed on the Charter Amendment petitions signed by approximately 64,000 voters. (Tab B to the 8/24 Ceis Declaration; also attached to this motion at Tab B.)

Compassion Seattle has appealed the final order issued by the lower court yesterday (August 30) that prohibits Seattle voters from voting on Charter Amendment 29 in the upcoming November 2, 2021 election.

II. RELIEF SOUGHT

[RAP 17.3(a)(2)]

This motion requests a stay of that lower court order pending resolution of this appeal on the merits.

To prevent the impending ballot-printing deadline from rendering this appeal proceeding moot, this motion also requests an expedited briefing schedule to resolve this stay request:

- response briefs due by 12:00 noon Thursday (September 2)
- reply due by 8:00 a.m. Friday (September 3)

This would allow the Court to rule by end of day Friday (September 3) in order for King County Elections to have time to proof and print ballot by the September 9 date noted on the following pages.

III. NOTICE GIVEN TO OTHER PARTIES
[RAP 17.4(b)]

Appellant’s counsel emailed counsel for the other parties in this case last night after being informed of Compassion Seattle’s decision to seek a stay, and this motion is being emailed to the other parties’ counsel as it is being filed this morning. (A copy of the confirming declaration required by RAP 17.4(b) is attached at Tab A.)

IV. GROUNDS FOR RELIEF SOUGHT / RECORD BELOW
[RAP 17.3(a)(3) & (4)]

The order issued by the lower court yesterday (August 30) prohibits Charter Amendment 29 from being printed on the November 2, 2021 election ballots.¹ Compassion Seattle’s appeal of the lower court’s order, however, becomes moot if ballots are printed and mailed without Charter Amendment 29 on them – for at that point the result of the lower court’s ruling becomes irreversible and impossible to correct.

¹ This August 30, 2021 Order is attached to the Notice Of Appeal filed this morning.

This mootness date is fast approaching. Military and overseas ballots must be mailed by September 18 to comply with RCW 29A.40.070(2).² And to ensure meeting that deadline, ballots need to be finalized and sent to print by September 9.³

This Court's rules are intended to assure that decisions are made on the merits instead of by delay.

- RAP 1.2(a) (this Court's appellate rules "will be liberally interpreted to ... facilitate the decision of cases on the merits").
- RAP 7.3 (this Court "has the authority ... to perform all acts necessary or appropriate to secure the fair and orderly review of a case").
- RAP 8.1(b)(3) ("Except where prohibited by statute, in other civil cases, including cases involving equitable relief ordered by the trial court, the appellate court has authority ... to stay enforcement of the trial court decision upon such terms as are just", and "In evaluating whether to stay enforcement of such a decision, the appellate court will (i) consider whether the moving party can demonstrate that debatable issues are presented on appeal and (ii) compare the injury that would be suffered by the moving party if a stay were not imposed with the injury that would be suffered by the nonmoving party if a stay were imposed").

² 8/24 Declaration of Deputy Director of Elections for King County Janice Case at ¶5.

³ 8/24 Declaration of Deputy Director of Elections for King County Janice Case at ¶5.

- RAP 8.3 (this Court “has authority to issue orders ... to insure effective and equitable review, including authority to grant injunctive or other relief to a party”).
- RAP 18.12 (this Court “may set any review proceeding for accelerated disposition”).

Granting the stay requested by Appellant Compassion Seattle serves the above rules’ purpose, for that stay allows this case to be decided on the merits instead of by delay. See also, *Boeing Co. v. Sierracin Corp.*, 43 Wn. App. 288, 291, 716 P.2d 956 (1986) (if “the fruits of a successful appeal would be totally destroyed pending its resolution, relief should be granted, unless the appeal is totally devoid of merit”) (citing *Shamley v. Olympia*, 47 Wn.2d 124, 286 P.2d 702 (1955)).

The harm that would be caused if this Court denied a stay, moreover, would be significant and irreversible. Approximately 64,000 citizens signed the petitions to put Charter Amendment 29 on the November 2, 2021 ballot.⁴ King County Elections verified the number of valid voter signatures on those petitions surpassed the 33,060 number required to qualify this Charter Amendment for the November 2, 2021 ballot, and the City Council unanimously voted to put Charter

⁴ 8/24 Ceis Declaration at ¶7.

Amendment 29 on the ballot.⁵ And if this charter amendment is kept off the November 2021 ballot, the next time any charter amendment can be proposed in Seattle is 2023.⁶

If this Court does not issue a stay, Seattle’s citizens would therefore be prohibited for two years from considering and adopting a Charter amendment concerning the homelessness crisis Seattle citizens are facing this year. That two year delay irreparably injures – as a practical matter repeals – the Charter amendment process that Seattle citizens adopted to protect themselves in Article XX, section 2 of their Seattle Charter.

In contrast, issuing a stay to allow the printing of ballots and voting to proceed would not impose such irreparable long term injury on plaintiffs. For example, if Seattle voters were to adopt this Charter amendment, plaintiffs would not be prohibited for two years from pursuing their declared intent to challenge this Charter amendment’s

⁵ 8/24 Ceis Declaration at ¶¶8-9.

⁶ This is because the Seattle Charter requires Charter amendments to be submitted to Seattle voters at a general municipal election (Seattle Charter, Article XX - Charter Amendments, section 2), and the next general municipal election after November 2021 is November 2023. RCW 29A.04.330(1) (“All city, town, and district general elections shall be held throughout the state of Washington on the first Tuesday following the first Monday in November in the odd-numbered years.”).

validity or constitutionality if the majority of Seattle citizens vote to adopt it. To quote the briefing of plaintiffs’ current counsel when he successfully opposed the type of pre-emptive injunction plaintiffs in this case demand: “All doubts should be resolved in favor of letting the people vote”, and “any challenges the [opponent] wants to raise will be fully preserved for post-election review”.⁷

The order that plaintiffs authored for the lower court to sign, moreover, has at least five underlying errors which, standing alone or in combination with others, will on the merits require reversal of the lower court’s pre-emptive order prohibiting Seattle citizens from considering and voting on Charter Amendment 29 in the upcoming November election. Each of these five errors raise at the very least a debatable issue justifying appellate review and resolution:

First, as explained by the Charter Amendment Sponsor below, that order’s underlying “initiative process” foundation does not apply to the charter amendment process in this case. See Compassion Seattle’s 8/25

⁷ 8/25 Donovan Authentication Declaration at ¶¶1-2.

Response To Plaintiffs’ 5-Day Summary Judgment Motion For Permanent Injunction at 4-9 (Attached at Tab C).

Second, it relies on what amounts to a sweeping “occupy the field” approach to State legislation holding that once the legislature passes legislation on a topic (e.g., homelessness or budgeting), city Charters are pre-empted and prohibited from dealing with or overlapping with that topic. But the legislature knows how to draft and enact statutory wording to pre-empt and prohibit city Charter amendments when the legislature wants to. E.g., RCW 35.43.030 (providing with respect to statutes authorizing municipalities to create and join in local improvement districts: “This and the following chapters relating to municipal local improvements shall supersede the provisions of the charter of any city of the first class.”). The legislature did not include such prohibition wording in the statutes the lower court referenced – and Washington law does not allow courts to now write into those statutes the prohibition that the legislature omitted. E.g., *Randy Reynolds & Associates, Inc. v. Harmon*, 193 Wn.2d 143, 155-156, 437 P.3d 677 (2019) (“We must not add words where the legislature has chosen not to include them”) (internal quotation mark omitted).

Third, the lower court’s order expands “administrative” matters to mean government officials in our State can immunize themselves from citizens exercising their direct democracy rights by signing a contract to move any issue they want into the “administrative realm”.

Fourth, its reliance on what “could” happen depending upon how the Charter Amendment ends up being applied is not only suppressing Seattle citizens’ voting rights based on speculation about what “could” happen, but is also using an “as applied” test to what are at this point purely “facial” challenges before the Charter Amendment is adopted – challenges which do not survive unless the Charter Amendment cannot on its face be applied lawfully by Seattle.

Fifth, its reliance on a few such as-applied predictions about certain Charter Amendment 29 provisions to declare the entire Charter Amendment null and void completely ignored the severability provision in this Charter Amendment, which expressly states that: “The terms and provisions of this [charter amendment] are severable; if any are found invalid this shall not affect the validity of the remainder.” Charter Amendment 29, section 5.

In short: there are, at the very least, debatable issues in this appeal that justify a stay in order to allow time for appellate review and resolution. Denying a stay simply operates to affirm without review the lower court's ruling against the well over 30,060 citizens who signed the Charter Amendment 29 petitions to allow Seattle voters to consider this Charter Amendment in the November 2, 2021 election.

V. REASON MOTION SHOULD BE DECIDED ON EMERGENCY BASIS [RAP 17.4(b)]

As the above pages explained, Compassion Seattle's appeal becomes moot once ballots are printed and mailed without Charter Amendment 29 on them – and the next time charter amendments can be presented to Seattle's citizens would be in November 2023.

A. Adequate Relief Cannot be Given if Motion Considered in the Normal Course [RAP 17.4(b)(1)]

As also explained above, this fast approaching mootness date is on or about September 9 – which does not allow timely relief in the normal course.

B. Movant Has Taken Reasonable Steps To Give Other Parties Notice [RAP 17.4(b)(2)]

As explained earlier, appellant's counsel emailed counsel for the other parties in this case last night after being informed of Compassion Seattle's decision to seek a stay, and this motion is being emailed to the other parties' counsel as it is being filed this morning.

VI. CONCLUSION

This appeal seeking to vindicate the Charter Amendment rights of the over 33,060 verified Seattle voters who signed the Charter Amendment petitions in this case will soon become moot if this Court does not issue a stay. The Charter Amendment's Sponsor accordingly requests that this Court set this motion for resolution on the expedited briefing schedule proposed above, and stay the lower court's order until this appeal can be resolved on the merits. If this Court grants the requested stay, Appellant will work with the other parties on an expedited briefing schedule so this Court can issue its ruling on the merits before the November 2021 election results are counted if that is this Court's desire.

DATED this 31st day of August, 2021.

FOSTER GARVEY PC

s/ Thomas F. Ahearne

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*Attorneys for Defendant/Appellant
Compassion Seattle*

Thomas F. Ahearne declares as follows:

1. I am an attorney at Foster Garvey PC and represent Compassion Seattle in this appeal. I am of legal age, have personal knowledge of the facts stated herein, and am competent to be a witness in this action.

2. I emailed counsel for the other parties in this case last night after being informed of Compassion Seattle's decision to seek a stay, and this motion is being emailed to the other parties' counsel as it is being filed this morning.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed in Bainbridge Island, Washington, on August 31, 2021.

s/ Thomas F. Ahearne _____

Thomas F. Ahearne



WORKING TOGETHER TO END HOMELESSNESS

Please Return Your Petition or Contact Us At:

Compassion Seattle: P.O. Box 21961, Seattle WA 98111
206-613-3246 Info@CompassionSeattle.org www.CompassionSeattle.org

CHARTER AMENDMENT MEASURE 29

WARNING: Every person who signs this petition with any other than his or her true name, or who knowingly signs more than one of these petitions, or signs a petition seeking an election when he or she is not a legal voter, or signs a petition when he or she is otherwise not qualified to sign, or who makes herein any false statement, shall be guilty of a misdemeanor. In addition, it is unlawful for any person: 1. To sign or decline to sign any petition for a City initiative, referendum, or Charter amendment, in exchange for any consideration or gratuity or promise thereof; or 2. To give or offer any consideration or gratuity to anyone to induce him or her to sign or not to sign a petition for a City initiative, referendum, or Charter amendment; or 3. To interfere with or attempt to interfere with the right of any voter to sign or not to sign a petition for a City initiative, referendum, or Charter amendment by threat, intimidation or any other corrupt means or practice; or 4. To sign any City of Seattle initiative, referendum, or Charter amendment knowing that he or she is not a registered voter of The City of Seattle. Any violation of paragraphs 1, 2, 3, or 4 shall be punishable by a fine of not more than \$500 or by imprisonment for a period not to exceed six months, or by both such fine and imprisonment. (Seattle Ordinance 94289, SMC 2.08.040, RCW 35.21.005).

CHARTER AMENDMENT PETITION FOR SUBMISSION TO THE SEATTLE CITY COUNCIL

To the City Council of The City of Seattle:

We, the undersigned registered voters of The City of Seattle, State of Washington, propose and ask for the amendment to the City of Seattle Charter known as Charter Amendment Measure No. 29 entitled:

City of Seattle proposed Charter Amendment No. 29 concerns actions to address homelessness and keep areas clear of encampments.

This measure would require the City to provide 2,000 housing units within one year; and, until 2028: waive land use regulations for units during declared emergencies; adopt homelessness policies; fund behavioral health and addiction treatment; dedicate minimum 12% of annual general fund revenue to homelessness and human services without affecting certain parks funding; implement diversion programs for law violations connected to poverty or behavioral health; and balance keeping public spaces clear of encampments with avoiding harm to individuals.

Should this measure be enacted into law? YES _____ / NO _____

a full, true and correct copy of which is included herein, and we petition the Council to present said proposed Charter Amendment to the qualified electors of The City of Seattle for approval or rejection at the next general municipal election occurring in accordance with Article XX, Section 2 of the City Charter; and each of us for himself or herself says: I have personally signed this petition; I am a registered voter of The City of Seattle, State of Washington, and my residence address is correctly stated.

— ONLY REGISTERED SEATTLE VOTERS CAN SIGN THIS CHARTER AMENDMENT PETITION —

	Petitioner's Signature	Petitioner's Printed Name	Residence Address (Street/Zip)	Date Signed
SAMPLE	<i>Joan Q. Public</i>	Joan Q. Public	2013 Seattle Blvd, 98100	Jan 21, 2013
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BOTH SIDES OF THIS PETITION MUST BE SUBMITTED ON A SINGLE SHEET OF PAPER FOR SIGNATURES TO BE COUNTED.

BE IT ENACTED BY THE PEOPLE OF THE CITY OF SEATTLE

The People of the City of Seattle, exercising their power to amend the City Charter by popular vote under Article XX, Section 2 of the City Charter, enact the following new article to the Charter of the City of Seattle.

Section 1. A new Article IX is added to the City Charter as follows:

ARTICLE IX. PROVISION OF HOMELESS SERVICES

Section 1.

Consistent with this Charter's preamble, it is necessary to protect and enhance the health, safety, environment and general welfare of all people and to support the economic vitality and sustainability of the City for the benefit of all of the people of Seattle.

Section 2.

First. The City shall fund and provide services to improve the lives of all residents of the City. It is City's goal that no one should have to live outdoors in public spaces. The City shall coordinate and engage with the public, community-based organizations, non-profit service providers, philanthropic organizations, businesses, and collective bargaining representatives, to understand and address current and emerging human service needs. It is City policy to fully support, advance and invest in any regional governmental homelessness authorities. When the City works with other public and private entities to meet its obligations under this Charter Article IX it shall collaborate to ensure successful outcomes and support an innovative and effective regional service network. It is City policy to and the City shall work to end chronic homelessness and racial disparities in the homeless population by investing City funds in practices and strategies, including emergency and permanent housing that effectively engage, shelter and house those who live in public spaces; and, work to retain individuals in housing; both with particular focus on the chronically homeless and those with the greatest barriers and greatest community impact. It is City policy that the effectiveness of strategies and services designed to transition homeless individuals to housing be measured and reported, with specific attention to those who are chronically homeless and facing greatest barriers to engagement, shelter and housing. It is City policy to and the City shall measure and report which City services, activities, and practices may contribute to people entering or experiencing homelessness. Those reports to the public shall occur at least every three months and include clear and specific outcomes to be established by the City.

Second. The City in conjunction with King County and through any agreement with a governmental or non-governmental organization, shall help fund low-barrier, rapid-access, mental health and substance use disorder treatment and services ("behavioral health services") with particular focus on individuals who are chronically homeless and face the greatest barriers to engagement; and also shall help fund and deploy a behavioral health rapid-response field capability that is coordinated where appropriate with City and county non-law enforcement crisis response systems and programs. The City shall fund culturally distinct approaches to behavioral health services to individuals for whom those are effective. The City-funded behavioral health programs and services shall be in combination with access to emergency housing in enhanced shelters, tiny houses, hotel-motel rooms, other forms of non-congregate temporary housing ("emergency housing") or permanent housing for those living in shelters and outdoors in public spaces. For purposes of this Article IX, "permanent housing" is defined as housing that complies with applicable life, safety and health standards for indoor accommodations and includes occupants' rights as tenants.

Third: It is the City's policy to make available emergency and permanent housing to those living unsheltered so that the City may take actions to ensure that parks, playgrounds, sports fields, public spaces and sidewalks and streets ("public spaces") remain open and clear of unauthorized encampments. The City shall develop policies and procedures to address those individuals who remain in public spaces, balancing the City's strong interest in keeping public spaces clear of encampments and the possible harm to individuals caused by closing encampments. The housing and services provided shall acknowledge and be tailored to individual needs and cultural differences and be appropriately person-centered. The City shall prioritize matching willing individuals to housing based on their specific needs and situation and, as appropriate, to accommodate disabling conditions and family type in housing. The City, or its designee, shall appropriately utilize pathways to permanent housing and prioritize individuals or family needs in order to limit emergency housing stays to no longer than necessary. While there is no right to camp in any particular

public space, it is City policy to avoid, as much as possible, dispersing people, except to safe and secure housing, unless remaining in place poses particular problems related to public health or safety or interferes with the use of the public spaces by others. In those circumstances where the City does not close an encampment, the City may still require individuals to shift their belongings and any structures to ensure safety, accessibility and to accommodate use of public spaces.

Fourth. Within six months of the effective date of this Charter Amendment the City shall provide for 1,000 units (in addition to those already funded) of emergency or permanent housing with services including access to behavioral health services and necessary staffing to serve people with the highest barriers. Within one year of the adoption of this Charter Amendment the city shall provide another 1,000 units (in addition to those already funded) of emergency or permanent housing with services including access to behavioral health services and necessary staffing to serve people with the highest barriers.

Fifth. During a declared civil emergency related to homelessness, and to accelerate the production of emergency and permanent housing serving homeless individuals ("projects") as required by this Article IX, it is City policy to and the City shall, to the full extent permitted by state law, (a) waive land use code and regulation requirements as necessary to urgently site projects, (b) waive all City project-related permitting fees for projects and, (c) process the application for project-related permits as first-in-line in order to expedite the permitting process. It also is City policy and the City shall refund to the projects all City imposed costs, fees, and the City's portion of the sales tax on all project expenditures, paid on or after the enactment of this Article IX and during a declared civil emergency related to homelessness.

Sixth. Services to individuals experiencing homelessness shall include identifying and addressing factors known to drive the overrepresentation of Black, Indigenous and People of Color among people experiencing chronic homelessness. Provision shall also be made to include culturally competent services and workforce standards to address safety, appropriate compensation, and working conditions that allow contractors to recruit, retain and stabilize a diverse, skilled and culturally competent workforce. The housing and services provided will acknowledge and be tailored to individual needs and cultural differences and be appropriately person centered. Additionally, consistent with the City's public safety obligations, programs shall be implemented to divert individuals from the criminal justice system whose law violations are connected to a lack of housing, income instability, or behavioral health issues.

Seventh. The actions herein required shall be executed consistent with any plan or actions established or implemented by a regional government authority, provided that a regional plan and activities may be employed by the City to satisfy this Article IX so long as the requirements of this Article IX are satisfied.

Section 3.

There is hereby established in the City Treasury a Human Services Fund to support the human services and homeless programs and services of the City. There shall be placed in the Human Services Fund such moneys as may be budgeted annually for such programs including not less than 12 percent of the City's annual general fund revenues; grants, gifts and bequests for human service purposes received from the general public, businesses and philanthropy; and such other moneys as may be provided by ordinance, without delaying or disrupting full restoration of general fund support for the Department of Parks and Recreation to facilitate repair and restoration of parks and as required by the Interlocal Agreement authorized by City Ordinance 124468.

Section 4.

This Article IX shall sunset and become null and void on December 31, 2027.

Section 5.

The provisions of this Article IX are to be liberally construed to achieve its purposes. Nothing in this Article IX shall be construed to interfere with contracts existing at the time of this Article's enactment, including contracts with regional governmental authorities. The terms and provisions of this Article IX are severable; if any are found invalid this shall not affect the validity of the remainder. This Article IX shall take effect and be in force immediately upon its enactment and shall supersede all preexisting ordinances and rules in conflict herewith.

BOTH SIDES OF THIS PETITION MUST BE SUBMITTED ON A SINGLE SHEET OF PAPER FOR SIGNATURES TO BE COUNTED.

6 SUPERIOR COURT OF WASHINGTON FOR KING COUNTY
7

8 SEATTLE/KING COUNTY COALITION ON
9 HOMELESSNESS, ACLU OF WASHINGTON,
and TRANSIT RIDERS UNION,

10 Plaintiffs

11 v.

12 COMPASSION SEATTLE, KING COUNTY,
13 and JULIE WISE, in her official capacity,

14 Defendants

No. 21-2-10563-3 SEA

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COMPASSION SEATTLE'S RESPONSE
TO PLAINTIFFS' 5-DAY SUMMARY
JUDGMENT MOTION FOR
PERMANENT INJUNCTION, ETC.

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III. FACTS

A. The Seattle Charter

A full copy of the current Seattle Charter is attached to the August 24 Declaration Of Tim Ceis In Response To Plaintiffs’ 5-Day Summary Judgment Motion For Permanent Injunction, Etc. (“8/24 Ceis Dec.”), ¶2 & Tab A. The people of Seattle adopted their current Seattle Charter at the March 12, 1946 general election, and they most recently amended it November 5, 2013. 8/24 Ceis Dec., Tab A at top of first page.

B. The Seattle Charter Amendment at Issue

A full copy of the Seattle Charter amendment at issue (Seattle Charter Amendment 29, which plaintiffs call “CA 29”) appears on the Charter amendment signature petition attached to the 8/24 Ceis Dec. (¶3 & Tab B).

Seattle Cares (d/b/a Compassion Seattle) is the sponsor of this Seattle Charter amendment. 8/24 Ceis Dec. at ¶5. To avoid any potential confusion or distraction with respect to the Charter amendment sponsor’s name (Seattle Cares) and the d/b/a plaintiffs used for the caption in this case (Compassion Seattle), this Response Brief will simply use the term “Charter amendment sponsor”.

C. Plaintiffs’ Prior Suit Delayed Printing of the Charter Amendment Petitions

The Charter amendment sponsor’s printing of Charter amendment petitions was delayed by the May 6 ballot title challenge filed in this Court by plaintiff Transit Riders Union and others (represented by the same plaintiff counsel as in this case). *In Re: Ballot Title Of Proposed Seattle Charter Amendment 29*, King County Superior Court No. 21-2-06029-0 SEA (Judge McDonald). Ceis Dec. at ¶6

The Charter amendment sponsor had to file a motion to be allowed to participate in that lawsuit after plaintiffs refused to allow the Charter amendment sponsor’s intervention absent a court order. 8/24 Ceis Dec. at ¶6 & Tab C (copy of “Charter Amendment Sponsor’s Motion To Intervene In This Action Challenging The Ballot Title For Its Proposed Charter Amendment”, King County Superior Court No. 21-2-06029-0 SEA (Judge McDonald)).

1 Because of that pending lawsuit, the Charter amendment sponsor could not print any
2 Charter amendment petitions until this Court issued its May 25 Order finalizing the wording of the
3 ballot title that had to be printed on the Charter amendment petitions. 8/24 Ceis Dec. at ¶6 & Tab D
4 (copy of “Order On Petition To Appeal Ballot Title”, King County Superior Court
5 No. 21-2-06029-0 SEA (Judge McDonald))

6 **D. The Charter Amendment Petitions Ultimately Filed**

7 Once Judge McDonald issued this Court’s May 25 Order finalizing the ballot title to be
8 printed on the Charter amendment petitions, the Charter amendment sponsor promptly printed and
9 began gathering Seattle citizens’ signatures on those Charter amendment petitions in order to put
10 this Charter amendment to a vote. 8/24 Ceis Dec. at ¶¶ 6-7 & Tab B (copy of Charter amendment
11 petition).

12 The Charter amendment petitions set forth this Charter amendment in full. 8/24 Ceis Dec.
13 at ¶¶ 3-4 & Tab B (copy of Charter amendment petition).

14 The Charter amendment sponsor collected approximately 64,000 signatures on the Charter
15 amendment petitions. 8/24 Ceis Dec. at ¶7 & Tab E.

16 The Charter amendment sponsor filed these Charter amendment petitions with the City
17 Council on July 1, 2021. 8/24 Ceis Dec. at ¶7 & Tab E.

18 In July 2021, the King County Elections department confirmed that these Charter
19 amendment petitions had the at least 33,060 valid signatures required to satisfy the 15% threshold
20 number specified in Seattle Charter Article XX, section 2 in order to put this Charter amendment
21 to a vote in the November 2021 election. 8/24 Ceis Dec. at ¶8, Tab F, & Tab G; see also
22 Part VI.A.3(c) below (quoting the threshold of “fifteen percent in number of the registered voters
23 of the City voting at the last preceding election for the office of Mayor” specified in Seattle Charter
24 Article XX - Charter Amendments, section 2).

1 On August 2, 2021, the Seattle City Council unanimously passed City of Seattle
2 Resolution 32012 to place this Charter amendment on the November 2 ballot pursuant to Seattle
3 Charter Article XX, section 2. 8/24 Ceis Dec. at ¶9, Tab H, & Tab I.

4 **IV. ISSUES**

- 5 (1) Did plaintiffs’ August 19 filings prove that allowing Seattle citizens to consider and vote
6 on this Charter amendment in the upcoming November 2021 municipal election would
7 violate the Charter amendment process that the Seattle Charter specifies for Seattle citizens
8 to amend their Seattle Charter?

9 *(As the following pages explain, the answer is “no”. See Parts VI.A-B below.)*

- 10 (2) If they did so prove, did plaintiffs’ August 19 filings establish that the vague dollar harm
11 they allege they might suffer if a pre-election injunction **is not** granted (i.e., their wanting
12 to spend money campaigning against this Charter amendment before the November 2021
13 election) outweighs the irreparable harm that would result if a pre-election injunction **is**
14 granted (i.e., preventing Seattle citizens from considering and voting on a Charter
15 amendment relating to Seattle’s homelessness crisis until the next municipal election in
16 November 2023)?

17 *(As the following pages explain, the answer is “no”. See Part VI.C below.)*

18 **V. EVIDENCE RELIED UPON**

19 The Charter amendment sponsor relies on the 8/24 Ceis Dec. and 8/25 Authentication
20 Declaration.

21 **VI. LEGAL DISCUSSION**

22 **A. Plaintiffs’ Initiative Process Arguments Do Not Apply to a Seattle Charter 23 Amendment – and this Seattle Charter Amendment Complies with the Seattle 24 Charter Amendment Process**

25 **1. Plaintiffs’ “Initiative Process” Premise**

26 Plaintiffs’ August 19 filings base their permanent injunction demand on a single premise:
“Proposed Seattle Charter Amendment 29 (“CA 29”) is outside the scope of the local *initiative*
process”. Plaintiffs’ Affidavit For Correction Of Election Error at 1:1-3 (italic font added).

1 Plaintiffs’ August 19 filings accordingly argue throughout that allowing Seattle citizens to
2 consider and vote on this Seattle Charter amendment violates Seattle’s *initiative* process.
3 Plaintiffs’ Affidavit For Correction Of Election Error at 1:3 (“initiative process”); 1:4 (“initiative
4 power”); 1:5 (“initiatives and referenda”); 1:6-7 (“initiative power”); 2:5 (“initiative process”);
5 2:10 (“initiative or referendum process”); 2:12 (“initiative”); 2:14 (“initiative process”); 2:16
6 (“initiative process”); 2:18 (“initiative process”); 2:20 (“initiatives and referenda”); 3:2 (“initiative
7 power”); 8:6 (“an initiative”); 10:18 (“initiative power”); 11:3 (“initiative power”); 11:7
8 (“initiatives and referendums”); 11:8 (“initiative power”); 11:10 (“initiative”); 11:12 (“initiative
9 and referendum process”); 11:14 (“initiative process”); 11:16 (“initiative”); 11:17 (“initiative
10 process”); 11:23 (“initiative power”); 12:22 (“initiative power”); 13:5 (“initiative or referendum”);
11 13:6 (“initiative power”); 13:8 (“An initiative”); 13:8 (“initiative power”); 13:12 (“initiative or
12 referendum process”); 13:23 (“initiative process”); 14:3 (“initiative or referendum”); 14:9
13 (“initiative and referendum”); 15:21 (“initiative process”); 16:4 (“initiative power”); 16:15
14 (“initiative power”); 17:17 (“initiative”); 17:19 (“initiatives”); 18:11 (“initiatives”); 19:1 (“an
15 initiative”); 20:7 (“initiative and referendum procedures”); 20:10 (“initiative and referendum
16 process”); 20:12 (“initiative and referendum process”); 20:15 (“initiatives and referenda”); 21:23
17 (“initiative and referendum”); 22:6-7 (“initiative and referenda”); 23:7 (“initiative power”); 23:11
18 (“initiative or referendum”); 24:23 (“initiative power”); 25:4 (“an initiative”); 25:6 (“initiative”);
19 25:7 (“initiative power”); 25:11 (“initiative”); 25:19 (“An initiative”); 25:19 (“initiative process”);
20 25:21 (“initiative power”); 26:3 (“initiative process”).

21 But a Charter amendment is not an initiative. And the Charter amendment in this case is a
22 Charter amendment.

23 The following pages explain why that distinction matters:

24 Part VI.A.2 below outlines how *initiatives* correspond to a legislative branch and the
25 legislative branch’s enactment of statutes or ordinances being subject to the people of that
26

1 jurisdiction having the power to enact or repeal statutes and ordinances by way of initiative and
2 referendum.

3 Part VI.A.3 explains how *Charter amendments* correspond instead to citizens and their
4 power to adopt and amend their own city government’s Charter at a municipal election. Some city
5 Charters (like Spokane’s) state that initiative provisions apply to Charter amendments. But others
6 do not. For example, the *Charter amendment process* that the Seattle Charter specifies for citizens
7 to amend their city government’s Charter does not state that initiative provisions apply to Seattle
8 Charter amendments.

9 Part VI.A.4 then closes with the dispositive point fatal to plaintiffs’ demand: plaintiffs’
10 August 19 filings did not prove that allowing Seattle citizens to consider and vote on this Charter
11 amendment in the upcoming November 2021 municipal election violates the *Charter amendment*
12 *process* that the Seattle Charter specifies for Seattle citizens to amend their Seattle Charter.

13 **2. The Process for Enacting a Statute or Ordinance by Initiative**

14 **(a) Initiatives & the Legislative Branch of our Federal Government**

15 Article I of the United States Constitution establishes the federal government’s legislative
16 branch. United States Constitution, Article I, sections 1-10.

17 The U.S. Constitution does not subject the legislative branch’s power to enact statutes to a
18 reservation by the people of the United States to enact and repeal federal statutes by way of
19 initiative and referendum.

20 **(b) Initiatives & the Legislative Branch of our State Government**

21 Article II of the Washington Constitution, entitled “Legislative Department”, establishes
22 the State government’s legislative branch. Washington Constitution, Article II, sections 1-43.

23 Unlike the U.S. Constitution, the Washington Constitution subjects the legislative branch’s
24 power to enact statutes to a reservation by the people of Washington to enact and repeal state
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1 statutes by way of initiative and referendum, and specifies the process used to so enact a statute by
2 initiative or repeal a statute by referendum. Washington Constitution, Article II, section 1(a)-(e).

3 ***(c) Initiatives & the Legislative Branch of our Seattle Government***

4 Article IV of the Seattle Charter, entitled “Legislative Department”, establishes the Seattle
5 government’s legislative branch. Seattle Charter, Article IV, sections 1-26.

6 Like the Washington Constitution, the Seattle Charter subjects the legislative branch’s
7 power to enact city ordinances to a reservation by the people of Seattle to enact and repeal certain
8 ordinances by way of initiative and referendum, and specifies in Seattle Charter Article IV the
9 process used to so enact an ordinance by initiative or repeal an ordinance by referendum. Seattle
10 Charter, Article IV, section 1.A-.N.

11 **3. The Process for Amending a Constitution or Charter**

12 ***(a) Amending the Federal Constitution***

13 Article V of the United States Constitution establishes the process for amending the
14 U.S. Constitution. United States Constitution, Article V.

15 That amendment process is not by way of initiative.

16 ***(b) Amending the Washington Constitution***

17 Article XXIII of the Washington Constitution establishes the process for amending the
18 Washington Constitution. Washington Constitution, Article XXIII, sections 1-3.

19 That amendment process is not by way of initiative.

20 ***(c) Amending the Seattle Charter***

21 A city Charter can say that provisions applicable to initiatives apply to Charter
22 amendments. For example, the Spokane Charter states:

23 This Charter may be amended by majority vote of the electorate of the City. The
24 provisions of this Charter, with respect to submission of legislation to popular vote
25 by the *initiative*, or by the council of its own motion, *shall apply* to and include the
26 proposal, submission and adoption of amendments.

1 The council may make further regulations for carrying out the provisions of this
2 article, not inconsistent herewith.

3 City of Spokane Charter, Section 125: Amendment of the Charter (*italic font added*).

4 The above Charter amendment process specified in the Spokane Charter is material for two
5 reasons:

6 **First**, it confirms the Spokane case that plaintiffs' August 19 filing exclusively relied upon
7 did not hold the initiative process applies all Charter amendments in our State. Plaintiffs' Affidavit
8 For Correction Of Election Error at 11:8-9 (citing *Spokane Entrep. Ctr. v. Spokane Moves to*
9 *Amend the Const.*, 185 Wn.2d at 101). Instead, that Spokane case simply applied the Charter
10 amendment process specified in the Spokane Charter – a process that specified provisions
11 applicable to *initiatives* apply to Spokane Charter amendments as well.

12 **Second**, it highlights what Seattle citizens could have said – but did not say – in their Seattle
13 Charter. The Seattle Charter does not say that provisions with respect to *initiatives* apply to Charter
14 amendments. Instead of applying the *initiative* process, the citizens of Seattle specified the
15 following process for them to amend their Charter at the ballot box:

16 Whenever fifteen percent in number of the registered voters of the City voting at
17 the last preceding election for the office of Mayor shall file with the City Council a
18 petition for a specified Charter amendment, which shall be set forth in full in such
19 petition, it shall be the duty of the City Council to submit said amendment to the
20 voters of the City for their ratification or rejection at the next general municipal
21 election occurring at least sixty days after the filing of such petition; such
22 amendment shall be submitted in the manner provided by law for the submission
23 of propositions to the voters of the City, provided: That when such petition is filed
24 with the City Council it shall be the duty of the City Clerk to convey the signed
25 petitions to the officer responsible for verification of the sufficiency of signatures
26 under state law, and to convey to the City Council any report received as to the
number of valid signatures contained in such petition. The Council shall provide by
ordinance a penalty for affixing to any such petition any false signature. If at the
general municipal election at which such amendment is submitted, a majority of the
lawful voters voting thereon shall by their vote ratify any amendment so submitted,
the same shall thereby become a part of the Charter and within five days after
certification of the results of such election it shall, by proclamation of the Mayor,
which shall be published in the city official newspaper, be so proclaimed, provided:
That if more than one amendment be petitioned for and submitted at the same

1 election such amendments shall be submitted in such manner that the electors may
2 vote for or against each amendment separately, and provided further; That, after
3 submission by the City Council, every such amendment shall be published by the
4 City Clerk in accordance with state law prior to such election and such other notice
5 shall be given as may be required by state law for the submission of propositions to
6 the voters of the City for their ratification or rejection.

7 Seattle Charter, Article XX - Charter Amendments, section 2.

8 **4. Plaintiffs Did Not Prove a Violation of the Seattle Charter Amendment Process**

9 Plaintiffs' August 19 filings did not prove (or even claim) that allowing Seattle citizens to
10 consider and vote on this Charter amendment in the upcoming November 2021 election violates
11 the *Charter amendment process* specified in the Seattle Charter. Plaintiffs' permanent injunction
12 demand must be denied for the straightforward reason that the Seattle Charter's above-quoted
13 amendment process requires – rather than prohibits – the submission of this Seattle Charter
14 amendment to Seattle's citizens for their consideration in the upcoming November 2021 election.

15 As noted at the beginning of this response, plaintiffs have a right to debate the wisdom of
16 this Charter amendment and urge Seattle citizens to reject this Charter amendment. But plaintiffs
17 August 19 filings did not prove plaintiffs are entitled to the court order they demand to
18 pre-emptively silence debate and suppress Seattle citizens' voting pursuant to the *Charter
19 amendment process* set forth in the Seattle Charter that Seattle's citizens adopted.

20 **B. Even If This Were an Initiative Instead of Charter Amendment, the Statutes &
21 Contract Plaintiffs Cite Would Not Justify the Pre-Emptive Order Plaintiffs
22 Demand**

23 Although the citizens of Spokane specified in their Charter that the *initiative* process
24 applies to Spokane Charter amendments, the citizens of Seattle did not do that in the Charter they
25 adopted. Even if this Court were to now amend the Seattle Charter to read like the Spokane Charter
26 in order to make the *initiative* process apply to Seattle Charter amendments, this Court's making
that Charter amendment still would not justify the pre-emptive order plaintiffs demand. That's
because, as the following pages point out, the statutes and ILA contract plaintiffs invoked for their
initiative arguments still would not justify that order.

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1. Homelessness Statutes

Plaintiffs’ primary *initiative* argument is this Court must pre-emptively block the upcoming election because the legislature pre-empted and prohibited initiatives relating to homelessness when it passed RCW 43.185C and ESSHB 1277.¹

But Charter Amendment 29 is a charter amendment – not an initiative. And the legislature knows how to draft and enact statutory wording to pre-empt and prohibit city Charter amendments when the legislature wants to. E.g., RCW 35.43.030 (providing with respect to statutes authorizing municipalities to create and join in local improvement districts: “This and the following chapters relating to municipal local improvements shall supersede the provisions of the charter of any city of the first class.”).

The legislature did not include such prohibition wording in the statutes plaintiffs cite. Washington law does not allow this Court to now write into those statutes the prohibition that the legislature omitted. E.g., *Randy Reynolds & Associates, Inc. v. Harmon*, 193 Wn.2d 143, 155-156, 437 P.3d 677 (2019) (“We must not add words where the legislature has chosen not to include them”) (internal quotation mark omitted).

Plaintiffs similarly suggest this Court must pre-emptively strike down this Charter amendment because this amendment might require Seattle to end up violating the State homelessness statutes plaintiffs cite.² But plaintiffs’ August 19 filings did not establish that this Charter amendment in fact prevents Seattle from complying with those statutes (because it does not).

2. Budget Statutes

Another one of plaintiffs’ *initiative* arguments is based on speculation about what this Charter amendment “could be interpreted to cost”, what such costs possibly “could force Seattle” to do, that funds might have to be reallocated “depending on how CA 29 [this Charter amendment]

¹ *Plaintiffs’ Affidavit For Correction Of Election Error at 3-5, 8, 19-23.*

² *Plaintiffs’ Affidavit For Correction Of Election Error at 19-23.*

1 is interpreted”, and “depending on how it is interpreted” possibly “could repeal” some of the City’s
2 encampment provisions.³ Plaintiffs further insist this Charter amendment’s “budgetary language
3 is unclear”, “there are multiple ways to interpret” its funding provisions, and it’s therefore possible
4 this Charter amendment “may require” some additional appropriation or reprioritizing of some
5 payments.⁴

6 Plaintiffs conclude this Court must therefore pre-emptively block the upcoming election
7 because an initiative cannot properly require Seattle to violate the State budgetary statutes
8 plaintiffs cite.⁵ But the speculation and assertions in plaintiffs’ August 19 filings did not establish
9 that this Charter amendment in fact prevents Seattle from complying with those statutes. (To the
10 contrary, this Charter amendment does not.) Thus, even if this Article XX Charter amendment
11 were instead an Article IV initiative, plaintiffs’ *initiative* argument would still fail.

12 3. Zoning/Land Use Laws

13 Another one of plaintiffs’ *initiative* arguments is that this Court must pre-emptively block
14 the upcoming election because an initiative’s including “waiver” and other provisions concerning
15 housing for persons experiencing homelessness violates Washington law by illegally interfering
16 with zoning and land use laws.⁶

17 But Charter amendment section 2 expressly states that its waiver and corresponding
18 provisions only apply “to the full extent permitted by state law.” Seattle Charter Amendment 29,
19 section 2. Plaintiffs’ August 19 filings accordingly did not establish that this Charter amendment
20 must be struck down as illegal on the grounds that its zoning/land use provisions instead require a
21 violation of Washington law. (To the contrary, this Charter amendment does not.) Thus, even if
22

23 ³ Plaintiffs’ Affidavit For Correction Of Election Error at 1:18, 1:19, 8:16-17, 15:18-19.

24 ⁴ Plaintiffs’ Affidavit For Correction Of Election Error at 17:3-15.

25 ⁵ Plaintiffs’ Affidavit For Correction Of Election Error at 16-19.

26 ⁶ Plaintiffs’ Affidavit For Correction Of Election Error at 13-15.

1 this Article XX Charter amendment were instead an Article IV initiative, plaintiffs’ *initiative*
2 argument would therefore fail.

3 **4. Contracting Away Citizens’ Charter Amendment Rights**

4 Another one of plaintiffs’ *initiative* arguments begins with assertions about a contract
5 relating to a regional homelessness authority (interlocal agreement or “ILA”), and then proceeds
6 to insist this Court must pre-emptively block the upcoming election because that contract
7 contracted away initiative rights with respect to the homelessness crisis Seattle citizens face –
8 specifically, by contractually transforming the topic of homelessness into a merely
9 “administrative” matter immune from the initiative power.⁷

10 But plaintiffs’ August 19 filings provided no legal authority for their essential legal premise
11 that the city can so nullify or contract away the Charter amendment right that Seattle citizens
12 expressly specified for themselves when they adopted Article XX, section 2 of their Seattle
13 Charter. Plaintiffs’ August 19 filings accordingly did not establish that this Court must
14 pre-emptively strike down this Charter amendment as illegal on the grounds that the ILA contract
15 nullified and contracted away the Charter amendment right Seattle citizens specified for
16 themselves in their Seattle Charter.

17 **C. Plaintiffs Did Not Prove the Balance of Hardships Require the Pre-Emptive**
18 **Permanent Injunction They Demand**

19 **1. Harm Plaintiffs Claim If This Court Does Not Prohibit Seattle Citizens from**
20 **Voting in the Upcoming November 2021 Municipal Election**

21 Plaintiffs’ August 19 filings alleged the harm they would suffer if this Court does not
22 prevent Seattle citizens from voting on whether to amend their Seattle Charter in the upcoming
23
24

25 _____
26 ⁷ *Plaintiffs’ Affidavit For Correction Of Election Error at 5-7, 8, 23-25.*

1 November 2021 municipal election: specifically, plaintiffs would choose to expend resources
2 campaigning against this Charter amendment.⁸

3 **2. Counterbalancing Harm If This Court Does Prohibit Seattle Citizens from**
4 **Voting in the Upcoming November 2021 Municipal Election**

5 As noted earlier, the Seattle Charter mandates that Charter amendments must be submitted
6 to Seattle voters at a general municipal election. Seattle Charter, Article XX - Charter
7 Amendments, section 2. The next general municipal election after November 2021 is
8 November 2023. RCW 29A.04.330(1) (“All city, town, and district general elections shall be held
9 throughout the state of Washington on the first Tuesday following the first Monday in November
10 in the odd-numbered years.”)

11 Prohibiting Seattle Citizens from voting on this Charter amendment concerning the current
12 homelessness crisis that Seattle citizens face would therefore force Seattle citizens to wait two
13 more years to be allowed to consider and adopt a Charter amendment addressing the current crisis
14 they are facing this year. That two year delay irreparably injures – indeed, as a practical matter,
15 effectively repeals – the Charter amendment process that Seattle citizens adopted to protect
16 themselves in Article XX, section 2 of their Seattle Charter.

17 In contrast, allowing the voting on this Charter amendment to proceed would not impose
18 such irreparable long term injury on plaintiffs. For example, if Seattle voters were to adopt this
19 Charter amendment, plaintiffs would not be prohibited for two years from pursuing their declared
20 intent to challenge this Charter amendment’s validity or constitutionality if the majority of Seattle
21 citizens vote to adopt it. To quote the briefing of plaintiffs’ current counsel when he successfully
22 opposed the type of pre-emptive injunction plaintiffs in this case demand: “All doubts should be
23 resolved in favor of letting the people vote”, “When thousands of voters have signed an initiative
24 petition, [an opponent] should not be able to hold the people’s initiative hostage merely because it

25 ⁸ *Plaintiffs’ Affidavit For Correction Of Election Error at 12:13-14 (citing Storms Decl. at ¶5,*
26 *Eisinger Decl. at ¶5, Wilson Decl. at ¶6).*

1 opposes the policy or has questions about the measure’s validity”, and “any challenges the
2 [opponent] wants to raise will be fully preserved for post-election review”. 8/25 Donovan
3 Declaration at ¶¶1-2

4 **VII. CONCLUSION**

5 For the reasons explained above, this Court should:

- 6 (1) deny plaintiffs’ demand to enter the pre-emptive order they request to block and
7 suppress Seattle citizens’ voting on whether to adopt the Charter amendment at issue,
8 and
9 (2) accordingly dismiss plaintiffs’ pre-election suit – but without prejudice to raise
10 post-election challenges to this Charter amendment’s validity or constitutionality if
11 Seattle’s citizens end up voting to adopt it in the upcoming November 2, 2021
12 election.

13 A proposed Order is attached.

14 *King County Local Rule 7(b)(5)(B)(vi) Word Limit Certification [motions and oppositions
15 not exceed 4,200 words; replies not exceed 1,750 words; including headings and footnotes,
16 but not (1) caption, (2) TOC / TOA, & (3) signature block in word limit certification]:*

17 *“I certify that this memorandum contains 4068 words, in compliance with the Local Civil
18 Rules.”*

19 DATED this 25th day of August, 2021.

20 FOSTER GARVEY PC

21 *s/ Thomas F. Ahearne*

22 Thomas F. Ahearne, WSBA #14844

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Attorneys for Seattle Charter Amendment 29 sponsor Seattle

Cares, d/b/a Compassion Seattle

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6 SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

7 SEATTLE/KING COUNTY COALITION ON
8 HOMELESSNESS, ACLU OF WASHINGTON,
9 and TRANSIT RIDERS UNION,

10 Plaintiffs

11 v.

12 COMPASSION SEATTLE, KING COUNTY,
13 and JULIE WISE, in her official capacity,

14 Defendants

No. 21-2-10563-3 SEA

ORDER OF DISMISSAL

[proposed]

15
16 This matter comes before the Court on plaintiffs' August 19, 2021 affidavit and motion
17 requesting declaratory and injunctive relief. Having considered that affidavit and motion, together
18 with defendants' responses, plaintiffs' reply, and the other submissions filed in this matter, and
19 having heard the parties' oral arguments, the Court finds that plaintiffs' requested relief should be
20 denied, and this case dismissed without prejudice to plaintiffs' pursuing a post-election challenge
21 to the validity or constitutionality of the Seattle Charter amendment they oppose if Seattle's
22 citizens adopt it in the upcoming November 2, 2021 election.

1 It is accordingly hereby ORDERED, ADJUDGED, and DECREED that:

2 (1) plaintiffs' affidavit and motion requesting declaratory and injunctive relief is denied,
3 and

4 (2) this case is dismissed without prejudice to plaintiffs' pursuing a post-election
5 challenge to the validity or constitutionality of Seattle Charter Amendment 29 if
6 Seattle's citizens adopt it in the upcoming November 2, 2021 election.

7 SO ORDERED this _____ day of August, 2021.

8
9 _____
10 The Honorable Catherine Shaffer
King County Superior Court Judge

11 Presented by: _

12
13 FOSTER GARVEY PC

14 s/ Thomas F. Ahearne

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