IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF WHATCOM

THE CITY OF BELLINGHAM, a municipal corporation and political subdivision of the State of Washington,	**NO. 12 2 01718 9**
Plaintiff,	**MEMORANDUM IN SUPPORT OF SPECIAL MOTION TO STRIKE UNDER RCW 4.24.525**
vs.	
WHATCOM COUNTY, a charter county and political subdivision of the State of Washington, DEBBIE ADELSTEIN, Auditor, in her official capacity, NO COAL!, A Washington political committee, and STONEWALL JACKSON BIRD, Committee Chairperson and in his capacity as Principal Petitioner,	
Defendants.	

Defendants NO COAL! and Stonewall Jackson Bird bring this special motion pursuant to the "Washington Act Limiting Strategic Lawsuits Against Public Participation" at RCW 4.24.525(4)(a). The moving Defendants ask the Court to strike the Complaint's First, Second, Third, and Seventh Bases for Relief and its request for injunctive relief to bar the entire initiative from the ballot. These are claims based on actions involving public participation and petition and the City cannot establish by clear and convincing evidence a probability of prevailing on these

Paukert & Troppmann, PLLC
522 W. Riverside Avenue,
Suite 560
Spokane, WA 99201
Telephone: (509) 232-7760

claims in a pre-election challenge. The City's inclusion of substantive, instead of procedural, arguments against the narrow enforcement provisions in the initiative and its failure to account for a severability clause violated RCW 4.24.525(4)(a) and these claims must be stricken as a matter of law.[1]

I. STATEMENT OF FACTS

Over the past two years, residents of the City of Bellingham have joined together to draft and qualify an initiative that would create a Community Bill of Rights. *Declaration of Stonewall Bird.* That initiative contains three parts. The first establishes a communitywide Bill of Rights that recognizes new civil, political, and environmental rights for the residents of Bellingham. The second prohibits certain activities that would violate those rights. And the third elevates those rights above the claimed "rights" and powers of corporate and other business entities that violate municipal laws. *Id.* The City has not complained about any of the substantive rights included in the initiative. The City also ignored the severability clause in the initiative that would cure any of the enforcement provisions that a court might deem beyond the scope of an initiative.

A. The Development and Qualification of the Bill of Rights Initiative

Beginning in November of 2010, a group of Bellingham residents, including Stonewall Bird began to meet regularly to discuss contemporary issues affecting the City of Bellingham. *Id.* Between February 2011 and February 2012, the group hosted several workshops for residents of Bellingham put on by the Community Environmental Legal Defense Fund (CELDF).

---

[1] RCW 4.24.525 is designed to protect free expression for individuals engaged in public participation, and similar to other laws against prior restraint, requires the trial court to make an early determination and strike all but the most compelling legal claims so that the weight of litigation does not chill public participation and petition. In this case, the chill is particularly egregious because it is the government that is wielding the sword of a lawsuit against those who are petitioning it for change.

Paukert & Troppmann, PLLC
522 W. Riverside Avenue,
Suite 560
Spokane, WA 99201
Telephone: (509) 232-7760

Id. These workshops explored the issue of local self-government, and the interaction between the rights of communities and the claimed "rights" of corporations and other business entities. *Id.* Over two hundred people attended the workshops, which, in part, introduced participants to other communities across the country that were engaged in similar conversations. *Id.*

The group considered a first draft of a Bellingham Community Bill of Rights in July 2011. *Id.* At the same time, the group began formalizing its organizational structure, creating a nonprofit organization called Living Democracy (incorporated on September 1, 2011), and an unincorporated political association acting as a political committee called NO COAL! (bylaws adopted on October 30, 2011, and registered with the Washington State Public Disclosure Commission). *Id.* The NO COAL! group decided to pursue a ballot initiative that would contain the Bellingham Community Bill of Rights. *Id.*

The two groups and their various committees met over one hundred times in 2011, with a similar pace of gatherings in 2012. *Id.* On January 26, 2012, NO COAL! formally launched the campaign for a Bellingham Community Bill of Rights at the Squalicum Boat House, within sight of both the Bellingham waterfront and the train tracks that run through Bellingham. *Id.*

The next day, the group submitted the proposed initiative to the Bellingham City Finance Director pursuant to §1.02.020(A) of the Bellingham Municipal Code. *Id.* The City Attorney reviewed the petition, determined that it was in "proper form," and, working with the petitioners, drafted a ballot title for the initiative. Pursuant to §1.02.020(E), the Finance Director then filed the ballot title with the County Auditor on February 7, 2012. *Id.*

Paukert & Troppmann, PLLC
522 W. Riverside Avenue,
Suite 560
Spokane, WA 99201
Telephone: (509) 232-7760

On June 18, the petitioners submitted 625 pages of petitions, bearing nearly 10,000 signatures, to the Finance Director to fulfill the Bellingham Charter requirements of submission of at least 4,990 valid signatures to qualify an initiative for the ballot.[2] *Id.*

The County Auditor issued a Certificate of Sufficiency on June 26, 2012. According to that Certificate, the campaign submitted a total of 9,951 signatures. *Id.* The Elections Office proceeded to check 7,357 signatures, of which 5,163 were deemed valid by the Office, thus qualifying the initiative for the November 2012 ballot. *Id.* By municipal law, the initiative was then forwarded to the Bellingham City Council as a petition for the Council to adopt it. *Id.*

Defendants and movants of this motion, Stonewall Bird and the unincorporated association No Coal!, were the primary public participants and petitioners in bringing the initiative as a petition to the City Council. *Id.* They engaged in multiple public meetings to discuss and advocate for the changes included in the initiative and made numerous public statements in support of this petition for change in local government. *Id.* As a direct result of this public participation and petition to the Bellingham City Council, they were named in this complaint. *Id.*

B. <u>The Response by the Bellingham City Council</u>

At an executive session called by the Bellingham City Council on the afternoon of June 18—the same day on which the petition signatures were submitted by the petitioners to the City—the City Council authorized the City Attorney to file litigation against the duly qualified initiative. *Id.* In a statement read after the conclusion of the City Council's regular session, the Council declared that the challenge would be solely to determine whether the initiative was "within the scope of the initiative process" as established by Washington law. *Id.*

---

[2] Signature requirements are governed by §10.02 of the Bellingham City Charter, which requires signatures equal to "not less than 20% of the total number of votes cast for the office of Mayor at the last preceding general election."

Paukert & Troppmann, PLLC
522 W. Riverside Avenue,
Suite 560
Spokane, WA 99201
Telephone: (509) 232-7760

On June 28, 2012, the City Council filed this declaratory judgment action against the Whatcom County Auditor, Whatcom County, the sponsoring group NO COAL!, and the principal petitioner for the initiative, Stonewall Bird. *Id.* In its request for declaratory relief, the City contradicted its oral statements concerning the scope of the challenge, and asked this Court to examine the legal and constitutional substance of the initiative's enforcement provisions, though the City does not appear to quarrel with the substantive rights in the initiative.

C. Severability of Initiative Provisions

Section Nine of the proposed initiative contains a severability clause:

> The provisions of this Ordinance are severable. If any court of competent jurisdiction decides that any section, clause, sentence, part, or provision of this Ordinance is illegal, invalid, or unconstitutional, such decision shall not affect, impair, or invalidate any of the remaining sections, clauses, sentences, parts, or provisions of the Ordinance. . .

See Initiative at §9 ("Severability").[3] *Id.* The City of Bellingham failed to address in its complaint why a post-election challenge to a few of the enforcement provisions it doesn't support, combined with the severability clause, would not meet its stated concerns.

II. ARGUMENT

Under the "Washington Act Limiting Strategic Lawsuits Against Public Participation" (herein the "Act"), a party may bring a special motion to strike a claim that is a based on "action involving public participation and petition." RCW 4.24.525(4)(a). The Act is meant to protect the people's exercise of their right to petition the government for redress of grievances, and to prevent people who exercise that right from the considerable expense of defending against weak lawsuits that seek to chill their valid exercise of the right, unless all the claims of such lawsuits

---

[3] Washington courts have ruled that if any portions of an initiative are ruled to be valid, that the valid portions must be put on the ballot. *See Priorities First v. City of Spokane*, 93 Wash.App. 406, 412 (1998).

Paukert & Troppmann, PLLC
522 W. Riverside Avenue,
Suite 560
Spokane, WA 99201
Telephone: (509) 232-7760

can be established with clear and convincing evidence within the first sixty days of the litigation. 2010 c 118 § 1. Initiative lawmaking—direct lawmaking by the people themselves—is the essence of public participation and petition under the Act, and in this case, Defendants Bird and NO COAL! have engaged in extensive public participation in petitioning for change within Bellingham. Under the City's Municipal Code, an initiative petition of this type is explicitly and on its face a petition for action by the City Council. *Id.*, *Exhibit B*.

The City's Complaint contains three bases for the declaratory relief it seeks that arguably might be proper for a pre-election challenge if the initiative did not contain a severability clause; but it includes four other bases that cannot be sustained under any circumstance and must be stricken as a matter of law. The moving Defendants do not seek to strike these three pre-election claims under this special motion at this time[4]. *See, e.g., American Traffic Solutions, Inc. v. City of Bellingham*, 163 Wash.App. 427, 290 P.3d 245 (Wash. App. 2011) (denying a special motion to strike under RCW 4.24.525 because the claim challenging a proposed initiative was a proper subject for a pre-election challenge).

The City's first, second, third, and seventh bases for declaratory relief are another matter and must be stricken. They assert that the proposed ordinance, if enacted by the people at the November election and enforced by the City and the people, would violate various substantive provisions of federal and state constitutional and statutory law. Washington jurisprudence is abundantly clear that substantive challenges to a proposed ordinance are not proper subjects of a pre-election challenge to initiative lawmaking. Hence the Court must dismiss these as groundless claims based on actions involving public participation and petition. And the Court must award

Paukert & Troppmann, PLLC
522 W. Riverside Avenue,
Suite 560
Spokane, WA 99201
Telephone: (509) 232-7760

the moving Defendants the statutory penalties and fees to discourage the City from engaging in prior restraint in bringing SLAPP suits in the future.

A. Initiative Lawmaking is "Action Involving Public Participation and Petition"

The legislature enacted the "Washington Act Limiting Strategic Lawsuits Against Public Participation" in 2010. RCW 4.24.525. It did so out of concern for SLAPP suits, or strategic lawsuits against public participation. SLAPP suits are weak or unconstitutional lawsuits filed to deter the public from exercising the constitutional rights of freedom of speech and to petition the government for redress of grievances. 2010 c 118, § 1. The Act seeks to deter such suits by providing an efficient method for speedy adjudication of SLAPP suits, and also by imposing a mandatory fines plus costs and fees against parties whose claims are dismissed under the Act. *Id.*

Under the Act, the moving party bears "the initial burden of showing by a preponderance of the evidence that the claims against them are based on an action involving public participation and petition." RCW 4.24.525(4)(b). The Act defines "action involving public participation and petition" in five ways. The first two encompass statements or documents submitted "in a legislative … proceeding or other governmental proceeding authorized by law," or "in connection with an issue under consideration … by a legislative … proceeding or other governmental proceeding authorized by law." RCW 4.24.525(2)(a) and (b). The third definition of "action" encompasses statements or documents submitted that are "reasonably likely to encourage or enlist public participation in an effort to effect consideration or review of an issue in a legislative … proceeding or other governmental proceeding authorized by law." RCW 4.24.525(2)(c). The fourth definition encompasses statements or documents submitted "in a place

---

[4] Defendants reserve the right to challenge these bases under RCW 4.24.525 at a later date based on a severability clause argument, including after the City files its opposition brief to this motion if it does not

Paukert & Troppmann, PLLC
522 W. Riverside Avenue,
Suite 560
Spokane, WA 99201
Telephone: (509) 232-7760

open to the public or a public forum in connection with an issue of public concern." RCW 4.24.525(2)(d). The fifth encompasses "any other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public concern, or in furtherance of the exercise of the constitutional right of petition." RCW 4.24.525(2)(e).

The statement/document at issue here is the "Proposal for a Bellingham Community Bill of Rights to be adopted by citizens' initiative" ("Proposal"), which the City attached to its Complaint as Exhibit A. This petition to the City Council[5] and the election whether to adopt it is an "action involving public participation and petition" under all five statutory definitions of the phrase. Initiative lawmaking is a legislative proceeding or other governmental proceeding authorized by law, specifically authorized both by the Washington State Constitution and statute, and by the city charter and municipal code. *See* Wash. Const. Art II, §1(a); RCW 29.79.010 *et seq.*, and 35.33.300; City of Bellingham Charter at §10.01; and BMC 1.02. Initiative lawmaking is a "legislative proceeding" because it involves making law. In this case, initiative lawmaking is also an "other governmental proceeding" because it involves an election conducted by the City, which is an "entity created by state … or local statute or rule." RCW 4.24.525(1)(d).

The "Proposal" is a document submitted in the course of, and in connection with an issue under consideration by, the process of initiative lawmaking, qualifying for the first two definitions of "action involving public participation or petition" under subsections (2)(a) and (b) of the Act. The "Proposal" also is likely to encourage or enlist the public to participate in the November 2012 election on whether to adopt it, making it an "action" under subsection (2)(c). As a document filed with the City pursuant to the required procedures, the "Proposal" has been

---

justify the balance of its claims.

Paukert & Troppmann, PLLC
522 W. Riverside Avenue,
Suite 560
Spokane, WA 99201
Telephone: (509) 232-7760

submitted in a public forum in connection with an issue of public concern, satisfying the fourth definition of "action" under subsection 2(d). Finally, the whole process of initiative lawmaking qualifies as exercise of the right to petition the government, meaning the "Proposal" and the election whether to adopt it both qualify as "any other lawful conduct" under the fifth definition of "action" at subsection 2(e). *See* RCW 4.24.525(2)(a) through (e).

The City alleges in its complaint that it is the public participation of these Defendants in advocating for the initiative that gives the City a basis for suing them for declaratory and injunctive relief under the seven separate bases alleged in the complaint. The City essentially admits that the claims brought against these Defendants are based on their public participation.

The City's Complaint "is based on" actions involving public participation and petition. The first, second, third, and seventh bases for declaratory relief argue exclusively that the "Proposal," in substance, violates various provisions of federal and state law, both constitutional and statutory. *See* Complaint, ¶¶ 3.5–3.7, 3.11. The relief the City seeks includes a declaration that the "Proposal" is invalid and none of it should placed on the ballot, and an injunction preventing placement of the "Proposal" on the ballot. *See* Complaint, "Prayer for Relief," pp. 10–11. By attacking the "Proposal" to keep it off the ballot in November, the first, second, third, and seventh bases for declaratory relief clearly are claims based on action involving public participation and petition. The moving Defendants have carried their initial burden.

B. The Challenged Bases for Relief are Groundless under Washington Election Law, and the City Cannot Establish a Probability of Success by Clear and Convincing Evidence.

---

[5] Once a proposed initiative has been certified as having sufficient signatures, it is considered a petition directly to the City Council, which can vote to accept the proposal or defer it to the voters. BMC 1.02.070.

Paukert & Troppmann, PLLC
522 W. Riverside Avenue,
Suite 560
Spokane, WA 99201
Telephone: (509) 232-7760

Once the moving party carries its initial burden under the Act, "the burden shifts to the responding party to establish by clear and convincing evidence a probability of prevailing on the claim." RCW 4.24.525(4)(b). The City cannot meet its burden with regard to its first, second, third, and seventh bases for declaratory relief. Because these claims do not involve the narrow exceptions to the ban on pre-election challenges to initiative lawmaking, they must be dismissed.

Under Washington law only a few pre-election challenges are allowed, The allowable challenges are generally limited to those that involve whether the proposed ordinance is a proper subject for initiative lawmaking, not whether it will withstand post-election constitutional scrutiny. This is a procedural matter, and does not involve whether the initiative violates federal or state law in a substantive manner. Hence allowable pre-election challenges include that the proposed ordinance is administrative rather than legislative, *City of Port Angeles v. Our Water-Our Choice!*, 170 Wash.2d 1, 239 P.3d 589 (Wash. 2010), or that the initiative concerns a matter that state law commits exclusively to a municipal government, rather than to the municipality as a whole. *Mukilteo Citizens v. Mukilteo*, 174 Wash.2d 41, 272 P.3d 227 (Wash. 2012).

The City's first, second, third, and seventh bases for relief do not meet either the administrative or delegative tests outlined above. They involve not whether the proposed ordinance is a proper subject of initiative lawmaking, but whether provisions in the proposed ordinance itself *might* violate various provisions of federal and state law, both constitutional and statutory. *See* Complaint, ¶¶ 3.5–3.7, 3.11. Washington jurisprudence is clear that such substantive challenges are never proper prior to an election for initiative lawmaking. *Coppernoll v. Reed*, 155 Wash.2d 290, 297 (2005) (affirming the "longstanding rule of our jurisprudence that we refrain from inquiring into the validity of a proposed law, including an initiative or referendum, before it has been enacted"); *Seattle Bldg. and Const. Trades Council v. City of*

Paukert & Troppmann, PLLC
522 W. Riverside Avenue,
Suite 560
Spokane, WA 99201
Telephone: (509) 232-7760

Seattle, 94 Wash.2d 740, 746 (1980) (declaring that "the courts should not interfere in the electoral and legislative processes"); *State ex rel. O'Connell v. Kramer*, 73 Wash.2d 85, 87 (1968) (declaring that the validity of proposed initiatives "should not come before us unless and until the people have enacted the measure into law, for the Supreme Court does not render advisory opinions"). Instead, our democratic procedure requires that the people first decide whether to enact a law proposed by initiative. Only after enactment may parties against whom the law is enforced challenge its substance in a case or controversy that is ripe for consideration.

The underlying rationale for the prohibition on substantive pre-election challenges is the sanctity of the initiative process and an avoidance of prior restraint. Unlike other states, the people of the State have codified the initiative power within Article II of the Washington Constitution, explicitly reserving initiative and referendum power to the people, and carving that power out from the general legislative authority of government. As declared by Washington courts, "the right of the people to enact laws through the initiative process is, of course, one of the foremost rights of the citizens of the State of Washington." *Schrempp v. Munro*, 116 Wash.2d 929, 932 (1991); *State ex rel. Mullen v. Howell*, 107 Wash. 167, 168 (1919) (declaring that initiative and referendum are "the first of all the sovereign rights of the citizen."); *Save Our State Park v. Hordyk*, 71 Wash. App. 84, 89-90 (1993). As proclaimed by the Washington Supreme Court, "local initiative and referendum provisions reserve a 'fundamental right of a governed people to exercise their inherent right and constitutional political power over governmental affairs.'" *1000 Friends of Washington v. McFarland*, 159 Wn.2d 165 (2006).

The sanctity of that initiative power has been extended outwards to protect the right of initiative qualification and political speech, with Washington courts ruling that restrictions on that right must be subject to the strictest constitutional tests. Indeed, relying on those

Paukert & Troppmann, PLLC
522 W. Riverside Avenue,
Suite 560
Spokane, WA 99201
Telephone: (509) 232-7760

constitutionally-embedded initiative rights, Washington State is one of only a handful of states to extend those protections to petitioning efforts on privately owned land and to certain political speech. *See Aderwood Associates v. Washington Environmental Council*, 96 Wash.2d 230 (1981) (mall owners' "private autonomy interest. . . not sufficient to overcome petitioners' rights" under the Washington Constitution's guarantee of citizens' initiative); *State of Washington ex rel. Public Disclosure Commission v. 119 Vote No! Committee et al.*, 135 Wash.2d 618 (1998) (striking agency regulation that banned false political advertising as a violation of the Washington Constitution's free speech guarantees); *Collier v. City of Tacoma*, 121 Wash.2d 737 (1993) (striking City ordinance that banned posting of certain pre-election campaign signage as a violation of the Washington Constitution's speech guarantees and confirming that even a content neutral restriction on political speech must satisfy strict scrutiny).

The other interest underlying the prohibition on substantive pre-election challenges to initiatives is that such challenges hinder the evolution of the law. Law changes to reflect new social standards, especially in the recognition of expanded horizons for equality and protection of rights. Allowing substantive pre-election challenges stunts that process, renders the law static, and places residents entirely at the whim of their elected officials as to moving new laws forward. Proposals for new laws that are unpopular with governments never emerge from the discussion process between people and their elected officials, and necessary movements towards change in legal structures are stillborn.[6] Waiting for government institutions to act on their own, especially when needed change runs contrary to the vested interests of governmental officials

---

[6] Indeed, the initiative proponents in this case have declared exactly that, explicitly proclaiming that a new structure of law that recognizes the rights of Bellingham residents and true "local self-government" is necessary to stop environmental degradation and climate change.

Paukert & Troppmann, PLLC
522 W. Riverside Avenue,
Suite 560
Spokane, WA 99201
Telephone: (509) 232-7760

(and the interests they represent in many locations), would guarantee that the doctrines of "separate but equal" and "women as property" would have remained the law of the land.

The City tries to avoid the general ban on pre-election challenges by couching its claims in terms of whether the proposed ordinance is within the City's initiative lawmaking power. Close reading of the claims, however, makes clear that those arguments are based entirely on whether the ordinance itself, in effect and substance, would violate federal or state law. This often involves the City's assertion that the ordinance is not within the City's power generally, which is different from the ordinance being outside the scope of the initiative process. For instance, the first basis says. "To pass such a law would be directly contrary to state law, the state constitution, federal law, and the United States Constitution." Complaint, ¶ 3.5. The second basis says, "The proposed ordinance would directly conflict with Article XI, section 11 (municipal police power), Article XII, section 5 (allowing corporations to sue) and Article XII, section 13 (regulating railroad carriers) of the State Constitution." Complaint, ¶ 3.6. The third basis says, "The initiative would enact laws that are in conflict with the United States Constitution and federal law." Complaint, ¶ 3.7. And the seventh basis says, "Neither RCW 35.22.280 or the Charter grant the City the authority to pass laws that create standing for a private cause of action as set forth in the proposed measure." Complaint, ¶ 3.11. All of these assertions involve whether the proposed ordinance is within the lawmaking power of the City, or whether it would violate federal or state law in effect. None involve whether the proposed ordinance is within or without the allowable procedure for initiative lawmaking.

If the Court accepts the City's novel argument that these claims regarding the constitutionality of the initiative pertain only to the scope of initiative lawmaking power, then it allows the City, by exception, to swallow the entire general rule against substantive pre-election

Paukert & Troppmann, PLLC
522 W. Riverside Avenue,
Suite 560
Spokane, WA 99201
Telephone: (509) 232-7760

challenges. Any opponent of an initiative who wishes to avoid this rule need only craft its complaint to say that by violating substantive law, the proposed ordinance is outside the initiative lawmaking power, which would contradict the weight of Washington election law.

Because the first, second, third, and seventh bases for relief are unsupportable pre-election challenges, the City cannot carry its burden of showing by clear and convincing evidence that these claims will succeed. Moreover, the City has not alleged that any of the substantive rights in Section 3 of the ordinance are beyond the scope of initiative powers and they must be advanced to the ballot even if the court were to consider striking one of the narrow enforcement provisions. *Priorities First v. City of Spokane*, 93 Wash.App. 406, 412 (1998). Because the moving defendants have carried their initial burden under the Act, and the City cannot carry its responsive burden, the Court must strike the challenged claims and deny the injunctive relief of barring the proposed Bellingham Community Bill of Rights from the ballot.

C. If the Court Strikes the Challenged Claims, it Must Award the Moving Defendants Ten Thousand Dollars Plus the Costs of Litigation and Reasonable Attorneys' Fees.

The Act says, "The court shall award to a moving party who prevails, in part or in whole, on a special motion to strike made under subsection (4)" both "costs of litigation and any reasonable attorneys' fees incurred in connection with each motion," plus "an amount of ten thousand dollars." RCW 4.24.525(6)(a)(i) and (ii). The language "shall" means the award is mandatory after a successful motion. *See, e.g., In re Marriage of Eklund*, 143 Wn.App. 207 (2008) (mandatory monetary penalty for non-compliance with parenting plan); *Spokane Research & Defense Fund v. City of Spokane*, 155 Wn.2d 89 (2005) (mandatory penalties for

Paukert & Troppmann, PLLC
522 W. Riverside Avenue,
Suite 560
Spokane, WA 99201
Telephone: (509) 232-7760

violations of the public records act); *State v. Richardson*, 105 Wn.App. 19 (2001) (mandatory victim penalty assessment).

The City cannot avoid the award by arguing that some of its claims survive, especially when the bulk of the actual rights in the initiative have not been challenged by the City. The Act allows motions against individual claims in a lawsuit. *See* RCW 4.24.525(1)(a) and (4)(a). Nowhere in the statute does it require a defendant to strike the entire lawsuit to be entitled to costs, fees, and the penalty.[7] By pleading these violative claims, the City required Defendants to answer them and incur attorney fees and must be held accountable as set out by the legislature.

III. CONCLUSION

The moving Defendants NO COAL! and Mr. Bird respectfully ask the Court for an Order: (1) striking from the City's Complaint the first, second, third, and seventh bases for declaratory relief at paragraphs 3.5, 3.6, 3.7, and 3.11 of the Complaint as well as the sought injunctive relief to bar the entire bill of rights from appearing on the ballot; (2) requiring the City to pay NO COAL! and Mr. Bird at least ten thousand dollars each; and (3) authorizing the defendants NO COAL! and Mr. Bird to submit a declaration of the costs of litigation and reasonable attorneys' fees they incurred in connection with this special motion so the Court can prepare an order for the City to pay such costs and fees.

DATED this 12th day of July, 2012.

By: _____
BREEAN L. BEGGS, WSBA #20795
Attorney for Defendants No Coal! and Bird

[7] For this reason and also under a plain reading, the Act arguably authorizes the Court to award ten thousand dollars per claim struck to each moving party.

Paukert & Troppmann, PLLC
522 W. Riverside Avenue,
Suite 560
Spokane, WA 99201
Telephone: (509) 232-7760

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th day of July, 2012, I caused to be served a true and correct copy of the foregoing document to the following:

Shane P. Brady **James Erb** Office of the City Attorney City of Bellingham 210 Lottie Street Bellingham, WA 98225	X ___ ___ ___	HAND DELIVERY OVERNIGHT MAIL U.S. MAIL VIA EMAIL
Royce Buckingham Office of the Prosecutor Whatcom County Suite 201 311 Grand Avenue Bellingham WA 98225	X ___ ___ ___	HAND DELIVERY OVERNIGHT MAIL U.S. MAIL VIA EMAIL

By: _____
Stonewall Bird

Paukert & Troppmann, PLLC
522 W. Riverside Avenue,
Suite 560
Spokane, WA 99201
Telephone: (509) 232-7760