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SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN THE COUNTY OF KING

ELIZABETH CAMPBELL, DORLI
RAINEY, BUD SHASTEEN, AND ED
PLUTE,

Petitioners.

No.

PETITION FOR RECALL AND
DECLARATION OF ELIZABETH
CAMPBELL, DORLI RAINEY, BUD
SHASTEEN, AND ED PLUTE, IN THE
MATTER OF THE RECALL OF CITY
OF SEATTLE COUNCIL MEMBER
RICHARD CONLIN

COMES NOW, Elizabeth Campbell, Dorli Rainey, Bud Shasteen, and Ed Plute,
and makes the following petition and declaration for the recall of Seattle City Council
Member Richard Conlin pursuant to the provisions of RCW 29A.56 § RECALL:

I. PARTIES

1. I, Elizabeth Campbell, Dorli Rainey, Bud Shasteen, and Ed Plute, declare that we
are over the age of 18 years and are competent to testify as to the matters herein. We
reside in Seattle, Washington.

1 2. Richard Conlin is a member of the Seattle City Council (interchangeably
2 Council/City Council). He was elected to Position Number 2 on the Council on
3 November 3, 2009. Conlin presently serves as the City Council President and in that
4 capacity he does such things as chair the meetings of the full council and ensures that all
5 agenda items are heard and acted upon in accordance with both the *Seattle City Council*
6 *Rules and Procedures*¹ (**EXHIBIT A**) and in accordance with the *Seattle City Charter*.

8
9 II. ACTS OF RICHARD CONLIN SUBJECT TO RECALL

10 **CHARGE 1. SDEIS MATTER - Violating Separation of Powers between Executive**
11 **Branch and Legislative Branch of City Government; Attempting to Give Official**
12 **City Approval of an Environmental Review Document Prepared under NEPA and**
13 **SEPA**²; **Ex Post Facto Activity by the Seattle City Council.**

14 PART ONE: As part of the environmental review of the Alaskan Way Viaduct Central
15 Waterfront Replacement Project (Project), a Supplemental Draft Environmental Impact
16 Statement (SDEIS) was prepared by the Washington State Department of Transportation
17 (WSDOT). On or about September 16, 2010 a preliminary draft of the SDEIS was
18 submitted by WSDOT to the City of Seattle Department of Transportation³ (SDOT) for
19 SDOT's review, comment, and approval.

20 On or about September 16, 2010 the director of SDOT, Peter Hahn, requested that
21 WSDOT give SDOT an additional seven days in order that SDOT and the Mayor of
22 Seattle, Michael McGinn, could more thoroughly review the draft SDEIS and in order to
23 prepare the City's comments on the SDEIS document.

24
25 ¹ As amended through Resolution No. 30948.

26 ² NEPA – National Environmental Protection Act; SEPA – State Environmental Protection Act

27 ³ The City of Seattle is designated as a co-lead agency with WSDOT on this project for purposes of
28 concurrency related to National Environmental Protection Act (NEPA).

1 Initially WSDOT agreed in principle with Hahn's request, but at 3:43 PM on the
2 afternoon of September 23, 2010, WSDOT sent an email (**EXHIBIT B**) to Hahn,
3 formally refusing the Mayor's request for an extension, and demanding that SDOT
4 immediately sign off on the draft of the SDEIS by 4:00 PM that day.

5
6 Without consultation with or agreement from the Mayor or SDOT's Hahn,
7 Council Member Richard Conlin independently made the decision that he would sign off
8 on the SDEIS. Late on the afternoon of the 23rd he signed the SDEIS document on behalf
9 of the City of Seattle, signifying the City's approval of the SDEIS. He thereafter
10 prepared and transmitted to the rest of the Council members and other legislative
11 department staff an email announcement (**EXHIBIT C**) that he had done the same.
12 Conlin went on to also state publicly that he had signed the SDEIS document in Hahn's
13 stead and that he had legal authority to do so.

14
15 Also on September 23, 2010 the City Attorney told a local newspaper (**EXHIBIT**
16 **D**)⁴ that he had not been consulted by Conlin about signing the SDEIS. In response to
17 inquiries from the news media, the public, and within City Hall about the legality of
18 Conlin signing the SDEIS Holmes issued a News Advisory (**EXHIBIT D**) on the
19 afternoon of September 24, 2010 that sidestepped the issue of legality and instead sought
20 to justify Conlin's act.

21
22 The head of WSDOT, Paula Hammond, also issued a public statement
23 (**EXHIBIT E**) on September 24, 2010 related to the matter of Conlin signing the SDEIS
24

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26 ⁴ Holden, Dominic. "Going Over Mayor's Head on Tunnel, Conlin Signs Off on State Impact Study".
27 *Stranger*. September 23, 2010. Index Newspapers, LLC.
<http://slog.thestranger.com/slog/archives/2010/09/23/conlin-tries-to-go-over-mayors-head-signs-impact-study-on-tunnel/>

1 on behalf of the City. She stated that WSDOT had accepted Conlin's act of signing the
2 City's approval of the SDEIS as legally binding act; she noted in the release that:

3 "His signature allows the environmental analysis of the proposed bored
4 tunnel to be released for public review and comment next month."

5 Therefore, the signing of the SDEIS was more than just a clerical, administrative type of
6 act, it was an important legal step in the context of a Federal and State mandated
7 environmental review process that Conlin had tampered with.

8 The City's signed and approved copy of the SDEIS was transmitted to WSDOT.
9 WSDOT in turn signed off on the SDEIS also signifying its approval of the document
10 along with the primary co-lead agency, the Federal Highway Administration; a copy of
11 the SDEIS approval page signed by each of the governmental entities is attached hereto
12 as **EXHIBIT F**. The SDEIS was subsequently published and distributed to the public for
13 their review and comment in October, 2010.

14
15 On September 29, 2010 WSDOT sent an extensive Memorandum (**EXHIBIT G**)
16 to Richard Conlin, pursuant to Conlin's request to WSDOT, requesting that WSDOT
17 provide him with the details of the City of Seattle's status as a co-lead agency, the
18 procedural details of that relationship, and other notes about the history of the
19 relationship. The memo confirmed that SDOT was the main agency within the City of
20 Seattle that WSDOT had coordinated its environmental work on the Project with.

21 While WSDOT also indicated in the memo that it had worked with other city
22 departments throughout the time which the Project had been under environmental review,
23 since at least 2001 (some eight plus years), WSDOT noted that SDOT is the City
24 department to which all drafts of environmental review documents were submitted to.

25 This well known understanding of the relationship for administering the
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1 environmental review process for the Project, between WSDOT and SDOT, is further
2 underscored by a review of who/which City department head signed off on the approval
3 of the Project's 2004 Draft Environmental Impact Statement (**EXHIBIT H**), it was the
4 head of SDOT, and on the Project's 2006 SDEIS (**EXHIBIT I**) – again, SDOT's director
5 signed the EIS document.
6

7 Nothing in WSDOT's memo, in the Project record, or in the myriad of historical
8 acts between WSDOT and the City of Seattle related to the Project would indicate that
9 any other person was authorized and empowered to sign on behalf of the City and extend
10 its approval of environmental review documents other than a member of the Executive
11 Branch of City government.
12

13 PART TWO: At a full City Council meeting on October 4, 2010, Council Bill 116983
14 was on the Council's agenda (**EXHIBIT J**) for the Council's consideration; it was
15 introduced by Council Member Sally Bagshaw. The Council passed the Bill, creating
16 Ordinance 123424 (**EXHIBIT K**). The main purpose of the Ordinance was to first
17 justify then ratify Conlin's September 23rd signing of the SDEIS:
18

19 "Consistent with Section 1 and Section 2 of this Ordinance, the City Council
20 ratifies and confirms Council President Richard Conlin's signature on the
21 Supplemental Draft Environmental Impact Statement..."⁵

22 Conlin's signing of the SDEIS was then characterized in the Ordinance as an act he had
23 taken pursuant to a policy that did not exist at the time that Conlin signed the SDEIS; the
24 policy that the City Council had just established in Ordinance 123424. That new policy,
25 ratified post-Conlin's signing of the SDEIS, on the basis that the Council wanted to be
26

27 ⁵ Ordinance 123424, Page 2, Section 3, Lines 12-14
28

1 sure that the City maintained its assorted advise and consent relationships with WSDOT
2 in regards to the Project, its co-lead status.⁶

3 The Council's questionable legislative act aside, in operation Ordinance 123424
4 is an ex post facto law seeking to legalize Conlin's act which was in contravention to the
5 Seattle City Charter and the separations between powers that it establishes between the
6 Executive and Legislative branches of City government:
7

8 ARTICLE IV. Legislative Department.

9 Sec. 4. POWERS AND DUTIES OF COUNCIL:

10 "...no members shall have or exercise executive or administrative power, except
as otherwise expressly provided in this Charter."

11 On October 25, 2010 Mayor McGinn sent a letter (**EXHIBIT L**) to Richard
12 Conlin objecting to and remonstrating with Conlin over Conlin's signing of the SDEIS.

13 McGinn stated:

14 "By now, I believe we all recognize that the Council President does not
15 have authority to approve or issue an SDEIS on behalf of the City.
16 Consistent with State and City law, only SDOT has that
17 authority...Because the SDEIS was issued without SDOT's approval,
18 there remains uncertainty as to SDOT's role in the process and
responsibility for the document".

19 **CHARGE 2. REFERENDUM MATTER - Colluding with City Attorney to Initiate and**
20 **Prosecute Litigation Without Constitutional or Charter Authority; Expenditure of**
21 **City Funds for Same; Failure to Perform an Official Duty Pursuant to City Charter**
22 **and Oath of Office.**

23 PART ONE: On March 29, 2011 City Attorney Peter Holmes filed a lawsuit⁷ against
24 Referendum 1, challenging its referability for a vote and seeking the court's opinion
25 about whether or not the Referendum exceeded the scope of legislative actions that are

26 ⁶ Ordinance 123424, Page 2, Sections 1 and 2

27 ⁷ King County Superior Court, Case No. 11-2-11719-7 SEA, City of Seattle v. Protect Seattle Now, et al.
28 Order dated May 20, 2011.

1 subject to referendum. On that same day Holmes issued a news release (**EXHIBIT M**)
2 announcing that he had filed the referendum lawsuit and he conducted numerous media
3 print, radio, TV, and blog interviews. During those interviews Holmes was asked by
4 media representatives about his authority to file such a lawsuit. In response Holmes
5 stated un-categorically that as city attorney he had the independent authority to initiate
6 such litigation.
7

8 On May 2, 2011 Richard Conlin filed an under penalty of perjury declaration
9 (**EXHIBIT N**) in the above referendum case. In it Conlin stated that one, he directed the
10 City Attorney to file the lawsuit challenging Referendum 1,⁸ and two, that he did so, “so
11 that the Legislative Department can comply with its legal responsibilities”.⁹
12

13 On May 13, 2011 a hearing was held in the matter of the City of Seattle v. Protect
14 Seattle Now et al, the Referendum 1 lawsuit. At the hearing Judge Middaugh determined
15 that the City Attorney lacked authority to initiate a lawsuit independently against the
16 referendum, and that council member Conlin also lacked independent authority to
17 commission the City Attorney to file a lawsuit, against the referendum (or anything else
18 for that matter). According to Judge Middaugh’s Order in the case (**EXHIBIT O**)¹⁰
19

20 “The term “supervisory control” does not grant the City Attorney
21 with independent authority to initiate a lawsuit on behalf of the City of
22 Seattle as a municipal corporation seeking a declaration that a citizen
23 referendum or initiative is beyond the purview of city voters. The City has
not produced any ordinance showing that the City Attorney has such
independent authority.

24 “Nor does Mr. Conlin have the power as President of the Seattle
25 City Council to authorize such a lawsuit in the name of the City of Seattle.

26 ⁸ Conlin Declaration, Page 2, Lines 15-17.

27 ⁹ Conlin Declaration, Page 2, Lines 13-14.

28 ¹⁰ Middaugh, Order. Page 3: Lines 9-23.

1 Nothing in the City Charter grants such expansive power to the head of the
2 Legislative Department to act in the name of the City of Seattle. The City
3 Council has General Rules and Procedures that set forth the duties of the
4 Council President, but these tend to be ministerial in nature. The Council,
5 when it acts to legislate for the City as a whole, does so as a body. The
6 record does not indicate that the City Council has taken any action as a
7 legislative body to authorize Mr. Holmes to bring this lawsuit on behalf of
8 the City.

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

12 PART TWO: On April 21, 2011 Referendum 1 (“Referendum”) challenging City of
13 Seattle Ordinance 123542 was transmitted by the City Clerk to the City Council
14 (“Council”). It was transmitted and received according to the dictates of the Seattle City
15 Charter (“Charter”)¹¹. The Charter imposes a duty upon the Council that an ordinance
16 being challenged by valid referendum will be referred for a public vote at the next
17 regularly scheduled election.

18 At the full Council meeting of April 25, 2011, the first council meeting that
19 Referendum 1 was on the agenda (**EXHIBIT P**) of, and the first time it could be referred
20 for vote, instead of referring it for a public vote, Richard Conlin made a motion that the
21 Referendum be held over for referral to sometime in the future. A vote on the motion
22 was held, Conlin voted affirmatively for passage of the motion, it passed; no action to
23

24
25 ¹¹ Seattle City Charter, ARTICLE IV. Legislative Department. Section 1. K. SUBMISSION AT
26 GENERAL OR SPECIAL ELECTION: “The City Council shall thereupon provide for submitting the said
27 ordinance or section, item or part thereof, to the vote of the qualified electors for ratification or rejection,
28 either at the next regularly scheduled election, irrespective of whether it is a state or a state or municipal
election, or at a sooner special election, as the City Council in its discretion may provide.”

1 refer the referendum for a vote was undertaken. The April 25th Minutes of the Council's
2 meeting (**EXHIBIT Q**) reflect this.

3 The Referendum was not referred for a public vote and no action was taken to
4 refer it for a public vote at any of the next three full council meetings which were held
5 between April 25th and May 16th.
6

7 On May 13, 2011 Judge Middaugh dismissed the City of Seattle as the plaintiff in
8 the *City of Seattle v. Protect Seattle Now* matter and decided that a portion of Ordinance
9 123542 was referable for a vote, setting into motion the process for ordering the City
10 Council. That afternoon City Council Resolution 31297 (**EXHIBIT R**) was drafted for
11 Conlin to sponsor, and Conlin told the press (**EXHIBIT S**) that the resolution would be
12

13 “an attempt to clarify the council's intent -- to approve an ordinance this
14 summer that would finalize its agreements with the state Department of
15 Transportation for street use, utilities, insurance and design details”,
16 stating further that it “was suggested by city attorneys to answer
17 Middaugh's questions about how the council would give final notice to the
18 state.”

19 The language of the Resolution 31297, that “After having the opportunity to
20 review and consider the Final Environmental Impact Statement and the Federal Record
21 of Decision, the City Council's notice to the State of Washington as described in Section
22 6 of Ordinance 123542 [the one being subjected to referendum] shall be in the form of
23 introducing and considering for enactment a City ordinance.”, effectively would have
24 negated the portion of Ordinance 123542 that Judge Middaugh was planning on allowing
25 to be referred for a public vote.
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1 On May 16, 2011 Conlin introduced Resolution 31297 to the full Council and
2 scheduled it for consideration and a vote for the next day, May 17th, at a specially called
3 meeting of the Council (**EXHIBIT T**).

4 On May 17th a few minutes before the specially scheduled meeting of the Council
5 was to be convened, Conlin cancelled the meeting.
6

7 On May 23rd Section 6 of Ordinance 123542 was referred by the City Council to
8 the August 16, 2011 ballot; in accordance with King County Superior Court Judge
9 Middaugh's order in the *WSDOT v. Protect Seattle Now* case.
10

11 **CHARGE 3. INITIATIVE MATTER - Failure to Perform an Official Duty Pursuant to**
12 **City Charter and Oath of Office.**

13 Despite the duty imposed under the Seattle City Charter that the City Council
14 shall make the consideration of an initiative petition paramount to all other council
15 deliberations and actions:

16 "Consideration of such initiative petition shall take precedence over all
17 other business before the City Council, except appropriation bills and
18 emergency measures."¹²

19 The records of the Seattle City Council for four successive full City Council
20 meetings, on May 2, 2011, May 9, 2011, May 16, 2011, and on May 23, 2011
21 (**EXHIBITS U, V, W, X, Y, Z, AA, AB, AC, and AD**) show that Richard Conlin has
22 sponsored motions to hold any consideration of Initiative 101¹³ in abeyance for an
23

24 ¹² Seattle City Charter, Article IV § 1. B

25 ¹³ On May 2, 2011 the City Clerk, Monica Simmons, in accordance with Seattle City Charter Article IV §
26 1.B., transmitted to the Seattle City Council for their consideration: Clerk File Number: 310969, *Initiative*
27 *Measure No. 101, to prohibit the construction, operation, or use of City of Seattle right-of-way(s) or City-*
28 *owned property for the construction and/or operation of a tunnel replacing that portion of SR 99*
commonly known as the Alaskan Way Viaduct, and Clerk File Number: 311489, Report of the City Clerk
on the Certificate of Sufficiency for Initiative 101.

1 indefinite time period. At each of these successive council meetings the secretary for the
2 Council has read the text of Initiative 101 into the record, and without any deliberation of
3 the Initiative whatsoever Conlin has immediately stated that he is making a motion to set
4 consideration of Initiative 101 over to the next scheduled Council meeting.
5

6 In addition to sponsoring the motions to not consider Initiative 101, Conlin voted
7 affirmatively at each council meeting for passage of the motions against Initiative 101;
8 all passed.

9 Conlin has both failed to perform his duty related to the City Charter imperatives
10 related to initiatives, he has violated his Oath of Office (**EXHIBIT AE**) which requires
11 him to support the Seattle City Charter.¹⁴
12

13 CONCLUSION

14 The *General Rules* of the City Council establish that Council members' duties
15 and responsibilities include but are not limited to:

- 16 • Upholding the public trust, demonstrating integrity, honesty and fairness;
- 17 • Exercising budget and fiduciary responsibility; and
- 18 • Being responsive to citizens.¹⁵
19

20 Conlin has not fulfilled those duties and responsibilities to the extent required.
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25 ¹⁴ For the record, on April 13, 2011 the City Attorney filed a lawsuit against Initiative 101, Seattle Citizens
26 Against the Tunnel et al, under the same circumstances as the one he filed against Referendum 1. As of
27 even date Conlin has not made any statements that he directed the City Attorney to file this "initiative
28 lawsuit". It should be further noted that no court order has been applied for or granted, barring the City
Council from considering Initiative 101 either. (**EXHIBIT AH**)

¹⁵ General Rules and Procedures of the Seattle City Council I.§A.4.

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DECLARATIONS

I declare under penalty of perjury according to the laws of the State of Washington that I believe the charge or charges to be true and have knowledge of the alleged facts upon which the stated grounds for recall are based, that the foregoing facts are true and correct to the best of my knowledge.

DATED this 13th day of June, 2011.

ELIZABETH A. CAMPBELL

I declare under penalty of perjury according to the laws of the State of Washington that I believe the charge or charges to be true and have knowledge of the alleged facts upon which the stated grounds for recall are based, that the foregoing facts are true and correct to the best of my knowledge.

DATED this 13th day of June, 2011.

DORLI RAINEY

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I declare under penalty of perjury according to the laws of the State of Washington that I believe the charge or charges to be true and have knowledge of the alleged facts upon which the stated grounds for recall are based, that the foregoing facts are true and correct to the best of my knowledge.

DATED this 13th day of June, 2011.

BUD SHASTEEN

I declare under penalty of perjury according to the laws of the State of Washington that I believe the charge or charges to be true and have knowledge of the alleged facts upon which the stated grounds for recall are based, that the foregoing facts are true and correct to the best of my knowledge.

DATED this 13th day of June, 2011.

ED PLUTE
