THE HONORABLE ANDREA DARVAS
Noted for Consideration:
August 28, 2013
(Pending Motion to Shorten Time)

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

BF FOODS, LLC, FILO FOODS, LLC, ALASKA AIRLINES, INC., AND WASHINGTON RESTAURANT ASSOCIATION, Plaintiffs, v. THE CITY OF SEATAC, et al., Defendants.	No. 13-2-25352-6 KNT **DEFENDANT-INTERVENOR'S MOTION FOR AN ORDER PURSUANT TO RCW 29A.68.011 DIRECTING THE CITY CLERK TO DETERMINE THE SUFFICIENCY OF ADDITIONAL SIGNATURES THAT HAVE BEEN PROVIDED TO HER**

I. NATURE OF PROCEEDINGS

The purpose of this motion is to seek an Order from this Court, pursuant to RCW 29A.68.011, directing the SeaTac City Clerk, Kristina Gregg, to determine the sufficiency of additional signatures that were provided to her on August 26, 2013. The prompt issuance of such an Order is necessary in order to protect the interest of the voters of the City of SeaTac in exercising legislative power through the initiative process.

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II. STATEMENT OF THE CASE

On August 26, 2013, this Court granted Plaintiffs' motion for various writs on the grounds that "the initiative sponsors have failed to present the requisite number of valid signatures to have the initiative presented to the voters at the general election in November." This Court did not, in its ruling, address the question of what steps the Defendant-Intervenor SeaTac Committee for Good Jobs ("the Committee") might take to cure the insufficiency of its signatures to allow the proposed initiative on the ballot this November.

The Committee previously argued to this Court that if this Court granted the Plaintiffs' Motion for various writs, the Committee should none-the-less have the opportunity to avail itself of this ten-day curative period. *See, e.g.,* Dkt. 36 at page 10. The Committee argued that given that the SeaTac Municipal Code ("SMC") outlines a specific remedy and process pertaining to a finding of insufficiency, the writs of prohibition and mandamus requested by Plaintiffs would, if interpreted as denying the Committee this curative opportunity, unjustly deny statutory remedies guaranteed to the Committee.

Plaintiffs asserted that no such opportunity exists under the SMC. *See, e.g.,* Dkt. 37, at 3-4.

The SMC, in Section 1.10.140(F), states that "if signatures are found to be insufficient, the City Clerk shall so notify the sponsor by certificate of insufficiency and the sponsor shall have ten (10) days from the date of the certificate in which to amend the petition by filing additional signed petitions." *See* Dkt. 36 at page 10. SMC 1.10.140(G) and (H) then provide a process whereby the Superintendent of Elections and the City Clerk "shall determine the sufficiency of such additional signatures" and issue a certificate of sufficiency.

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Immediately subsequent to the issuance by this Court of its Order, which found that the initiative measure "is not supported by the required number of valid signatures of registered voters," Dkt. 40 at 9, the Committee presented additional signatures to the Clerk of the City of SeaTac, in compliance with the procedures permitted after a finding of insufficiency under SMC 1.10.140(F). *See* Declaration of Laura Ewan at ¶3; Exhibit A. The City Attorney replied to the Committee via email shortly after receipt of these signatures. (*See,* Ewan Declaration at ¶4, Ex. B). The email indicates that "in strict accordance with Judge Darvas's Order, the City is prohibited from sending the Initiative to King County for inclusion on the ballot." (Ex. B). The City Attorney goes on to note that while "you raised the issue in Court on Thursday as to whether you are entitled to a cure period," "Judge Darvas did not rule on this issue." Based on the City's interpretation of this Court's Order, the City Attorney has asserted that "if you wish the City to process these signatures further, you may want to consider seeking a Court Order compelling us to do so."(Ex. B).

This Motion requests the Court, in recognition of the fact that remedial election statutes are to be construed liberally in favor of maximum enfranchisement, and consistent with RCW 29A.68.011, to direct the City to interpret its own code to allow for the Committee to remedy the finding of insufficiency contained within this Court's Order.

III. EVIDENCE RELIED UPON

The Committee relies upon the operative pleadings in this matter, including this Court's Order of August 26 (Dkt. 40), Dkt. 36, and Dkt. 37. The Committee also relies upon the Declaration of Laura Ewan and Brianna Thomas and exhibits attached thereto.

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IV. ARGUMENT AND AUTHORITY

As noted above, the Committee requests that this Court issue an order pursuant to RCW 29A.68.011, compelling the SeaTac City Clerk to process the additional signatures presented to her by the Committee. Absent such an order, the City will refuse to permit the Committee to avail itself of the process outlined under SMC 1.10.140(F)-(H), which states that "[i]f signatures are found to be insufficient, the City Clerk shall so notify the sponsor by certificate of insufficiency and the sponsor shall have ten (10) days from the date of the certificate in which to amend the petition by filing additional signed petitions."

SMC 1.10.140(F) states that "if signatures are found to be insufficient, the City Clerk shall so notify the sponsor by certificate of insufficiency and the sponsor shall have ten (10)days from the date of the certificate in which to amend the petition by filing additional signed petitions." SMC 1.10.140(G) and (H) then provide a process whereby the Superintendent of Elections and the City Clerk "shall determine the sufficiency of such additional signatures" and issue a certificate of sufficiency. Given that the SMC outlines a specific remedy and process pertaining to a finding of insufficiency, the failure by the City to permit the Committee to invoke that process, in light of this Court's August 26, 2013, ruling that effectively transformed the previously issued certificate of sufficiency into a certificate of insufficiency, deprives the Committee of its rights under the SeaTac Municipal Code.

Plaintiffs have previously argued that no such right to "cure" a deficiency, at this stage of proceedings, exists, and that SMC 1.10.140(F) does not create one. It is well established, however, that courts "must construe statutes consistent with their underlying purposes while avoiding constitutional deficiencies." *State v. Eaton*, 168 Wn.2d 476, 480, 229 P.3d 704 (2010).

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"'Statutes should be interpreted to further, not frustrate, their intended purpose.'" *Bostain v. Food Exp., Inc.*, 159 Wn.2d 700, 712, 153 P.3d 846 (2007) (quoting *Burnside v. Simpson Paper Co.*, 123 Wn.2d 93, 99, 864 P.2d 937 (1994)). "'A fundamental rule of statutory construction is that the court must interpret legislation consistently with its stated goals.'" *State v. Otis*, 151 Wn. App. 572, 582, 213 P.3d 613 (2009) (quoting *Tunstall v. Bergeson*, 141 Wn.2d 201, 211, 5 P.3d 691 (2000)). "We construe statutes to effect their purpose and avoid unlikely or absurd results." *Thompson v. Hanson*, 167 Wn.2d 414, 426, 219 P.3d 659 (2009) (citing *State v. Neher*, 112 Wn.2d 347, 351, 771 P.2d 330 (1989)).

There can be no dispute that the underlying purpose of the SeaTac Municipal Code provisions that provide a municipal right of initiative is to permit the voters of the City of SeaTac to exercise legislative power through the initiative process. The ten-day curative period set forth in SMC 1.10.140 furthers this intended purpose. Interpreting SMC 1.10.140 as permitting the ten-day curative period *only* after an initial assessment of the validity of the signatures has been conducted and a certificate of insufficiency has been issued, but *not* permitting such a period to exist if a certificate of sufficiency is issued erroneously, then vacated by court order, clearly frustrates, instead of furthers, this purpose.

Moreover, it is beyond dispute that "[t]he error of the election authorities" (in this case, the error, as found by this Court, by the City of SeaTac and King County in failing to reject all signatures from duplicate signers) "should not disenfranchise the voter." *Loop v. McCracken,* 151 Wash. 19, 25 (1929). Remedial election statutes are to be "construed liberally in favor of maximum enfranchisement." *Gold Bar Citizens for Good Government v. Whalen,* 99 Wn.2d 724, 728 (1983); *see State ex. rel. Pemberton v. Superior Court,* 196 Wn. 468, 480 (1938) (court

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should avoid "disenfranchis[ing] persons who have voted in entire good faith"). This authority and the authority cited above compels the conclusion that this ten-day curative period should now be made available to the Committee by the City of SeaTac.

RCW 29A.68.011 and its section (4) provide that any judge of the superior court in the proper county "shall, by order, require any person charged with error, wrongful act, or neglect to forthwith correct the error, desist from the wrongful act, or perform the duty and to do as the court orders," whenever it is made to appear that "A wrongful act other than as provided for in subsections (1) and (3) of this section has been performed or is about to be performed by any election officer…." It is beyond dispute that the SeaTac City Clerk, an election officer, *see* RCW 29A.04.055, has refused to provide the Committee with the benefit of the 10-day curative period set forth in SMC 1.10.140. Thus, an order compelling the SeaTac City Clerk to perform this duty should appropriately issue.

As far back as *Moyer v. Van de Vanter,* 12 Wn. 377, 382 (1895), the State Supreme Court noted that if "the individual voter … should in good faith comply with the law, … it would be a great hardship were he deprived of his ballot through some fault or mistake of an election officer in failing to comply with a provision of the law over which the voter had no control." In the instant case, this Court has already found that the error of election officers (in both SeaTac and King County) in failing to properly apply state law caused the Committee's petition to erroneously be deemed supported by a valid number of signatures, causing the Committee great prejudice. This Court should not now countenance another election officer, the SeaTac City Clerk, to compound the prior errors by refusing to acknowledge the expressed desire of SeaTac voters to see this initiative on the November ballot.

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V. CONCLUSION

For the foregoing reasons, the Committee respectfully requests the Court issue the attached proposed Order directing the SeaTac City Clerk to determine the sufficiency of additional signatures that were provided to her on August 26, 2013.

DATED this 28th day of August, 2013.

s/Dmitri Iglitzin
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s/Laura Ewan
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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of August, 2012, I caused the foregoing Defendant-Intervenor's Motion for an Order Pursuant to RCW 29A.68.011 Directing the City Clerk to Determine the Sufficiency of Additional Signatures That Have Been Provided to Her to be filed with the Court using the e-filing system, and true and correct copies of the same to be sent via email and same day US First Class mail, per agreement of counsel, to:

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