

APPENDIX A
IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON

BURIEN COMMUNITIES FOR
INCLUSION, a Washington
political committee,

Respondent,

v.

RESPECT WASHINGTON, a
Washington political committee,

Appellant,

KING COUNTY ELECTIONS;
JULIE WISE, King County
Director of Elections, in her
official capacity at King County
Elections; and CITY OF BURIEN,

Defendants.

No. 77500-6-I

DIVISION ONE

UNPUBLISHED
OPINION

FILED:

September 9, 2019

APPELWICK, C.J.—On September 14, 2017, the trial court granted Burien Communities for Inclusion (BCI) a preliminary injunction, prohibiting Burien Initiative 1 (Measure 1) from being placed on the November 2017 ballot. Respect Washington appeals the preliminary injunction, arguing that (1) it violates the free speech rights of the city of Burien’s (City) voters, (2) the trial court erred in altering the status quo, and (3) BCI failed to show substantial injury. It also contends that Measure 1 is within the scope of the City’s initiative power. We affirm.

FACTS

On January 9, 2017, the Burien City Council passed Ordinance 651 (Ordinance). The Ordinance is now codified at Burien Municipal Code (BMC) 2.26.010-.030. BMC 2.26.020 provides that “a City office, department, employee, agency or agent shall not condition the provision of City services on the citizenship or immigration status of any individual,” except as otherwise required by law. It prohibits City personnel from initiating any inquiry or enforcement action based solely on a person’s civil immigration status, race, inability to speak English, or inability to understand City personnel or officers. BMC 2.26.020(4) And, it forbids City officials from creating a registry for the purpose of classifying people on the basis of religious affiliation, or conducting a study related to the collection of such information. BMC 2.26.030.

On July 7, 2017, Craig Keller, the campaign manager, treasurer, and officer of Respect Washington, a Washington political committee submitted an initiative petition to the City. The petition asked that an initiative repealing the Ordinance, Measure 1,¹ be submitted to a vote of the City’s registered voters. In addition to repealing the Ordinance, Measure 1 would add the following chapter to the BMC:

New Chapter 9.20 is hereby added to the Burien Municipal Code “Public Peace, Morals and Welfare” to read as follows:

¹ Both parties refer to this initiative as “Measure 1.”

9.20 Citizen Protection of Effective Law Enforcement: The City of Burien shall not regulate the acquisition of immigration status or religious affiliation unless such regulation is approved by a majority vote of the City Council and a majority vote of the people at a municipal general election.

Two weeks later, the King County Department of Elections found that a sufficient number of signatures had been submitted for Measure 1, and issued a certificate of sufficiency. The Burien City Council then voted to place Measure 1 on the November 7, 2017 ballot.

On September 8, 2017, Burien Communities for Inclusion (BCI), a Washington political committee, filed a complaint for declaratory and injunctive relief against Respect Washington, King County Elections, King County Director of Elections Julie Wise, and the City. It sought a declaratory judgment that Measure 1 is invalid, arguing in part that (1) it exceeds the scope of the City's initiative power, and (2) the petition used to gather signatures violates RCW 35.21.005. It also asked the trial court to enjoin Measure 1 from being included on the November 2017 ballot.

Three days later, BCI sought and obtained a temporary restraining order (TRO). The TRO prohibited King County Elections and Wise from placing Measure 1 on the November 7, 2017 ballot. As a result, King County removed Measure 1 from the ballot. In granting the TRO, the trial court ordered that, on September 13, the matter be heard on a motion for a preliminary

injunction, at which time the TRO would expire.² The deadline for King County Elections to send the ballots to the printer was the next day, September 14.

On September 14, 2017, the trial court granted BCI's motion for a preliminary injunction. In doing so, it ordered the following:

1. City of Burien Initiative Measure No. 1 ("Measure 1") is invalid on the grounds that (a) Measure 1 exceeds the scope of the initiative authority granted to the people of the City of Burien, that it is administrative in nature, and (b) the petition used to gather signatures for Measure 1 violated RCW 35.21.005 by deviating from the requirements for the contents and form of a petition, as set forth in RCW 35.17.240 through 35.17.360;
2. Defendants King County Elections, Julie Wise, King County Director of Elections, and all agents of King County Elections are prohibited from including or placing Measure 1 on the November 7, 2017 ballot.

Respect Washington appeals.³

² On September 12, 2017, BCI filed a motion for a preliminary injunction, asking the trial court to enjoin King County Elections and Wise from including Measure 1 on the ballot.

³ Respect Washington did not seek a stay of the trial court decision. Instead, on October 27, 2017, it filed a motion with this court, asking the court to treat the order as an appealable order

DISCUSSION

Respect Washington makes six arguments.⁴ First, it argues that BCI is not entitled to any relief because its complaint is barred by the statute of limitations and laches. Second, it argues that the preliminary injunction violated the free speech rights of the City's voters. Third, it argues that the trial court erred in granting a preliminary injunction that altered the status quo. Fourth, it argues that BCI failed to show that substantial injury would result from Measure 1's placement on the ballot. Fifth, it argues that Measure 1 does not exceed the scope of the City's initiative power, and is legislative in nature. And sixth, it argues

under RAP 2.2(a)(3), or, alternatively, to grant discretionary review. On January 3, 2018, this court ordered that review would go forward as an appeal. The court explained that, despite not obtaining a declaratory judgment or permanent injunction, as a practical matter, BCI obtained the relief it requested.

⁴ As an initial matter, BCI argues that all of Respect Washington's claims are moot. This case may be moot, because Measure 1 can no longer be placed on the November 2017 ballot. See Randy Reynolds & Assocs., Inc. v. Harmon, 193 Wn.2d 143, 152, 437 P.3d 677 (2019) (finding that an appeal was moot because the Court of Appeals could no longer offer effective relief). However, Respect Washington contends that Measure 1's placement on another ballot is relief that this court can provide. Even if a case becomes moot, "the court has discretion to decide an appeal if the question is of continuing and substantial public interest." Id. "Washington courts have repeatedly entertained suits involving the right of initiative or referendum despite possible mootness because the suits entail substantial public interest." Glob. Neighborhood v. Respect Wash., 7 Wn. App. 2d 354, 379, 434 P.3d 1024 (2019). Accordingly, regardless of whether Respect Washington's claims are moot, we reach the merits of this case.

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