

Initiative No. 2009 - 2
“Community Bill of Rights” Charter Amendment
Council Action under SCC 2.02.080

Statement to the Spokane City Council
by Steve Eugster
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Tonight, the City Council should declare that Initiative No. 2009 - 2, submitted by Envision Spokane, is illegal. SCC 2.02.080.

Why? Because it violates the “single subject” rule of City Charter § 13.

Section 13. Subject of Ordinance. The subject of every ordinance shall be set out clearly in the title thereof, and no ordinance except one making appropriations shall contain more than one subject. Ordinances making appropriations shall be confined to the subject of appropriations.

The single subject rule is not something new to the courts of the State of Washington and in particular the Washington Supreme Court.

The rule is found in the Washington State Constitution. Art. II, § 19 provides:

SECTION 19 BILL TO CONTAIN ONE SUBJECT. No bill shall embrace more than one subject, and that shall be expressed in the title.

The state constitution version of City Charter § 13 comprises "two distinct prohibitions." *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 207, 11 P.3d 762, 27 P.3d 608 (2000).¹ The first clause, the single-subject rule,

¹ *In Amalgamated*, the court held that an initiative measure fixing annual license tab fees for motor vehicles at \$30 per vehicle, repealing existing motor vehicle taxes, and requiring voter approval for future tax measures was invalid.

provides that "[n]o bill shall embrace more than one subject," while the second clause, the subject-in-title (or clear-title) rule, stipulates that "that [subject] shall be expressed in the title." Wash. Const. Art. II, § 19.

City Charter Section 13 has the same two requirements though the language is a bit different. The "subject of every ordinance shall be set out clearly in the title" and "no ordinance except one making appropriations shall contain more than one subject." City Charter § 13. Thus, the subject can contain only a single subject.

The Three Step Process of Analysis

The Washington Supreme Court has developed certain tests as to whether these two rules of the single subject rule are complied with. Whether an initiative violates the single subject rule is a three step process:

First, a determination must be made as to whether the subject of the legislation is general or restrictive.

Second, if the title is general it must be determined whether the parts of the bill are (a) germane to the title and (b) rationally related to one another.

Third, it must be determined whether the incidental subjects bear a rational relation to one another, whether they are considered necessary to implement one another.

Discussion

First Step

This court has adopted a framework that makes the single-subject analysis contingent on the preliminary labeling of the bill's title as either "general" or "restrictive." A general title "is broad rather than narrow." *Amalgamated*, 142 Wn.2d at 207.

Where a title is general, the act will have a single subject if the parts of the

bill are germane to the title and rationally related to each other. *Citizens for Responsible Wildlife Mgmt. v. State*, 149 Wn.2d 622, 632-33, 71 P.3d 644 (2003); *Amalgamated*, 142 Wn.2d at 209; *Pierce County v. State*, 150 Wn.2d 422, 431 n. 3, 78 P.3d 640 (2003).

The title to the charter changes is “Community Bill of Rights.” This is a general title. It is the general subject of the legislation.

Note, the general title is not in the singular, rather it is in the plural. Immediately, one can see there is violation of the single subject rule. There is a violation on the face of the initiative. One might say “the initiative is facially void or illegal.”

Second Step

The second step is to determine whether there is a “`rational unity’ between the general subject and the incidental subdivisions.” *Fed. Old Line Ins. Co.*, 69 Wn.2d at 403. The rational unity analysis focuses solely on the measure itself, not statements which be generated for a voters’ pamphlet. *Amalgamated*, 142 Wn.2d at 212. The problems of a title cannot be corrected by tinkering with the voter’s pamphlet.²

In the case at hand, Is there a rational unity between the general title of bill of rights and the rights which are set forth? There is no connection between the two. Such rights are not aspects of any known “bill of rights.” There is no special relationship between the title bill of rights and any particular rights or set of rights.

As previously stated, the title in fact is not single, it is multiple and it does not presume rights which common sense might identify specifically with the title. The rights are not “germane” to the title.

Third Step

² This point is made because some might say the problems presented by the initiative could be corrected by additional work on the ballot title of the initiative as it may appear in a local voter’s pamphlet.

The third step in the rational unity analysis is to determine if the incidental subjects bear some rational relation to one another. See *Kiga*, 144 Wn.2d at 826; *Amalgamated*, 142 Wn.2d at 216.

The court will ask “[d]oes rational unity exist between the two subjects such that they might be considered necessary to implement the other?” *Amalgamated*, 142 Wn.2d at 217; *Kiga*, 144 Wn.2d at 827).

In *Wash. Toll Bridge Auth. v. State*, 49 Wn.2d 520, 524, 304 P.2d 676 (1956) the title violated single subject rule because incidental subjects were unrelated and not germane to one another.

In these cases, the subjects were so disjointed as to bear no relation to each other, thus the court concluded that they were unrelated because neither was necessary to implement the other.

Of particular relevance, the initiatives in *Amalgamated*, *Kiga*, and *Washington Toll Bridge Authority v. State* each contained dual subjects, but one was more broad, long term and continuing than the other, a characteristic that suggests logrolling may be at issue. See *Amalgamated*, Page 638 142 Wn.2d at 217; *Kiga*, 144 Wn.2d at 827; *Wash. Toll Bridge Auth v. State*, 49 Wn.2d at 524.

Is not this what we have in the instant case? Does not the broadness of the term “community bill of rights” suggest on its very face the fact that “logrolling” is taking place?

Here, the subject of the initiative is general. It is a “community bill of rights.” Immediately, one is impressed with the fact that the subject is not only general but that it is multiple. It is “rights” not a “right.”

Assuming the rights are incidental to the general subject of Community Bill of Rights do the rights or incidental subjects bear “some rational relation to one another” and is there rational unity extant between the multiple subjects such that they might be considered necessary to implement the other?

What is the rational unity between each of the rights such that they might be considered necessary to implement the other? There is none.

For example, there is no unity between affordable preventive health care and affordable housing. There is no unity between the delivery of legal standing to inanimate objects such as rivers and affordable housing. There is no unity between bank lending practices and neighborhood veto of development proposed in a neighborhood.

Conclusion

Initiative No. 2009-2 is illegal. It violates the single subject rule of City Charter §13.

OTHER LEGALITY PROBLEMS – OBSERVATIONS

Introduction

There are many other problems of the legality of Initiative No. 2009-2. These problems have to do generally with the power of a home rule charter city in the state of Washington.

A city does not have independent power. It is a subdivision of the state and in this case the state of Washington.

Spokane's powers are limited to those extended to it by Washington law.

In addition, the powers of the city of Spokane are limited by the United States Constitution. For example, the city cannot exercise powers granted by the people to the federal government of the United States of America.

Finally, an initiative to change the city charter must comply with the provisions of the charter. The single subject rule is discussed above. The rule as to how laws are amended, City Charter §21 will be addressed below.

Discussion

The discussion which follows is divided into the various parts or “rights” of the so-called community bill of rights. First there will be the title, next the language of the right or rights with respect of the title, and then bulleted comments as to what is illegal about each title and its rights.

First. Residents have the right to a locally-based economy.

Residents have the right to a locally-based economy to ensure local job creation and enhance local business opportunities. The right shall include the right to have local monies reinvested locally by lending institutions, and the right to equal access to capital, credit, contracts, incentives, and services for businesses owned by Spokane residents.

- What is a locally based economy?
- Where does the city get the authority to create a cause of action to force “local monies [to be] reinvested locally by lending institutions.”
- What powers does the city of Spokane have to provide “right[s] to equal access to capital, credit, contracts, incentives, and services for businesses owned by Spokane residents.” This conflicts with state and federal law.
- The city does not have authority to enter fields of law already entered by superior governmental powers.
- The city has no power to engage in law making which affect interstate commerce.

Second. Residents have the right to affordable preventive healthcare.

Residents have the right to affordable preventive healthcare. For residents otherwise unable to access such care, the City shall guarantee such access by coordinating with area healthcare providers to create affordable fee-for-service programs within eighteen (18) months following adoption of this Charter provision.

- How does one define “affordable preventive health care?”
- Where does the city get the authority to provide affordable preventive healthcare insurance or services?
- Where is the money going to come from?
- This would violate the state constitutional prohibitions of gifts of public funds. Wash. Const. Art. VIII, §7.

Third. Residents have the right to affordable and safe housing.

Residents have the right to affordable housing, the right to a safely-maintained dwelling, and the right to be free from housing discrimination. The City shall ensure the availability of low-income housing stock sufficient to meet the needs of the low-income

housing community. People and families may only be denied renting or buying of a dwelling for non-discriminatory reasons and may only be evicted from their residence for non-discriminatory causes.

- Federal and state law have already occupied most of the field as to this so called “right.”
- Where does the city have the power by law to “ensure the availability of low-income housing stock sufficient to meet the needs of the low-income housing community.”
- What do the foregoing words mean?
- Is there not more than one subject in this “right?”
- This would violate the state constitutional prohibitions of gifts of public funds. Wash. Const. Art. VIII, §7.

Fourth. Residents have the right to affordable and renewable energy.

Residents have the right to access affordable and renewable energy sources.

- How can the people of Spokane create these rights - affordable energy and renewable energy.
- Is the city supposed to go into the public utilities business?
- Does this not conflict with rights already granted to Avista?
- Is the city supposed to engage in condemnation of Avista service and properties in Spokane so as to provide such “affordable” and “renewable” energy services.
- This would violate the state constitutional prohibitions of gifts of public funds. Wash. Const. Art. VIII, §7.

Fifth. The natural environment has the right to exist and flourish.

Ecosystems, including but not limited to, all groundwater systems,

surface water systems, and aquifers have the right to exist and flourish. River systems have the right to flow and have water quality necessary to provide habitat for native plants and animals, and to provide clean drinking water. Aquifers have the right to sustainable recharge, flow, and water quality.

- The people of Spokane do not have authority to create legal standing in inanimate objects.
- The area has already been covered under state and federal law.

Sixth. Residents have the right to determine the future of their neighborhoods.

Residents have the right, through their neighborhood councils, to determine the future of their neighborhoods, which shall include the right to adopt enforceable neighborhood plans, and the right to have growth-related public infrastructure costs funded by new development as provided by an impact fees Ordinance. The City of Spokane shall provide sufficient funding to neighborhood councils for the creation, adoption, and enforcement of neighborhood plans. Such plans shall respect and promote the rights delineated by this Charter. Residents may also determine the future of their neighborhoods by rejecting proposed land development projects, in accordance with the provisions of this Charter.

- This provision violates Charter §21 in that it amends other laws but does not comply with the City of Spokane Charter as to the amendment process. The charter says:

Section 21. Amendments and Repeals.
Amendments and repeals of ordinances or sections thereof shall be by ordinance. An amending ordinance shall contain the entire ordinance or section amended.

- Surely this violates the Growth Management Act requirements.
- Zoning laws cannot be changed by local ad hoc referenda

- This law would create the opportunity for unconstitutional taking of property without due process of law or compensation for the taking. It violates both the Washington state constitution and the constitution of the United States of America.

Seventh. Workers have the right to be paid the prevailing wage, and the right to work as apprentices, on certain construction projects.

Workers have the right to be paid the prevailing wage on all private construction projects exceeding two million dollars in construction costs (as annually adjusted for inflation), and all public and publicly subsidized construction projects, within the City of Spokane. Workers have the right to work as apprentices on all private construction projects exceeding two million dollars in construction costs (as annually adjusted for inflation), and all public and publicly subsidized construction projects, through programs approved under the Washington State Apprenticeship Training Program, and each contractor and subcontractor building those projects shall be required to use apprentices for a minimum of fifteen percent (15%) of the total hours worked on each project.

- This right includes more than one right, more than one subject.
- The city has no right to enter into this field, it simply does not have the authority.

Eighth. Workers have the right to employer neutrality when unionizing, and the right to constitutional protections within the workplace.

Workers have the right to employer neutrality when unionizing, and the right to be free from captive audience meetings, or other mandatory, non-work related meetings, in the workplace.

- The city has no business nor right in attempting to enter this field. It is covered already.

Ninth. Residents, workers, neighborhoods, neighborhood councils, and the City of Spokane shall have the right to enforce the Community Bill of Rights.

All rights recognized by the Community Bill of Rights are fundamental, inalienable, and self-executing. The City of Spokane, or any person, neighborhood, or neighborhood council aggrieved by a violation of their rights, or any person seeking to enforce the rights of ecosystems, may enforce these rights. Enforcement actions shall be filed as civil actions in a court of competent jurisdiction, against any person, government, or entity violating these rights, and sufficient legal and equitable relief shall be awarded to remedy the violation, including restoration of a damaged ecosystem. In any action to enforce any Charter right, the court may allow the prevailing plaintiff a reasonable attorney's fee and expert fees. Corporations and other business entities shall not be deemed to possess any legal rights, privileges, powers, or protections which would enable those entities to avoid the enforcement of these rights, or which would enable them to nullify these rights. If any part or provision of these Charter provisions, or the application of these Charter provisions to any person or circumstance, is held invalid, the remainder of these Charter provisions, including the application of such part or provisions to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect.

- See the comments to Right Sixth.

[Tenth] §74.5 (New). Rights of Neighborhoods and Neighborhood Councils

A. The City of Spokane shall notify neighborhood councils of any proposals for commercial, industrial, or multi-unit residential land developments to be located within neighborhoods represented by those councils. That notice shall be given not more than five business days from the submission of a project permit application to the City by the developers of those proposals, and shall include notice to neighborhood councils representing neighborhoods adjacent to the neighborhood in which the land development is proposed to occur.

B. A neighborhood council may veto a land development project if requested to veto that project by a number of neighborhood

registered voters equal to or greater than fifteen percent (15%) of the total number of votes cast at the last preceding general municipal election within that neighborhood. After being petitioned, if the neighborhood council determines that the land development project may adversely affect the neighborhood, and that the project is incompatible with either the neighborhood's planning, the City's Comprehensive Plan, or the City Charter, the council may veto the project. Such action by the neighborhood council shall stop all site development associated with the project, such action shall be binding upon the City of Spokane, and the City of Spokane shall defend such action against any legal challenges.

C. A neighborhood council shall veto a land development project if requested to veto that project by a number of neighborhood registered voters greater than fifty percent (50%) of the total number of votes cast at the last preceding general municipal election within that neighborhood. Petitioners must find that the land development project may adversely affect the neighborhood, and that the project is incompatible with either the neighborhood's planning, the City's Comprehensive Plan, or the City Charter. Such action by the neighborhood council shall stop all site development associated with the project, such action shall be binding upon the City of Spokane, and the City of Spokane shall defend such action against any legal challenges.

- This probably violates the Growth Management Act.
- It probably violates the City Comprehensive Plan
- It more than likely amends the comprehensive plan and in doing so does so illegally.
- See the comments to Right Sixth.

Section 4 In this section the Initiative attempts a blanket amendment of all other charter provisions and city statutes in conflict with the language of the "Community Bill of Rights."

- This is not how legislation is amended. Legislation amended has to be set out showing the legislation as it is and the legislation as amended.

- The Initiative violates City Charter § 21.

Conclusion

The illegalities of Initiative No. 2009-2 set forth above are only a beginning.