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. COMPLAINT FOR DECLARATORY JUDGMENT

I. INTRODUCTION

1. The City of Seattle seeks a declaration that proposed Seattle Referendum No. 1 (R-1), which seeks a vote to approve or disapprove Ordinance 123542, is beyond the scope of the referendum power. Ordinance 123542 accepts on behalf of the City of Seattle three agreements

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

offered by the State of Washington Department of Transportation related to the State Route 99 Alaskan Way Viaduct and Seawall Replacement Program.

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.

3. The City of Seattle seeks resolution of this legal issue in accordance with the Washington Supreme Court's ruling in *Philadelphia II v. Gregoire*, 128 Wn.2d 707, 911 P.2d 389 (1996). That case held that the proper method for a governmental official to resolve whether a proposed ballot measure is beyond the scope of the initiative or referendum power is to seek a judicial determination before the matter is placed on a ballot.

II. PARTIES

4. Plaintiff the City of Seattle ("the City") is a municipal corporation validly formed and existing under the Constitution and laws of the State of Washington. It is a first-class charter city located in King County, Washington.

5. Defendant Protect Seattle Now is a political campaign committee registered with the City of Seattle Ethics and Elections Commission and is a principal proponent of proposed R-1. This Committee has its principal place of business in the City of Seattle.

6. On information and belief, Defendant Andrew Paxton is a citizen of the United States and a resident and registered voter of Seattle, in King County, Washington. Defendant Paxton is

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

the Chair of the Protect Seattle Now campaign committee and is one of the petitioners who filed proposed R-1 with the Seattle City Clerk.

7. On information and belief, Defendant Scot Brannon is a citizen of the United States and a resident and registered voter of Seattle, in King County, Washington. Defendant Brannon is the Treasurer of the Protect Seattle Now campaign committee and is one of the petitioners who filed proposed R-1 with the Seattle City Clerk.

8. Defendant Let's Move Forward is a political campaign committee registered with the City of Seattle Ethics and Elections Commission in relation to the proposed referendum petition. This Committee has its principal place of business in the City of Seattle.

9. On information and belief, Defendant Phil Lloyd is a citizen of the United States and a resident and registered voter of Seattle, in King County, Washington. Defendant Phil Lloyd is the Treasurer/Secretary of the Let's Move Forward campaign committee.

10. The Washington State Department of Transportation ("the State") is an agency of the State of Washington and is a party to the contracts accepted by Ordinance 123542, which is the subject of the proposed referendum.

III. JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction by virtue of RCW 2.08.010 and RCW 7.24.010.

12. Jurisdiction and venue are proper by virtue of RCW 4.12.025(1), which provides for suits to be brought in the county in which a defendant resides, or has its principal place of business.

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

IV. FACTS

13. On March 29, 2011, Defendants Protect Seattle Now, Andrew Paxton, and Scot Brannon (collectively "the Petitioners") submitted a proposed referendum petition, later designated as proposed R-1, to the City of Seattle Clerk's Office. Proposed R-1 would subject Ordinance 123542 to a public vote.

14. The City Clerk's Office fulfilled its ministerial duties, pursuant to Article IV § 1(J) of the Seattle City Charter, by date and time stamping the proposed petition, assigning the referendum a Clerk's File number and referendum number. Shortly after the filing of this complaint, the Clerk will transmit the petition signatures to King County Elections for the signature validation process.

15. In 2009, the State Legislature enacted a law directing the State to "take the necessary steps to expedite the environmental review and design processes to replace the Alaskan Way viaduct with a deep bore tunnel under First Avenue from the vicinity of the sports stadiums in Seattle to Aurora Avenue north of the Battery Street tunnel." RCW 47.01.402(1).

16. In October 2009, the City enacted Ordinance 123133, authorizing execution of a Memorandum of Agreement that "outlines the responsibilities of both the City and State and expectations about the role of each in the implementation and funding of the numerous AWVSR [Alaskan Way Viaduct and Seawall Replacement] Program elements." This Memorandum of Agreement further authorized the City and State to negotiate agreements to implement RCW 47.01.402(1) and Ordinance 123133. Ordinance 123133 declared that "[i]t is the City's policy that the Alaskan Way Viaduct and Seawall Replacement (AWVSR) Program Bored Tunnel Alternative is the City's preferred solution for replacing the existing Alaskan Way Viaduct."

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

17. Pursuant to RCW 47.01.402(1) and Ordinance 123133, the State and the City negotiated three agreements that the State offered to enter into as legally binding contracts between the State and the City in a letter dated January 28, 2011.

18. On January 31, 2011 a proposed ordinance was introduced to accept the State's offer. On February 7, 2011, the City Council passed the proposed ordinance by a vote of eight to one. The Mayor vetoed this ordinance on February 17, 2011. The Council then reconsidered the proposed ordinance on February 28, 2011 and overrode the veto by a vote of eight to one.

19. Prior to the March 30, 2011, the effective date of the ordinance, the Petitioners filed a referendum petition with the City Clerk. The Petitioners estimated that the petition had 28,929 signatures.

V. FIRST CAUSE OF ACTION – DECLARATORY JUDGMENT:

PROPOSED R-1 IS BEYOND THE SCOPE OF THE LOCAL REFERNDUM POWER BECAUSE ORDINANCE 123542 IS AN ADMINISTRATIVE RATHER THAN LEGISLATIVE ACT.

20. Plaintiff re-alleges the allegations set forth in paragraphs 1 through 19 above.

21. Ordinance 123133, enacted with the Mayor's signature on October 27, 2009, deemed the tunnel the City's preferred alternative for replacing the viaduct, and RCW 47.01.402 effectively deemed the tunnel the State's preferred alternative by directing "the necessary steps to expedite the environmental review and design process" for the tunnel. The City's acceptance of the agreements with the State regarding the tunnel project "merely pursues a plan already adopted by the governing body itself, or some power superior to it." *Citizens for Financially Responsible Government v. City of Spokane*, 99 Wn.2d 339, 347, 662 P.2d 845 (1983). By

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

accepting the contracts, Ordinance 123542 merely pursues that plan and does not constitute a new plan.

22. Proposed R-1 may not be placed upon the ballot because it is beyond the scope of the local government referendum power. Proposed R-1 is beyond the scope of the referendum power because Ordinance 123542 is administrative and not legislative in nature.

23. A controversy exists between Plaintiff and some or all Defendants regarding whether proposed R-1 is within the scope of the referendum power. Adjudication of this controversy by this Court would definitively resolve the controversy.

VI. SECOND CAUSE OF ACTION – DECLARATORY JUDGMENT:

PROPOSED R-1 IS BEYOND THE SCOPE OF THE LOCAL REFERNDUM POWER BECAUSE ORDINANCE 123542 EXERCISES A POWER THAT WAS DIRECTLY DELAGATED TO THE GOVERNING BODY.

24. Plaintiff re-alleges the allegations set forth in paragraphs 1 through 19 above.

25. An ordinance is also beyond the charter-granted power of referendum if the state legislature has delegated the legislative power exercised by that ordinance directly to the governing body and not to the people.

26. State law provides that the governing body of a city is authorized to directly lease, sell, or convey by gift to the State of Washington any land necessary for a state highway, at such price as the governing body may deem in the best interests of the City. The agreements between the State and the City concern, in part, the transfer of City land to the State for State highway purposes and specifically reference the authority granted under RCW chapter 47.12 to the governing body of the City. Ordinance 123542 is therefore beyond the scope of the referendum

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

power, because State law specifically delegates the power to enact this ordinance to the City of Seattle's governing body.

27. A controversy exists between Plaintiff and some or all Defendants regarding whether proposed R-1 is within the scope of the referendum power. Adjudication of this controversy by this Court would definitively resolve the controversy.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the court:

1. Declare that proposed R-1 may not be placed upon the ballot because it is beyond the scope of the local referendum power.

2. Declare that Ordinance 123542 was by its terms effective as of March 30, 2011.

3. Award such other relief as the court deems just and proper.

DATED this 29th day of March, 2011.

PETER S. HOLMES
Seattle City Attorney

By:

Jeff Slayton, WSBA No. 14215
John B. Schochet, WSBA No. 35869
Gary E. Keese, WSBA No. 19265
Assistant City Attorneys
Attorneys for Plaintiff City of Seattle

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