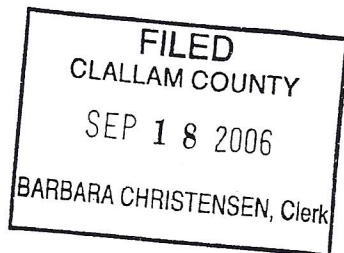


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COPY

CLALLAM COUNTY SUPERIOR COURT
STATE OF WASHINGTON

CITY OF PORT ANGELES, a Washington
municipal corporation

Plaintiff,

v.

OUR WATER — OUR CHOICE!, a
Washington political action committee;
Lynn Warber, campaign chair of OUR
WATER — OUR CHOICE!;
PROTECT OUR WATERS, a Washington
political action committee; and
Ann Mathewson, treasurer of PROTECT
OUR WATERS,

Defendants,

v.

Washington Dental Service Foundation, LLC,
a Washington limited liability company,

A Party in Interest.

NO. 06 2 00823 1

COMPLAINT FOR
DECLARATORY JUDGMENT

I. INTRODUCTION

1. The City of Port Angeles is a non-charter code city organized and operating under Title 35A RCW.

2. The City has been operating a municipal water system since at least 1925.

3. On September 8, 2006 and September 12, 2006, Defendants OUR WATER — OUR CHOICE! filed initiative petitions, to have the City Council enact an ordinance or submit to a vote of the residents of the City the "Medical Independence Act" (copy attached as Exhibit A).

4. On September 8, 2006 and September 11, 2006, Defendants PROTECT OUR WATERS filed initiative petitions, to have the City Council enact an ordinance or submit to a vote

1 of the residents of the City the "Water Additives Safety Act" (copy attached as Exhibit B).

2 5. The City of Port Angeles seeks a declaration that the "Medical Independence Act"
3 is beyond the scope of the initiative power.

4 6. The City of Port Angeles seeks a declaration that the "Water Additives Safety Act"
5 is beyond the scope of the initiative power.

6 7. Port Angeles seeks resolution of these legal issues in accordance with the Washington
7 State Supreme Court ruling in Philadelphia II v. Gregoire, 128 Wash.2d 707 (1996), which held that
8 the proper method for resolving whether a proposed initiative is beyond the scope of the initiative
9 power is to seek a judicial determination before the matter is placed on a ballot.

10

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II. JURISDICTION AND VENUE

12 8. Plaintiff CITY OF PORT ANGELES is a municipal corporation organized under the
13 laws of the State of Washington.

14 9. Defendant OUR WATER - OUR CHOICE! is a political action committee registered
15 with the Washington Public Disclosure Commission, listing an address of 1114 E. 4th Street, Port
16 Angeles, WA 98362. Defendant Lynn Warber is listed as "campaign chair" of OUR WATER —
17 OUR CHOICE!. Lynn Warber is a citizen of the United States, a resident and registered voter of the
18 City of Port Angeles, and is the petitioner who filed the proposed Medical Independence Act with
19 the Port Angeles City Clerk.

20 10. Defendant PROTECT OUR WATERS is a political action committee registered with
21 the Washington Public Disclosure Commission, listing an address of 1923 W. 6th Street, Port
22 Angeles, WA 98362. Defendant Ann Mathewson is listed as treasurer of PROTECT OUR
23 WATERS. Defendant Ann Mathewson is a citizen of the United States, a resident and registered
24 voter of the City of Port Angeles, and is the petitioner who filed the proposed Water Additives Safety
25 Act with the Port Angeles City Clerk.

26 11. Washington Dental Service Foundation, LLC is an essential party to this action. It
27 has a contract interest that relates to the subject matter of this action. It is made a party to this action
28 as required by RCW 7.24.110.

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1 12. The court has jurisdiction over this matter under RCW 7.24 et seq.

2

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II. BACKGROUND FACTS

4

5 13. On February 18, 2003, the City Council of Port Angeles by motion accepted an offer
6 from Washington Dental Service Foundation ("WDSF") to construct a system to fluoridate the City's
7 water supply.

8

9 14. Subsequently, on March 1, 2005, the City Council approved, by motion, an agreement
10 between the City and WDSF titled "Agreement Regarding Gift of Fluoridation System" (the
11 "Agreement"), copy attached as Exhibit C. The Agreement provided that WDSF would give to the
12 City a system to fluoridate the City's public water supply.

13 15. Each initiative would have the effect, along with other consequences, of requiring the
14 City to stop fluoridating its public water supply.

15

16

III. CLAIMS

17 16. The proposed initiatives are beyond the scope of initiative power for one or more of
18 the following reasons:

19

20 A. Each initiative attempts to administer a proprietary function of the City.
21 Initiatives may validly address only legislative subjects. An administrative subject is outside the
22 scope of the initiative power in a code city. The operation of the municipal water system is a
23 proprietary administrative function. It is not a governmental function. The operation of the City
24 water system, including the addition of chemicals, what chemicals to add, and what quantities and
25 by what means, are all administrative functions. They are beyond the scope of initiative powers.

26

27 B. Even if operation of the City's water system is a legislation matter, it is a
28 matter that has been vested in the City Council. State law specifically vests in the legislative
29 authority of the City, the City Council, the right to operate City utilities. The operation of City
30 utilities is not a subject that is within the scope of initiative power given to the electorate.

31

32

1 C. Either initiative, if it were adopted, would impair the obligation of the contract
2 between the City and the WDSF. Legislation impairing the obligation of a contract is prohibited by
3 Article I §23 of the Washington State Constitution. Any initiative attempting to enact an ordinance
4 impairing the obligation of a contract is outside the scope of the initiative power and is invalid.

5 D. The "Medical Independence Act" effects a transfer of property rights of the
6 City's water utility to citizens of the community. It grants a new property right in that it does not
7 exist now, and does so without consideration. It is a violation of Article VIII §7 of the Washington
8 State Constitution. An attempt to require a violation of a constitutional prohibition is beyond the
9 scope of initiative and is invalid.

10 E. Each initiative constitutes an invalid attempt to interfere with the authority
11 vested in the City Council to control the budget of the City. Port Angeles is a code city governed
12 under Title 35A RCW. Chapter 35A.33 RCW provides that the city's legislative authority (the City
13 Council) alone is authorized to budget. The city council alone may make changes and adjustments
14 to the budget. Each initiative would interfere with the budgeting power of the City Council because
15 each would, outside of the statutory budget process, create a significant liability of the city.

16 17. A controversy exists between the City and the Defendants OUR WATER - OUR
17 CHOICE! and Lynn Warber regarding whether the "Medical Independence Act" is within the scope
18 of the initiative power, which adjudication by this court would resolve.

19 18. A controversy exists between the City and the Defendants PROTECT OUR
20 WATERS and Ann Mathewson regarding whether the "Water Additives Safety Act" is within the
21 scope of the initiative power, which adjudication by this court would resolve.

22 23 IV. REQUEST FOR RELIEF

24 Plaintiff CITY OF PORT ANGELES requests that the court grant the following relief:

25 1. Declare that the "Medical Independence Act," in its entirety, is invalid because it is
26 beyond the scope of the local initiative power, and therefore is null and void as a City of Port
27 Angeles initiative.

28 2. Declare that the "Water Additives Safety Act," in its entirety, is invalid because it is
4-Complaint for Declaratory Judgment

1 beyond the scope of the local initiative power, and therefore is null and void as a City of Port
2 Angeles initiative.

3 3. Enter judgment awarding Plaintiff CITY OF PORT ANGELES its costs and
4 disbursements in this action.

5 DATED this 18 day of September, 2006.

6 *filing*
7 *fees, etc*

8 
9 WILLIAM E. BLOOR, WSBA #4084
10 City Attorney for City of Port Angeles

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