Honorable Laura Gene Middaugh

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

CITY OF SEATTLE, A Washington municipal corporation, Plaintiff, vs. PROTECT SEATTLE NOW; ANDREW PAXTON, in his capacity as Protect Seattle Now's Committee Chair and a principal referendum petitioner; 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.	No. 11-2-11719-7 SEA DECLARATION OF JOHN B. SCHOCHET

I, John B. Schochet, declare under penalty of perjury under the laws of the State of Washington as follows:

PETER S. HOLMES
Seattle City Attorney
600 Fourth Avenue, 4th Floor
P.O. Box 94769
Seattle, WA 98124-4769
(206) 684-8200

1. I am an assistant city attorney for the City of Seattle and am counsel for the City of Seattle in this matter. I am over the age of 18 years and am competent to testify as to the matters herein.

2. On March 31, I spoke to counsel for the Washington State Department of Transportation on the telephone, who stated that they do not oppose the expedited briefing schedule and leave for early summary judgment motion requested in the City's motion.

3. On April 1, 2011, I sent the email attached as Exhibit A to the email addresses we located for Defendants Protect Seattle Now, Paxton, Branon, Let's Move Forward, and Lloyd. Attached as Exhibits B and C are copies of the Seattle Ethics and Elections Commission filings for Protect Seattle Now and Let's Move Forward showing their email addresses as well as Branon's and Lloyd's. Attached as Exhibit D is a newspaper reprint of a press release from Protect Seattle Now showing Paxton's email address as protectseattlenow@gmail.com. Protect Seattle Now's website (www.protectseattlenow.org) identifies its email address as protectseattlenow@gmail.com.

4. As of 4:00 p.m. on April 4, 2011, I have not received a response to my April 1, 2011 email addressing the City's proposed early summary judgment motion and expedited briefing schedule.

Signed at Seattle, King County, Washington this 4th day of April, 2011.

John B. Schochet

PETER S. HOLMES
Seattle City Attorney
600 Fourth Avenue, 4th Floor
P.O. Box 94769
Seattle, WA 98124-4769
(206) 684-8200

EXHIBIT A

Schochet, John

From: Schochet, John
Sent: Friday, April 01, 2011 4:57 PM
To: 'BryceB@atg.wa.gov'; 'danielg2@atg.wa.gov'; 'paul.lawrence@klgates.com'; 'phil@seattlecfo.com'; 'scot@scotbrannon.net'; 'protectseattlenow@gmail.com'; 'campbell.beth@comcast.net'
Cc: Slayton, Jeff; Keese, Gary; O'Connor-Kriss, Sara
Subject: City of Seattle v. Protect Seattle Now, et al. (King County Cause No. 11-2-11719-7 SEA)
Attachments: complaint for declarator_001.pdf

Dear Counsel, Mr. Brannon, Mr. Paxton, and Ms. Campbell:

We represent the *City of Seattle in City of Seattle v. Protect Seattle Now, et al.*, and we are writing to address several issues pertaining to this action. For everyone's convenience, a copy of the complaint is attached to this email.

Parties, service, and representation. We have included the parties we believe are directly interested in the referability of Ordinance 123542 as named defendants, including the two organizations registered with the Seattle Ethics & Elections Commission as being involved with the R-1 campaign (PSN and LMF), the filers of the R-1 petition (Brannon and Paxton), the named representatives of each EEC-registered organization (Brannon and Lloyd), and the other party to the contracts at issue in Ordinance 123542 (WSDOT). Although they have not yet filed notices of appearance, we understand that Bryce Brown and Dan Galvin plan to appear on behalf of WSDOT/the State, and Paul Lawrence may appear on behalf of LMF, Lloyd, and some additional intervening parties. We have confirmed that the State, LMF, Lloyd, and Brannon have been served.

Ms. Campbell's notice of appearance. Today we received a notice of appearance from Elizabeth Campbell on behalf of Protect Seattle Now. Absent additional legal authority, we cannot treat this as a valid notice of appearance, as Ms. Campbell is not a licensed attorney, and Washington law appears to require organizations appearing in litigation to be represented by attorneys and not by pro se individuals. *See, e.g., Lloyd Enterprises, Inc. v. Longview Plumbing & Heating Co., Inc.*, 91 Wn. App. 697, 701, 958 P.2d 1035 (1998), *rev. denied* 137 Wn.2d 1020 (1999). While we will continue to copy Ms. Campbell on communications regarding this case, we cannot accept her notice of appearance as constituting valid representation of PSN.

Parties' contact information. Please include John Schochet, Jeff Slayton, and Gary Keese on communications directed to the City regarding this matter. For Brannon, Paxton, Lloyd, PSN, and LMF, we are using the email addresses on file with the Seattle EEC and on PSN's website and media materials. Please let us know if there are better email addresses to use, and please let us know as soon as you have obtained counsel.

Intervention/additional parties. We understand that some additional parties (including Ms. Campbell and SCAT) may wish to intervene in this action. The City will not oppose requests for intervention as long as the parties seeking to intervene have a demonstrated interest in whether Ordinance 123542 is subject to Seattle's referendum power and such intervention will not delay the expeditious resolution of this legal issue.

Expedited summary judgment briefing. We believe this case is likely to be resolved on cross-motions for summary judgment. A quick resolution is important because the City needs to receive a decision from the Court determining whether Ordinance 123542 is referable before the May 24, 2011 primary ballot deadline so that R-1 may be placed upon or kept off the August primary ballot based on the Court's decision. To that end, we intend to file a motion next Monday asking the Court to (1) grant the City leave to file a summary judgment motion before the 20 days post-service ordinarily required by CR 56(c), and (2) issue an expedited briefing schedule for cross-motions as follows:

(a) Motions for summary judgment seeking declaration that Ordinance 123542 is not referable due on Friday, April 15, 2011

(b) Cross-motions for summary judgment seeking declaration that Ordinance 123542 is referable and responses to the April 15 motions due on Monday, April 25, 2011
(c) Responses to the April 25 cross-motions and replies in support of the April 15 motions due on Thursday, May 5, 2011
(d) Replies in support of the April 25 cross-motions due on Tuesday, May 10, 2011
(e) Oral argument on all motions on Friday, May 13, 2011 (we have been advised that Judge Middaugh is available on this date)

We believe this is fair briefing schedule that balances the City's need for an expeditious decision with the parties' need to obtain counsel and research, analyze, and brief the legal issues in this case. Please let us know as soon as possible if the City's proposed summary judgment schedule is acceptable to all parties.

We are happy to hold a telephone conference next week or communicate over email as necessary to resolve or otherwise these issues and any other issues they parties may wish to raise.

-John Schochet

John B. Schochet
Special Counsel & Policy Advisor

Seattle City Attorney's Office
600 4th Avenue, 4th floor
P.O. Box 94769
Seattle, WA 98124-4769
Phone: 206-684-8224
FAX: 206-684-8284
john.schochet@seattle.gov

CONFIDENTIALITY STATEMENT: This message may contain information that is protected by the attorney-client privilege, the attorney work product doctrine, or by other confidentiality provisions. If this message was sent to you in error, any use, disclosure, or distribution of its contents is prohibited. If you receive this message in error, please contact me at the telephone number or e-mail address listed above and delete this message without printing, copying, or forwarding it. Thank you.

EXHIBIT B

SEEC - Committee Registration Statement

Committee	
Name	LET'S MOVE FORWARD
Acronym	
Street	603 STEWART STREET #819
City	SEATTLE
State	WA
Zip	98101
County	KING
Committee Email	PHIL@SEATTLECFO.COM
Fax	(206)381-8597
Phone	(206)382-5552
Disclosure Option	Full Reporting
Eligibility for Contributions to Candidates	Not Eligible

Committee Type	
Continuing or Single Election	Single Election Year Committee
Election Date	11/08/2011
Ballot Number	
For or Against	for
Description	LET'S MOVE FORWARD
Ballot Issue or Other	Ballot Issue Committee
Local or Statewide	local

Campaign Manager or Media Contact	
Name	SHEILA STICKEL
Street	603 STEWART STREET #819

City	SEATTLE
State	WA
Zip	98101
Phone	(206)434-0979
Treasurer	
First Name	PHIL
Last Name	LLOYD
Street	603 STEWART STREET #819
City	SEATTLE
State	WA
Zip	98101
Phone	(206)382-5552
Ministerial Only?	No
Deputy Treasurer(s)	
{none listed}	
Person(s) Performing only Ministerial Functions	
{none listed}	
Committee Officer(s)	
Name	PHIL LLOYD
Title	SECRETARY/TREASURER
Street	603 STEWART STREET #819
City	SEATTLE
State	WA
Zip	98101
Related or Affiliated Political Committee(s)	
{none listed}	
Campaign Bank or Depository	
Name	BANK OF AMERICA
Branch	SEATTLE BUS. BANKING
City	SEATTLE

Public Availability of Committee Records

Campaign books must be open to the public by appointment between 8 a.m. and 8 p.m. during the eight days before the election, except Saturdays, Sundays, and legal holidays. In the space below, provide contact information for scheduling an appointment and the address where the inspection will take place. It is not acceptable to provide a post office box or an out-of-area address.

Street Address	603 STEWART STREET #819
City	SEATTLE
Phone	(206)382-5552
Email	
Fax	

Fixed link to this report:
www2.seattle.gov/ethics/eldata/filings/popfiling.asp?prguid=65761E56-ED5C-4692-9467-38D849CD0F98

Close

EXHIBIT C

Report History		
Originally filed:	3/2/2011 3:56:17 PM	PopUp
This amendment filed:	3/8/2011 1:46:30 PM	{displayed below}

SEEC - Committee Registration Statement

Committee	
Name	PROTECT SEATTLE NOW
Acronym	
Street	PO BOX 17385
City	SEATTLE
State	WA
Zip	98127
County	KING
Committee Email	SCOT@SCOTBRANNON.NET
Fax	
Phone	206-388-4380
Disclosure Option	Full Reporting
Eligibility for Contributions to Candidates	Eligible

Committee Type	
Continuing or Single Election	Single Election Year Committee
Election Date	11/08/2011
Ballot Number	
For or Against	against
Description	TUNNEL REFERENDUM
Ballot Issue or Other	Ballot Issue Committee
Local or Statewide	local

Campaign Manager or Media Contact	
Name	AINSLEY CLOSE
Street	PO BOX 17385
City	SEATTLE
State	WA
Zip	98127
Phone	206-349-5844
Treasurer	
First Name	SCOT
Last Name	BRANNON
Street	11418 9TH AVE NW
City	SEATTLE
State	WA
Zip	98177
Phone	206-388-4380
Ministerial Only?	No
Deputy Treasurer(s)	
Name	AINSLEY CLOSE
Street	7338 15TH AVE NE
City	SEATTLE
State	WA
Zip	98115
Phone	206-349-5844
Person(s) Performing only Ministerial Functions	
{none listed}	
Committee Officer(s)	
Name	DREW PAXTON
Title	CHAIR
Street	963 21ST AVE
City	SEATTLE

State	WA
Zip	98122
Name	TIM HARRIS
Title	VICE-CHAIR
Street	219 1ST AVE STE 220
City	SEATTLE
State	WA
Zip	98104
Name	KEVIN FULLERTON
Title	SECRETARY
Street	808 NW 56TH
City	SEATTLE
State	WA
Zip	98107
Related or Affiliated Political Committee(s)	
Name	MOVE SEATTLE SMARTER
Relationship	AFFILIATED
Street	POB 17385
City	SEATTLE
State	WA
Zip	98127
Campaign Bank or Depository	
Name	WASHINGTON FEDERAL
Branch	BALLARD
City	SEATTLE
Public Availability of Committee Records	
Campaign books must be open to the public by appointment between 8 a.m. and 8 p.m. during the eight days before the election, except Saturdays, Sundays, and legal holidays. In the space below, provide contact information for scheduling an appointment and the address where the inspection will take place. It is not acceptable to provide a post office box or an out-of-area address.	

Street Address	11418 9TH AVE NW
City	SEATTLE
Phone	(206)388-4380
Email	SCOT@SCOTBRANNON.NET
Fax	

Fixed link to this report:
www2.seattle.gov/ethics/eldata/filings/popfiling.asp?prguid=11E04007-FEB3-43A4-9162-5D196A54287C

Close

EXHIBIT D

Front Page

UPDATE: Deadliest Catch Captain Hillstrand and deck hand Anderson discuss show

News

Features

Westside-O-Rama West Seattle Entertainment Guide Admiral Theater 2343 California Ave. S.W.

Sports

SLIDESHOW: WSHS baseball trounces Ingraham 11-1 West Seattle High School

Opinion

Are good bad guys extinct? by Debbie Smith I'm not talking about the really bad guys: the ...

Police Blotter

Police Blotter Week of 3-28-11 Editor's Note: Copper theft is on the rise across the nation these ...

NEWS

Bin 41 celebrating their first anniversary

West Seattle speeders still not getting the message so instead they get tickets

SLIDESHOW: Genesee Schmitz Neighborhood Council held a hoe-down

Seattle rocker Duff McKagan releases new video by West Seattle filmmaker Jamie Chamberlin

SLIDESHOW: Chaco Canyon Organic Cafe opens April 1

South Seattle Community College Garden Center Opens April 7

UPDATE: Deadliest Catch Captain Hillstrand and deck hand Anderson discuss show at Alki Tavern

WS Spring Egg Hunts announced by Parks and Rec.

Earth Service Corp launching food composting program at West Seattle High School

EPA seeking input on sediment cleanup options for Boeing Plant 2

UPDATE: Mayor and Councilmember O'Brien cry foul on lawsuit against signature gatherers; Gov. backs it

SSCC Free resume and job search workshops schedule announced

2. This lawsuit does not address the question of whether a deep bore tunnel should replace the Alaskan Way Viaduct, or whether the City of Seattle should have accepted the deep bore tunnel construction agreements offered by the Washington State Department of Transportation. The legal issue presented is whether proposed R-1 is precluded because Ordinance 123542 is an administrative rather than legislative act or, in the alternative, because the power to enter into these agreements was directly delegated to the City of Seattle's governing body. In either case, Ordinance 123542 would be beyond the scope of the referendum power.

A portion of new lawsuit against anti-tunnel petitioners by City Attorney Pete Holmes. We will update this story.

UPDATE: Protect Seattle Now coalition turns in 28,929 signatures for tunnel vote, Pete Holmes sues coalition

Pete Holmes sues coalition

By Steve Shay
2011-03-29

UPDATE: City Attorney PETE HOLMES sues coalition, others, over referendum:

The Stranger's Dominic Holden and other media have the lawsuit published in full.

http://www.thestranger.com/images/blogimages/2011/03/29/1301427707-comol...

We will continue to update

Over **56,000 signatures** on two initiatives to put the deep bore tunnel to a vote have so far been collected at the City Clerk office.

Press Release from Drew Paxton, Protect Seattle Now:

Today the Protect Seattle Now coalition turns in 28,929 signatures, more than 10 percent of Seattle's voters, to submit to the people a referendum overturning the City's agreements to go forward with the controversial deep bore tunnel. The coalition expects that Seattle's elected officials will uphold the democratic process as directed in the City Charter and place this referendum on the ballot.

Yesterday the campaign asked the Mayor, the City Council and the City Attorney to pledge by 5 p.m. today that they will place this referendum on the ballot and not silence the voice of the people of Seattle. To date, Mayor Mike McGinn and Councilmember Mike O'Brien have pledged to allow the people of Seattle to have a vote on this risky and expensive project. Councilmember Burgess responded stating, "The Charter is very clear that if sufficient voter signatures are verified the Council will place the measure on the next election ballot, which would be August. I'm confident we will follow the law." Councilmember Bagshaw stated to the Seattle Times that she opposes a vote of the public. The campaign has not heard from Councilmembers Clark, Licata, Conlin, Harrell, Godden, Rasmussen or City Attorney Pete Holmes.

MOST VIEWED

UPDATE: Deadliest Catch Captain Hillstrand and deck hand Anderson discuss show at Alki Tavern

Car Counselor: The Auto Industry - Part 2 – Where We Are

Seattle rocker Duff McKagan releases new video by West Seattle filmmaker Jamie Chamberlin

UPDATE: Burien doctor barred from giving physicals, coaching at Highline High

West Seattle speeders still not getting the message so instead they get tickets

SLIDESHOW: Chaco Canyon Organic Cafe opens April 1

SLIDESHOW: Genesee Schmitz Neighborhood Council held a hoe-down

UPDATE: Mayor and Councilmember O'Brien cry foul on lawsuit against signature gatherers; Gov. backs it

UPDATE: Amanda Knox forum at Seattle U. to attract big names, public invited

Earth Service Corp launching food composting program at West Seattle High School

SSCC Free resume and job search workshops schedule announced

Bin 41 celebrating their first anniversary

WS Spring Egg Hunts announced by Parks and Rec.

UPDATE:Wikipedia founder Jimbo Wales reviews page about Amanda Knox for inaccuracies

Police Blotter Week of 3-28-11

Please send us your news tips, photos or ideas of how we can better cover your neighborhood

Email us at tips@westseattleherald.com

Receive updates on news and events in the West Seattle neighborhood via Twitter or Facebook!

Earth Day Stories offered at Duwamish Longhouse April 17

SW Precinct Captain Paulsen officially promoted at city hall

UPDATE 2: SLIDESHOW- Standoff at Seattle West Inn & Suites over; Suspect in custody

Chance to vote for West Seattle band in Battle of the Bands

City sues unemployed activist over no-tunnel signatures

UPDATE: Amanda Knox forum at Seattle U. to attract big names, public invited

UPDATE: Protect Seattle Now coalition turns in 28,929 signatures for tunnel vote, Pete Holmes sues coalition

UPDATE: Duwamish Alive! Earth Day river restoration, volunteers needed

Pete Holmes' law suit against anti-tunnel coalition flawed says SCAT

Westwood Village getting new owner, reports say

West Seattle/downtown Seattle water taxi spring schedule begins April 8

Halibut and Wine Tasting at Seattle Fish Co. this Thursday, March 31st

Seattle Parks Dept. seeking provider for 'Summer Art In The Park'

facebook

West Seattle Herald

westseattleherald@gmail.com

West Seattle stories since 1923

A recent Elway Poll found that 55 percent of Seattle voters want the referendum to be placed on the ballot.

Protect Seattle Now was organized after the City Council voted last month to override the mayor's veto of a City ordinance related to the construction of the deep bore tunnel under Alaskan Way. Coalition members point out that the tunnel project, which is not fully funded, runs the risk of significant cost overruns that state law mandates Seattle taxpayers alone would have to pay. An Oxford University study found that 90 percent of megaprojects like the deep bore tunnel experience cost overruns, usually around 30 percent of the project cost. Both the City of Seattle and the State of Washington are dealing with budget deficits that have forced cuts to public services, raising questions about whether taxpayers can afford to pay cost overruns on the project.

PROTECT SEATTLE NOW. CAMPAIGN BY THE NUMBERS

Number of signatures collected: 28, 929
Number of signatures required to qualify for the ballot: 16,503
Number of volunteers: 124
Total number of volunteer hours: 1534
Total number of donations: 290
Average donation amount: $173
Percentage of donations below $250: 90%
Percentage of donors from Seattle: 87 %
Percentage of donors from Washington State: 94%
Number of councilmembers pushing the tunnel with Seattle on the hook for cost overruns: 8
Number of them up for reelection this year: 5
Number of anti-public-vote editorials by Joni Balter and the Seattle Times: 3 and counting

MEDIA CONTACT
DREW PAXTON
protectseattlenow@gmail.com
(206)-257-2252

Press Release from Referendum 101 organizer Elizabeth Campbell:

Dear Stop the Tunnel Friends,

(Today) is another historic day in the fight against the tunnel; when we turned in our 28,000 signatures for Initiative 101 that was the first day. Now with the help of our alliance partners, 27,000 plus more signatures are slated to be submitted tomorrow for the referendum related to stopping the tunnel.

At 10:00 AM (this) morning the petitions will be submitted to the City Clerk, 3rd Floor, City Hall. I hope that many of you can make the turn-in, to show your support for another part of the effort to bring the tunnel project before the voters.

In regards to our effort to complete I-101, if you remember we started last week to gather enough signatures to cure the 1,179 signature deficiency that we had. I'm happy to announce that we have completed that task also, as of even date we acquired an additional 3,200 signatures to take us over the top. Adding to our previous 28,000 + total, that means we will have collected 31,200 signatures towards putting I-101 on the ballot.

For the next week we will be internally validating the signatures we recently collected, comparing them to the Seattle voter roll, and comparing them to our own I-101 signature database that we received from King County Elections - in order to confirm that we have enough valid signatures that we are turning in.

Our final validity rate was 68.9%, based on that we do have enough signatures, but we want to be sure. Our final batch of signatures is due in the Clerk's office on April 10th.

I'd like to extend a special thank you to everyone for making this happen. Each person that has been involved in the I-101 campaign has played a key part towards ensuring that the tunnel project will be voted on, and now with the referendum looking like it is likely to qualify with enough signatures, not once, but twice.

SHARE