

No. 82225-5

SUPREME COURT  
OF THE STATE OF WASHINGTON

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CITY OF PORT ANGELES, Respondent,

v.

OUR WATER-OUR CHOICE, and PROTECT OUR WATERS,  
Petitioners,

v.

WASHINGTON DENTAL SERVICE FOUNDATION, LLC,  
Respondent.

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OUR WATER OUR CHOICE AND PROTECT OUR WATERS'  
ANSWER TO AMICI CURIAE BRIEF OF INTERNATIONAL  
ACADEMY OF ORAL MEDICINE AND TOXICOLOGY, ET AL.

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**I. ANSWER**

Amici International Academy of Oral Medicine and Toxicology, et al. provide credible evidence of the harms of delivering drugs in public water supplies where adequate notice and informed consent are impractical, dosage is uncontrolled, and there is no knowledge of consumer medical history, sensitivity or needs. This evidence supports the voters being allowed to enact a prohibition or limitation on all persons putting drugs in local public water supplies in the manner that the Initiatives propose. There is adequate evidence of harm to justify using police power and statutory authority.

Amici International Academy of Oral Medicine and Toxicology, et al. provide credible argument that putting drugs in public water supplies is unconstitutional. However, the instant case is solely about whether the Initiatives can go on the ballot and it is unnecessary for this Court to determine in the instant case whether fluoridation is unconstitutional.

As is stated in *McQuillin Mun Corp* 16:47 (3<sup>rd</sup> Ed.) (2002) provided as Appendix C to the Amici Brief:

The people's right to exercise the initiative power is a right that must be jealously defended by the courts.

Regarding a local initiative, *McQuillin* states:

A limitation of the [local] power by general law may either be express or by implication, but the limitation will not be implied

unless the limiting provisions are clear or compelling. At least, the power extends to all matters of local concern other than those excluded by express or necessarily implied exceptions contained in charter, statutory, or constitutional provisions.

...

state regulation of a matter does not necessarily preempt the power of local voters to act through the initiative or referendum. Courts must inquire into the nature of the state's regulatory interests to determine if they are fundamentally incompatible with the exercise of the right of initiative or referendum, or otherwise reveal a legislative intent to exclusively delegate authority to the local governing body.

McQuillin Mun Corp 16:53 (3<sup>rd</sup> Ed.) (2002) (citations omitted.)

Further:

The distinction between "legislative" and "administrative" matters is the distinction between making laws of general applicability and permanent nature, on the one hand, as opposed to decisions implementing such general rules, on the other.

...

Where a matter is of local rather than statewide concern, a local decision which is intrinsically legislative retains that character even in the presence of a state law authorizing or setting limits on the particular field of action.

McQuillin Mun Corp 16:54 (3<sup>rd</sup> Ed.) (2002) (citations omitted.)

Based on these legal principles, this Court should find the

Initiatives are appropriate to send to the voters of the City of Port Angeles.

Dated this 12<sup>th</sup> day of February, 2010.

Respectfully submitted,

By: \signed\  
Gerald Steel, WSBA No. 31084  
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CERTIFICATE OF SERVICE

I certify that on the 12<sup>th</sup> day of February, 2010, I caused a true and correct copy of this certificate and the Our Water Our Choice and Protect Our Waters' Answer to Amici Curiae Brief of International Academy of Oral Medicine and Toxicology, et al. to be served on the following by first class mail with proper postage:

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Dated this 12<sup>th</sup> day of February, 2010 at Olympia Washington.

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