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Court of Appeals Division I
State of Washington

Opinion Information Sheet

Docket Number: 67908-2

Title of Case: Tim Eyman, App/cross-resp. vs. Michelle Mcgehee/redmond City Clerk, Resp/cross-app.

File Date: 02/19/2013

SOURCE OF APPEAL

Appeal from King County Superior Court

Docket No: 11-2-32979-8

Judgment or order under review

Date filed: 10/11/2011

Judge signing: Honorable Laura Inveen

JUDGES

Authored by Ronald Cox

Concurring: James Verellen

Dissenting: Stephen J. Dwyer

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Dwyer, J. (concurring and dissenting) ? I agree with the majority that the determination of the legal validity of an initiative is exclusively a judicial function and that executive branch officers have no business stiff-arming the voters of a city by petulantly refusing to comply with their lawful obligation to process a submitted initiative. I also agree with the majority that, based on the issues briefed to us, appellant has not stated an argument meriting appellate relief. In particular, the initiative statute at issue does not mandate advisory ballots. However, although not argued to us, a plain reading of the statute at issue discloses that the proper, lawful processing of this proposed initiative would not have been a useless act. I dissent from the majority's contrary conclusion.

The optional municipal code gives the citizens of a city two powers. Upon the collection of a sufficient number of signatures of city voters, the proponents of an initiative may: (1) Present it to the city council for the council to exercise its legislative authority and adopt the proposed ordinance "as is"; and (2) If the city council declines to do so, have the proposed ordinance placed on a general election ballot for an "up or down" vote by the city's voters. Thus, the citizens are given both the right to propose legislation and the right to enact legislation.

Here, the majority correctly notes that controlling case law establishes that the traffic camera ordinance at issue is not subject to direct democracy. It cannot be placed on a ballot because the state legislature has reserved to the

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city council?not to the city's voters?the right to make decisions in this field of governance. See *Mukilteo Citizens for Simple Government v. City of Mukilteo*, 174 Wn.2d 41, 272 P.3d 227 (2012); *Am. Traffic Solutions, Inc. v. City of Bellingham*, 163 Wn. App. 427, 260 P.3d 245 (2011), review denied, 173 Wn.2d 1029 (2012). I have no quarrel with the majority's deference to this authority.

But what does this mean? It means that the city council can legislate in

this area. The city council can?legally?adopt ?as is? the ordinance proposed in the initiative. This would be perfectly proper. However, the wrongful acts of the Redmond City Clerk deprived both the voters and their elected city council of this opportunity.

This case is different from the situation in *Philadelphia II v. Gregoire*, 128 Wn.2d 707, 911 P.2d 389 (1996). As described:

The Philadelphia II initiative seeks to establish in the United States ?direct democracy? by means of a federal, nationwide initiative process to complement the current congressional system, and ultimately to call a world meeting where representatives from participating countries will discuss global issues.

Philadelphia II, 128 Wn.2d at 710. ?[T]he initiative process is limited to acts that are legislative in nature.? *Philadelphia II*, 128 Wn.2d at 718. A proposed initiative must also ?be within the authority of the jurisdiction passing the measure.? *Philadelphia II*, 128 Wn.2d at 719. The initiative at issue in *Philadelphia II* ?goes beyond the scope of Washington State initiative power as it attempts to exercise authority that goes beyond the jurisdiction of the state.? 128 Wn.2d at 719 (?The fundamental and overriding purpose of *Philadelphia II* is to

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create a federal initiative process.?). Thus, the *Philadelphia II* initiative sought to enact a law that the state legislature was without power to enact. As the state legislature could not enact the proposed law, neither could the voters.

But here the Redmond City Council can choose to adopt Eyman?s initiative ?as is.? The initiative is ?legislative in nature? and is ?within the authority? of the city council to adopt. *Philadelphia II*, 128 Wn.2d at 718, 719.

?Petitions containing the required number of signatures shall be accepted as prima facie valid until their invalidity has been proved.? RCW 35A.01.040(5). To label Eyman?s initiative as being ?invalid? is to make an overbroad statement. The initiative petition was valid for presentment to the Redmond City Council. Had the city council chosen not to adopt the ordinance proposed in the initiative, the matter could not be properly put on the ballot. This is true. But that does not change the fact that the first right granted by the initiative power is the power to

propose legislation. And it does not change the fact that the proposed legislation could have been lawfully adopted "as is" by the city council.

Redmond's executive branch wrongfully and illegally came between its voters and their city council. It would not have been a "useless act" for the superior court judge to have granted the writ of mandamus, forcing the Redmond City Clerk to behave lawfully and transmit the petition for signature verification.