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SUPERIOR COURT OF WASHINGTON
IN AND FOR KING COUNTY

BURIEN COMMUNITIES FOR
INCLUSION, a Washington political
committee,

Plaintiff,

v.

RESPECT WASHINGTON, a Washington
political committee; KING COUNTY
ELECTIONS; JULIE WISE, KING
COUNTY DIRECTOR OF ELECTIONS,
in her official capacity at KING COUNTY
ELECTIONS; and THE CITY OF
BURIEN,

Defendants.

CASE NO. 17-2-23799-0

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Comes now the Plaintiff, and by way of complaint, alleges as follows:

I. NATURE OF ACTION

1.1 Plaintiff Burien Communities for Inclusion (“the Committee”) brings this action for declaratory and injunctive relief against Defendants Respect Washington, King County Elections, the King County Director of Elections, and the City of Burien (the “City”).

1.2 The Committee alleges that Burien Initiative Measure No. 1 (“Measure 1”) is plagued by numerous issues that render it unlawful and invalid. The Committee seeks a

1 declaratory judgment that Measure 1 is outside the scope of the City’s initiative power and is
2 otherwise invalid. The Committee seeks an order prohibiting the measure from appearing on the
3 November 2017 ballot.

4 **II. JURISDICTION AND VENUE**

5 2.1 The Superior Court of Washington, King County has jurisdiction over Plaintiff’s
6 claims pursuant to RCW 2.08.010 and RCW 7.24.010.

7 2.2 Venue in King County is appropriate pursuant to RCW 4.12.020.

8 2.3 This Court has jurisdiction over this controversy pursuant to RCW 7.24.010
9 because Plaintiff seeks a declaratory judgment that Measure 1 is invalid under the Burien
10 Municipal Code (“BMC”) and the laws of the State of Washington. This Court also has the
11 authority under RCW 7.24.190 and RCW 7.40.010 to issue a prohibitory injunction preventing
12 placement of Measure 1 on the November 2017 ballot.
13

14 **III. PARTIES**

15 3.1 The Committee is a Washington political committee whose primary address is in
16 Burien, Washington and whose mission is to serve the Burien community. The Committee’s
17 interests and the interests of the people who it serves will be adversely affected by changes to the
18 functions, powers and duties of City officers and employees, as well as the inquiries, actions and
19 law enforcement profiling by the City that could result from the passage of Measure 1.
20

21 3.2 Respect Washington is a Washington nonprofit organization headquartered in
22 Bellevue, Washington. Respect Washington is the sponsor of Measure 1. As of the filing of this
23 Complaint, more than half of Respect Washington’s funding comes from “US, Inc.,” an entity
24 based out of Petoskey, Michigan. US, Inc. was founded by John Tanton, who public sources say
25
26

1 opposes immigration on the grounds of population reduction and protection of an ethnic white
2 majority.

3 3.3 King County Elections is a department of King County, Washington responsible
4 for conducting local elections. The Committee names King County Elections as a defendant
5 because an injunction preventing the unlawful initiative from appearing on the ballot will require
6 the department's action.

7 3.4 Julie Wise is the King County Director of Elections. The Committee names
8 Defendant Wise in her official capacity only. The Committee names the Director of Elections of
9 King County Elections as a defendant because an injunction preventing the unlawful initiative
10 from appearing on the ballot will require the Director's action.

11 3.5 The City is a code city, organized under Chapter 35.02 RCW and Article 11,
12 Section 10 of the Washington State Constitution, whose powers are conferred by the laws of the
13 State of Washington. The City does business in King County, Washington. The City is named as
14 a defendant because a challenge concerning the local initiative power necessarily involves
15 consideration of the City's authority to enact legislation that conflicts with state and local laws.
16
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18 **IV. FACTUAL ALLEGATIONS**

19 4.1 In January of 2017, the City Council considered the adoption of Ordinance No.
20 651 to ensure that local officers and city officials will not request information regarding or
21 initiate any inquiry solely based on a person's civil immigration status, race, or inability to speak
22 English, and to forbid the creation of a registry or database for the purpose of classifying
23 residents' religious affiliations.

24 4.2 Ordinance No. 651 created Chapter 2.26 of the BMC. This Chapter prohibited
25 inquiries into immigration status by City offices, departments, employees, agencies, or agents
26

1 unless “otherwise required by law,” and prohibited the conditioning of City services on the
2 citizenship or immigration status of any individual. BMC 2.26.020. It also prohibited the
3 collection of information regarding religious affiliation, unless such information is voluntarily
4 provided. BMC 2.26.030. It expressly did not prohibit any City employee, agency, or agent
5 from participating in required activities with federal law enforcement agencies. BMC
6 2.26.020(A).

7
8 4.3 On January 9, 2017, at a Special Meeting of the Burien City Council, Ordinance
9 No. 651 was passed by a majority of council members, after public comment.

10 4.4 Craig Keller, a West Seattle resident who is also the campaign manager, treasurer
11 and sole officer of Respect Washington, submitted on July 7, 2017 an initiative petition to the
12 City Clerk’s office seeking to create an ordinance repealing Ordinance No. 651 and amending
13 the BMC to prohibit the City of Burien from regulating the acquisition of immigration status or
14 religious affiliation without a majority vote of the City Council and a majority vote of the people
15 at a municipal general election.

16
17 4.5 The petition used for gathering signatures in support of Measure 1 contained
18 numerous extraneous statements of anti-immigrant propaganda, added a purported “legislative
19 history” characterizing city council members’ positions on Ordinance No. 651, and misstated the
20 language and effects of Ordinance No. 651. Specifically, the petition included the following
21 language, prominently placed, emphasized with a border and in larger font than most other text
22 on the page:

23
24 **CALL TO ACTION:** Don't be fooled by Councilmember doubletalk about Ordinance 651. A mere four of them
25 blocked our police from investigating whether criminals and gang members in their custody are here illegally.
26 “Sanctuary city” ordinances chill the sharing of such information with U.S. Citizenship and Immigration Services
which works for us to process criminals for deportation. Ord. 651 threatens the safety of every Burien citizen and
legal resident by allowing criminal aliens, like the one who shot Kate Steinle in San Francisco, to prey upon others
inside our once peaceful town. You have the right to live in a Burien which is safe! **Please sign today!**

1 On the page setting forth the text of Measure 1, the petition included the following
2 information, and a solicitation for contributions to Respect Washington:
3

4 **LEGISLATIVE HISTORY**

Burien City Council passed Ord. 651 on Jan. 9, 2017

5 Voting "YES"

Berkowitz [sponsor]

6 Bell

Tosta

7 Armstrong

8 "Respect for Law" Realists Voting "NO":

9 Edgar

Krakowiak

10 Wagner

11 **Dear Citizen:**

12 A "sanctuary" city breeds disrespect for the rule of
13 law. Illegal immigration is not a victim-less crime.
14 It deprives unemployed citizens and legal residents
15 of work opportunities, depresses wages, penalizes
16 employers who obey the law, encourages the use of
17 fraudulent documents and stolen Social Security
18 numbers - particularly those of children. Please
19 sign and mail immediately to earn yourself a vote!

20 **INSTRUCTIONS:**

21 **STEP 1:** Make 2-sided copies of this petition for
22 friends. Or print 2-sided from a PDF downloaded
23 from www.RespectWashington.us

24 **STEP 2:** Fill signature lines immediately. Signed
25 petitions must be received at our P.O. Box by July 5th,
26 2017. Do not procrastinate. Fill petition this week.

STEP 3: Mail petition and contribution (checks please,
no cash) to: www.RespectWashington.us
P.O. Box 66634, Seattle, WA 98166
(206) 935-3505

Please help us cover the costs of this petition.

1
2 4.6 Measure 1 amends the Burien Municipal Code as follows:

- 3 a. Adds a new Chapter to BMC, at 9.20, titled “Citizen Protection of
4 Effective Law Enforcement,” which would prohibit the City from
5 “regulat[ing] the acquisition of immigration status or religious affiliation
6 unless such regulation is approved by a majority vote of the City Council
7 and a majority vote of the people at a municipal general election.”
8
9 b. Formally and specifically deems the Findings concerning the goals and
10 intents behind BMC 2.26 as outlined therein to be “propaganda;” and
11
12 c. Repeals BMC 2.26 in its entirety.

13 4.7 After several efforts at gathering the necessary number of signatures needed to
14 present the petition to the City Council, Respect Washington presented the petition to the City
15 Council.

16 4.8 The City Council considered the petition at its Special Meeting on July 31, 2017,
17 and heard extensive public comment on the issue. A decision was postponed until the City
18 Council’s regular meeting on August 7, 2017, where the City Council adopted Resolution No.
19 395 to place Measure 1 on the November 2017 ballot.

20 4.9 Measure 1 is already listed on the King County Elections ballot measure
21 homepage (*see* [http://www.kingcounty.gov/depts/elections/how-to-vote/ballots/whats-on-the-
23 ballot/ballot-measures/november-general/list-of-measures/burien.aspx](http://www.kingcounty.gov/depts/elections/how-to-vote/ballots/whats-on-the-
22 ballot/ballot-measures/november-general/list-of-measures/burien.aspx)).

24 4.10 Upon information and belief, King County Elections will be preparing, printing,
25 and mailing voter ballots and voter pamphlets in the very near future. Voter pamphlets are
26 scheduled to be mailed to voters on or about October 17, and ballots will be mailed on or about

1 October 18. However, overseas voters and military service member ballots are scheduled to be
2 mailed on or about September 22. Therefore, printing of ballots and related materials is expected
3 to commence well in advance of that date.

4 4.11 Various issues exist with Measure 1 that render it unlawful and invalid.

5 4.12 Initiatives and referenda that are unlawful or otherwise invalid should not be
6 placed on the ballot. Absent action from this Court, Measure 1 will unlawfully appear on the
7 November 2017 ballot.
8

9 4.13 The Committee has standing to bring this case because placement of Measure 1
10 on the November 2017 ballot and any resulting passage of Measure 1 will cause injury in fact to
11 the people of Burien who the Committee serves.

12 **V. FIRST CAUSE OF ACTION – Declaratory Judgment That Measure 1 Is Invalid**
13 **Because It Exceeds The Scope Of the City’s Initiative Power.**

14 5.1 Plaintiff incorporates the previous allegations as if fully set forth herein.

15 5.2 Pursuant to the Washington Declaratory Judgment Act, RCW 7.24 *et seq.*, this
16 Court may declare the validity of a proposed initiative.

17 5.3 This matter is ripe for declaratory relief because a dispute exists as to the validity
18 of the Initiative.

19 5.4 **Administrative Issues Are Outside the Initiative Power.** Local initiative power
20 is limited to legislative, as opposed to administrative, actions. Determining whether an action is
21 administrative or legislative is appropriate in pre-election review. Ordinance No. 651 sought,
22 among other things, to bring City operating procedures in line with King County law
23 enforcement policies in order to foster trust and cooperation between city personnel and law
24 enforcement officials and immigrant communities to heighten crime prevention and public
25 safety. Policies and procedures regarding how Burien City personnel conduct their jobs are
26

1 administrative and already established in the BMC and city policies. Measure 1 would thus
2 change existing administrative policy. Measure 1 is administrative in nature, and is therefore not
3 subject to the initiative (or referendum) process. Plaintiff is entitled to a declaratory judgment
4 that Measure 1 is invalid on this basis.

5 **5.5 Powers Granted To The Legislative Authority Of A City Are Outside The**
6 **Initiative Power.** Powers that have been granted to the legislative authority of a city or county,
7 as opposed to the municipal entity as a whole, are also not subject to legislation by initiative. If a
8 state statute explicitly grants power to the city’s legislative authority—here, the City Council—
9 then that power is held exclusively by the City Council and not by the electorate. RCW
10 35A.11.020 states that the “legislative body of each code city shall have power to organize and
11 regulate its internal affairs ... *and to define the functions, powers, and duties of its officers and*
12 *employees[.]*” Ordinance No. 651 governs the functions, powers, and duties of its personnel with
13 respect to inquiring into, using, and disclosing immigration status and information about
14 religious affiliation. If passed, Measure 1 would prohibit City officials from limiting City
15 employees from regulating the acquisition of immigration status or religious affiliation without a
16 vote by the electorate at a general election. Measure 1 therefore exceeds the scope of the City’s
17 initiative (or referendum) powers. Plaintiff is entitled to a declaratory judgment that Measure 1
18 is invalid on this basis.
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21 **VI. SECOND CAUSE OF ACTION – Declaratory Judgment That Measure 1 Is Invalid**
22 **Because The Content and Form of the Petition Used To Gather Signatures In**
23 **Support Thereof Failed To Comply With Proper Initiative/Referendum Procedures,**
24 **As Set Forth In Both City And State Law, Rendering the Signatures Obtained**
25 **Invalid.**

26 6.1 Plaintiff incorporates the previous allegations as if fully set forth herein.

1 6.2 Pursuant to the Washington Declaratory Judgment Act, RCW 7.24 *et seq.*, this
2 Court may declare the validity of a proposed initiative.

3 6.3 This matter is ripe for declaratory relief because a dispute exists as to the validity
4 of the Initiative.

5 6.4 RCW 35A.11.080 provides that cities like Burien may provide for the exercise in
6 their city of the powers of initiative and referendum.

7 6.5 BMC 1.10.010 provides that the “citizens of the city of Burien ... are granted the
8 powers of initiative and referendum as provided for in RCW 35A.11.080,” which “shall be
9 exercised in the manner set forth in RCW 35.17.240 through 35.17.360.”

10 6.6 As required by RCW 35.17.270, any petitioner preparing an initiative petition for
11 submission “shall follow the procedures established in RCW 35.21.005.”

12 6.7 The petition proposing Measure 1 violates RCW 35.21.005 by deviating from the
13 requirements for the contents and form of a petition, as set forth in RCW 35.17.240 through
14 35.17.360, by containing on its face non-objective information, information that is not fair or
15 impartial, and fundraising solicitations not permitted by statute.

16 6.8 Because the petition failed to comply with local and state law, the signatures
17 obtained via those petitions are invalid. Therefore, there were not a sufficient number of valid
18 signatures as required by RCW 35A.11.100 to qualify the measure for the ballot.

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21 **VII. THIRD CAUSE OF ACTION – Declaratory Judgment that Measure 1 Is Invalid**
22 **Because It Imposes Unreasonable Restrictions On The City Council’s Power To**
23 **Organize Its Affairs, In Violation Of State Law.**

24 7.1 Plaintiff incorporates the previous allegations as if fully set forth herein.

25 7.2 Pursuant to the Washington Declaratory Judgment Act, RCW 7.24 *et seq.*, this
26 Court may declare the validity of a proposed initiative.

1 7.3 This matter is ripe for declaratory relief because a dispute exists as to the validity
2 of the Initiative.

3 7.4 Section 1 of Measure 1 states that the City “shall not regulate the acquisition of
4 immigration status or religious affiliation” unless “approved by a majority vote of the City
5 Council and a majority vote of the people at a municipal general election.”

6 7.5 The legislative body of the City of Burien has the power to organize and regulate
7 its internal affairs, conferred to it by RCW 35A.11.020. This power, inter alia, confers on the
8 legislative body of the City of Burien the power to enact laws and have those laws become
9 effective without those laws having to be approved by a majority vote of the people at a
10 municipal general election. This language adds impermissible conditions on the City Council’s
11 ability to organize and regulate its internal affairs, in violation of State law.

12
13 **VIII. FOURTH CAUSE OF ACTION – Declaratory Judgment That Measure 1 Is Invalid**
14 **Because It Violates The Single Subject Rule.**

15 8.1 Plaintiff incorporates the previous allegations as if fully set forth herein.

16 8.2 Pursuant to the Washington Declaratory Judgment Act, RCW 7.24 *et seq.*, this
17 Court may declare the validity of a proposed initiative.

18 8.3 This matter is ripe for declaratory relief because a dispute exists as to the validity
19 of the Initiative.

20 8.4 The Washington Constitution (art. II, sec. 19) requires that no bill embrace more
21 than one subject. This requirement applies to ordinances adopted by initiative. If a piece of
22 legislation fails to meet this requirement, it is wholly invalid.

23 8.5 If legislation contains two component parts with two different purposes—one
24 continuing and general in character, the second specific and targeted in nature—it is in violation
25 of the single subject rule and therefore wholly invalid.
26

1 8.6 Measure 1 contains two component parts with two different purposes. It creates a
2 continuing, general, prospective prohibition on the City regulating the acquisition of immigration
3 status or religious affiliation without a majority vote of the City Council and of the electorate at a
4 general election. It also creates a specific repeal of BMC 2.26. It therefore violates the single
5 subject rule, and is invalid.

6 **IX. FIFTH CAUSE OF ACTION – Injunctive Relief.**

7 9.1 Plaintiff incorporates the previous allegations as if fully set forth herein.

8 9.2 Pursuant to RCW 7.24 and RCW 7.40 *et seq.* the Court has the power to grant
9 injunctive relief. The Court may grant an injunction at the time the action is commenced or at
10 any time afterward.

11 9.3 A prohibitory injunction preventing Measure 1 from being placed on the ballot
12 for the November 2017 election is the only adequate remedy for this invalid initiative.

13 **XI. REQUEST FOR RELIEF**

14 WHEREFORE, plaintiff requests that this Court grant the following relief:

- 15 A. A declaratory judgment that Measure 1 is procedurally and substantively invalid;
16 B. Enjoin Measure 1 from being included on the November 2017 ballot;
17 C. Payment of attorneys’ fees and costs; and
18 D. Such other and further relief as the Court deems just and proper.
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1 DATED this 8th day of September, 2017.

2 s/Jennifer L. Robbins
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