THE HONORABLE LAURA GENE MIDDAUGH

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

FOR KING COUNTY

CITY OF SEATTLE, a Washington municipal corporation, Plaintiff, v. PROTECT SEATTLE NOW; SIERRA CLUB SEATTLE GROUP; SCOT BRANNON, in his capacity as Protect Seattle Now's Treasurer and a principal referendum petitioner; LET'S MOVE FORWARD; PHIL LLOYD, in his capacity as Let's Move Forward's Secretary/ Treasurer; WASHINGTON STATE DEPARTMENT OF TRANSPORTATION, Defendants.	Case No. 11-2-11719-7 SEA **~~[PROPOSED]~~ ORDER DISMISSING CITY OF SEATTLE AS PARTY PLAINTIFF AND REARRANGING THE PARTIES** CLERK'S ACTION REQUIRED

This matter came before the Court on the motion of Protect Seattle Now ("PSN") pursuant to CR 12(b) and CR 17 to dismiss the City of Seattle ("the City") as party plaintiff. For the reasons set forth below, the motion is GRANTED, the Washington State Department of Transportation ("WSDOT") is substituted as the plaintiff in charge of the complaint, and the City of Seattle as a necessary party shall remain in the case as a defendant.

I. DOCUMENTS AND EVIDENCE CONSIDERED

In considering the motion, the Court reviewed the following:

- PSN's Motion to Dismiss City of Seattle as Party Plaintiff; Declaration of Gary W. Manca in Support of PSN's Motion to Dismiss City of Seattle as Party Plaintiff; and

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EXHIBIT O

PSN's Reply in Support of Motion to Dismiss City of Seattle as Party Plaintiff.

- The City's Opposition to Motion to Dismiss; and Declaration of Richard Conlin and the exhibits attached thereto.
- Let's Move Forward and Phil Lloyd's Statement Regarding PSN's Motion to Dismiss.
- WSDOT's Response to PSN's Motion to Dismiss City of Seattle as Party Plaintiff.
- All the other pleadings and papers on file in this case.

II. STATEMENT OF RELEVANT FACTS

On February 28, 2011, the Seattle City Council enacted Ordinance 123542, overriding a mayoral veto. On March 29, 2011, PSN and its volunteers filed a referendum petition ("proposed Seattle Referendum No. 1") with the Seattle City Clerk, and its sufficiency was later verified by the King County Elections Department and the City Clerk. Proposed Seattle Referendum No. 1 seeks to refer Ordinance 123542 to the voters of Seattle for their approval or rejection.

Also on March 29, 2011, Seattle City Attorney Peter Holmes filed the complaint in this case, seeking a declaratory judgment that proposed Seattle Referendum No. 1 is outside the scope of the referendum power of Seattle voters. The President of the Seattle City Council, Richard Conlin, asked Mr. Holmes if he would file such a complaint. The Mayor of Seattle objected to Mr. Holmes bringing this action, and no authorization from the City Council as a legislative body appears in the record.

III. STATEMENT OF ISSUES

A. Whether the Seattle City Attorney has the independent authority to initiate a lawsuit, on behalf of the City of Seattle as a municipal corporation, challenging the referendum or initiative power of Seattle voters.

B. Whether the President of the Seattle City Council has the authority to request the Seattle City Attorney to initiate a lawsuit, on behalf of the City of Seattle as a municipal corporation, challenging the referendum or initiative power of Seattle voters.

C. Whether another party should be substituted as plaintiff.

D. Whether the City of Seattle should remain in this case as a necessary party defendant.

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III. ORDER

The Seattle City Charter describes the duties and power of the Seattle City Attorney as follows: "The City Attorney shall have full supervisory control of all the litigation of the City, or in which the City or any of its departments are interested, and shall perform such other duties as are or shall be prescribed by ordinance." Seattle City Charter, art. XIII, § 3. ~~A common sense~~ The word "supervisory" means to oversee. [illegible] not [illegible]. The term "supervisory control" does not grant the City Attorney with the independent authority to initiate a lawsuit on behalf of the City of Seattle as a municipal corporation seeking a declaration that a citizen referendum or initiative is beyond the power of city voters. The City has not produced any ordinance showing that the City Attorney has such independent authority.

Nor does Mr. Conlin have the power as President of the Seattle City Council to authorize such a lawsuit in the name of the City of Seattle. Nothing in the City Charter grants such expansive power to the head of the Legislative Department to act in the name of the City of Seattle. The City Council has General Rules and Procedures that set forth the duties of the Council President, but these tend to be ministerial in nature. The Council, when it acts to legislate for the City as a whole, does so as a body. The record does not indicate that the City Council has taken any action as a legislative body to authorize Mr. Holmes to bring this lawsuit on behalf of the City.

Therefore, no city official or body with the power to do so has authorized this lawsuit on behalf of the City of Seattle. The City is therefore dismissed as party plaintiff.

WSDOT has indicated its willingness to substitute as plaintiff and take control of the complaint. Such a substitution is proper under CR 17, and WSDOT shall be rearranged from

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defendant to plaintiff in this matter, with control of the complaint. This substitution shall have the same effect as if the action had been commenced in the name of WSDOT.

The City of Seattle is a necessary party to this action. Therefore, the City of Seattle shall remain a party in this case, but as a defendant.

The parties to this case shall henceforth caption the case in accordance with the rearrangement of the parties set forth in this order.

The COURT CLERK is directed to update the Clerk's files, however the Clerk deems appropriate, to reflect the current identification of the parties in accordance with the rearrangement of the parties set forth in this order.

IT IS SO ORDERED.

DATED this 20 day of May 2011.

SUPERIOR COURT JUDGE

Laura Gene Middaugh

PRESENTED BY:

MANCA LAW, PLLC

s/ Gary Manca
Gary W. Manca, WSBA No. 42798
Attorney for Protect Seattle Now

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