Honorable Laura Gene Middaugh
Noted for April 15, 2011

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 MOTION FOR LEAVE TO FILE SUMMARY JUDGMENT MOTION AND FOR EXPEDITED BRIEFING SCHEDULE Noted for: Friday, April 15, 2011 Without Oral Argument

I. INTRODUCTION AND RELIEF REQUESTED

This declaratory judgment action exclusively concerns issues that are susceptible for resolution on summary judgment but that require resolution by this Court before May 24, 2011. Plaintiff the City of Seattle (the "City") filed this lawsuit on March 29, 2011. Under CR 56(a), the

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City ordinarily would not be able to file a summary judgment motion until the expiration of Defendants' time to answer, which under CR 4(a)(2) would be as late as April 25, 2011 for all defendants except Paxton, who has not yet been served. Delaying a summary judgment motion until April 25 would prevent a hearing from taking place before May 23, 2011 at the earliest, *see* CR 56(c), which would made a decision before May 24, 2011 unlikely. Accordingly, in the interests of expeditiously resolving this matter in a manner consistent with the needs of the parties and judicial economy, the City respectfully requests that this Court: (1) Grant the City leave to file a summary judgment motion on Friday, April 15, before the expiration of Defendants' time to answer the complaint;[1] and (2) issue an expedited briefing and hearing schedule as follows:

- The City and all parties requesting substantially the same relief as the City (the "Moving Parties") shall file and serve their motions for summary judgment and all supporting documents by Friday, April 15, 2011;
- All parties opposing the Moving Parties' motions and seeking different relief (the "Cross-Moving Parties") shall file and serve their responses to the Moving Parties' motions by Monday, April 25, 2011 and shall also file any cross-motions for summary judgment by that date;
- The Moving Parties shall file and serve their replies in support of their motions and responses to the Cross-Moving Parties' motions by Thursday, May 5, 2011;
- The Cross-Moving Parties shall file and serve their replies in support of their motions by Tuesday, May 10, 2011; and

[1] Since this motion is noted for Friday, April 15, the City intends to file and serve a summary judgment motion on that date contingent on a favorable ruling on this motion by this Court.

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- The Court shall schedule oral argument on these motions on Friday, May 13, 2011.[2]

II. STATEMENT OF FACTS

On February 28, 2011, the Seattle City Council enacted Ordinance 123542 by overriding a mayoral veto. *See* Seattle Ordinance 123542 (*available at* http://clerk.ci.seattle.wa.us). Ordinance 123542, which accepts and binds the City to three agreements with Defendant Washington State Department of Transportation (the "State") relating to design and construction of the proposed deep bore tunnel project replacing the Alaskan Way Viaduct in Downtown Seattle, was scheduled to take effect on March 30, 2011. *Id.* On March 29, 2011, Defendants Protect Seattle Now, Andrew Paxton, and Scot Brannon ("Petitioners") filed a referendum petition with the Seattle City Clerk, designated as R-1. *See* Shenk Decl. ¶ 2.[3] Petitioners estimated that the petition contains 28,929 signatures. *See id.* If R-1 is valid, the deadline for placing it upon the 2011 primary ballot is May 24, 2011. *See* RCW 29A.04.311, 29A.04.321 (stating that the primary is on the third Tuesday in August and that local governments have until 84 days before that date to submit a matter for the ballot).

III. KCLR 7(B)(11) STATEMENT

The State does not oppose this motion. *See* Schochet Decl. ¶ 2. On Friday, April 1, 2011, the City notified Defendants Let's Move Forward and Lloyd at the email address on file with Seattle Ethics and Elections Commission (phil@seattlecfo.com) of the City's intent to file this motion. (Lloyd's apparent email address is identified as the "committee email" for Let's Move Forward.) *See id.* ¶ 3, exs. A-B. On Friday, April 1, 2011, the City notified Defendants Protect Seattle Now, Brannon, and Paxton at the email address on file with Seattle Ethics and Elections Commission

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[2] It is the City's understanding that this Court has an available oral argument slot on Friday, May 13, 2011.

[3] Also on March 29, 2011, after the City filed this lawsuit, J. Roger Nowell filed three additional pages of petition signatures with an additional 32 estimated signatures. Shenk Decl. ¶ 2.

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(scot@scotbrannon.net) and the email address on Protect Seattle Now's campaign website (protectseattlenow@gmail.com) of the City's intent to file this motion. (Brannon's apparent email address is identified as the "committee email" for Protect Seattle Now, and some Protect Seattle Now press releases have identified Paxton's email address as protectseattlenow@gmail.com.) *See id.* ¶ 3, exs. A, C-D. The City has not received a response to this email regarding the proposed early summary judgment motion and expedited briefing schedule. *See id.* ¶ 4.

IV. ISSUES

Whether the Court should grant the City leave to file a summary judgment motion fewer than 20 days after its Complaint was served on all parties and whether the Court should adopt an expedited briefing schedule for early summary judgment motions.

V. EVIDENCE RELIED UPON

The City relies upon the Declaration of Carol Shenk, Legislative Information Manager, City of Seattle Clerk's Office; the Declaration of John Schochet, Assistant city Attorney; the documents on file with this Court; and the legal authorities cited in this motion.

VI. ARGUMENT AND AUTHORITY

The sole issue in this lawsuit is whether Seattle's Ordinance 123542 is subject to Seattle's municipal referendum power given the limits imposed on the municipal initiative and referendum power by state law. *See* Complaint ¶¶ 20-27. If Ordinance 123542 is not subject to Seattle's municipal referendum power, the ordinance, and the three agreements it accepts, are binding as of the Ordinance's March 30, 2011 effective date, and R-1 cannot be placed upon the ballot. *See, e.g., Heider v. City of Seattle*, 100 Wn.2d 874, 877, 675 P.2d 597 (1984). If Ordinance 123542 is subject to Seattle's municipal referendum power, Petitioners' filing of their referendum petition suspended the ordinance and R-1 must be placed on the ballot. *See* Seattle

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Charter art. IV, §§ 1.J-1.K. Since Ordinance 123542 implements policies previously adopted by City and State law in 2009, the City believes it is administrative, not legislative, and therefore not subject to the local referendum power; alternatively, the City also believes Ordinance 123542 is not subject to the local referendum power because it takes actions delegated by the State to Seattle's governing body. *See, e.g.*, *City of Port Angeles v. Our Water-Our Choice*, 170 Wn.2d 1, 7, 239 P.3d 589, 592 (2010); *City of Sequim v. Malkasian*, 157 Wn.2d 251, 265, 138 P.3d 943, 951 (2006). Pursuant to the Supreme Court's guidance in *Philadelphia II v. Gregoire*, 128 Wn.2d 707, 911 P.2d 389 (1996), the City is bringing this action so this Court may determine whether Ordinance 123542 is referable and, in turn, whether R-1 should be placed upon the ballot or the three City-State agreements deemed effective as of March 30, 2011. Because the deadline for placing R-1 upon this year's primary ballot is May 24, 2011, *see* RCW 29A.04.311, 29A.04.321, and because the City needs to know as soon as possible whether its three agreements with the State are in effect, it is important that the City receive an expeditious final determination from this Court.

The briefing schedule proposed by the City accomplishes this while being fair to all parties. The standard timeline contemplated by the Civil Rules would push a hearing date too close to the May 24 ballot deadline. This schedule gives Petitioners and any other parties supporting placing R-1 on the ballot 27 days from the filing of this action to their first brief's due date, and they would have more than a week to respond to the City's motion. All parties would have the opportunity to file replies, and argument would be set more than a week before the ballot deadline, giving this Court an opportunity to make a decision following argument while still allowing the parties to determine whether to seek appellate relief following this Court's decision. This briefing schedule balances the need to give all parties the opportunity to prepare

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arguments and research and analyze the applicable legal issues while also addressing the City's need for a clear answer on whether Ordinance 123452 is referable and the agreements' legal status before the ballot deadline.

DATED this 4th day of April, 2011.

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