

September 2, 2015

Mr. Troy Bruner, Chair
City of Spokane Ethics Committee

Re: Request for continuance in Ethics complaint against Councilman Mike Fagan

Mr. Bruner,

I am respectfully requesting a continuance of the Ethics complaint hearing which would allow me to employ the services of an attorney to assist in providing me with defense against what I believe is a baseless and frivolous complaint made by Councilman Jon Snyder on 19 July, 2015. It is my belief that this complaint was made for the express purpose of affecting public opinion as I am a candidate for re-election.

To re-visit the chronology of this matter I offer the following statement;

During the city council's legislative session of 13 July, the matter of a citizen's initiative came before the council for further disposition per the Spokane municipal code. The majority expressed concern over factual voting record information which had been added to the back side the petition used. The majority's primary concern was whether or not the factual voting record was "biased" and was enough to throw the initiative out. A long discussion ensued between CP Stuckart and Asst. City attorney Mike Piccolo during this open public session several times, which amounted to the fact that the initiative sponsors met all of the municipal code requirements and that the factual voting record which was put on the petitions was not prohibited by law. During this public discussion, CM Mumm, CM Stratton, and Spokane city council policy advisor/attorney Mr. Brian McClatchey discussed this issue also. At one point during the exchange, CM Mumm was noted to have thanked Mr. Piccolo for "the memo". CM Mumm was referring to a memo which was issued to the City council and the members of the administration on Friday the 10th specific to the above subject matter. Applying CM Snyder's logic in his complaint, Piccolo and McClatchey both had a duty to stop this discussion to ask for further disposition of "the memo" and failed to do so providing for an implied or expressed waiver to same.

About mid-afternoon the next day, I received a call from Inlander reporter, Mr. Jake Thomas for comments regarding a story he was doing in light of the fact that the Center for Justice was signaling that they would file a law suit to keep that initiative effort off of the ballot. From that article printed the following day, A statement I made was encapsulated therein which CM Snyder is using as basis for his complaint; "Fagan says that Mike Piccolo, a city attorney, has already issued an opinion stating that because supporters didn't modify the ballot title, summary or format, it was acceptable for them to add the language". Simply put; The sponsors of the effort had met all the requirements of the code and that the extra language added to the petition form was not prohibited by same.

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On Friday the 17th CM Snyder sent me an email with his Ethics complaint attached to provide me with notification of his intent to submit this complaint on Monday the 20th. I responded to CM Snyder during which time I asked him to reconsider his complaint as the "contents & conclusion" of the July 10 memo issued by Piccolo were discussed in an open public session of the city council. CM Snyder replied back to me with; "You are right. It was discussed. But there is a difference between acknowledging the existence of a memo and describing its contents to the public".

On 3 August, the day before the primary election, Mr. Jake Thomas called me and stated; That a bird flit upon his shoulder and let him know that an ethics complaint was filed against me", and he asked me for comments on that. I participated in an interview but did not see any article which may have resulted from same. During this interview, I asked Mr. Thomas to check his notes on his contact with me for the word "memo", during which time Mr. Thomas confirmed that I made no such reference. Up to this point, there was no public notice of an Ethics meeting or complaint submission so who was it that notified Mr. Thomas ? Again, this occurred on the day before the primary election.

It is my belief that ill will and/or improper motive is being applied in this allegation against me and this allegation serves no purpose but to impugn my character and strip me of my sacred honor as an elected official and candidate for re-election. This issue has created undue hardships on my family and I, it has affected my service to the citizens which I represent, and further sours the working environment which I must operate in.

As I prepare to provide for a vigorous defense against this allegation, my attorney and I must gain an understanding of the process and procedures used by the Ethic committee. In order for us to move ahead towards the hearing, I would respectfully submit the following questions;

1. Does the Committee have the authority to decide issues of law?
2. What rules govern the Committee?
3. Where can I find the rules?
- 4.. Do I have the right to subpoena witnesses to appear before the Committee?
5. If I have the right to subpoena witnesses, who issues the subpoenas?
6. Does the Administrative Procedure Act (APA) govern the Committee and these proceedings?
7. Do I have a right to submit a written summary of my arguments after the Committee has taken testimony, but before the Committee issues a decision?
8. What is the standard of review in case of an appeal to Superior Court?

In closing, I have included for your review a copy of the Inlander article dated 15 July that is used by CM Snyder as the basis of his complaint, a copy of the transcripts of the Spokane city council meeting of 13 July where an "Implied or expressed waiver" occurred on "the memo" that CM Snyder is accusing me of

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publically discussing, and I would greatly appreciate your consideration of a continuance of these proceedings to allow me to prepare.

Thank you again for your consideration.

Regards,

A handwritten signature in blue ink, appearing to read 'Mike Fagan', with a long, sweeping horizontal line extending to the right.

Mike Fagan, Councilman
Spokane City Council

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Wednesday, July 15, 2015

NEWS

Center for Justice will challenge immigration initiative in court

Posted By Jake Thomas on Wed, Jul 15, 2015 at 12:56 PM

The Center for Justice intends to challenge the legality of an initiative petition that, if passed, would overturn a city policy that bars police and other employees from contacting individuals solely to ascertain their immigration status.

Rick Eichstaedt, the group's executive director, tells the *Inlander* that supporters of the petition illegally placed prejudicial text on the petitions used to collect signatures.

The language added to the petition is a "legislative history" that lists members of Spokane City Council who voted for "Spokane to become a sanctuary for illegal aliens." The petition goes on to list Councilmen Mike Allen and Mike Fagan as the members of the council "who voted to prevent Spokane from becoming a sanctuary for illegal aliens, and to defend the right of taxpayers, police and other city employees to refuse finance and harbor lawless activity."

LEGISLATIVE HISTORY
Ordinances C35164 and C35167 were passed by 5-2 Council votes on October 20 and October 27, 2014, respectively.
Members who voted for Spokane to become a sanctuary for illegal aliens:
Benjamin Stuckart (term ends 2015)
Candace Mumm (Dist 3 term ends 2017)
Jon Snyder (Dist 2 term ends 2017)
Karen Stratton (Dist 3 term ends 2015)
Amber Waldref (Dist 1 term ends 2017)
Members who voted to prevent Spokane from becoming a sanctuary for illegal aliens, and to defend the right of taxpayers, police and other city employees to refuse finance and harbor of lawless activity:
Mike Allen (Dist 2 term ends 2015)
Mike Fagan (Dist 1 term ends 2015)
Date of Mayor's signature:
David Condon (term ends 2015)
Ord. C35164 on November 6, 2014
Ord. C35167 on November 12, 2014
Prime Sponsor: Benjamin Stuckart
(term ends 2015)

Eichstaedt says that past legal challenges to initiatives have been based on their substance, citing attempts from business and government entities to prevent Envision Spokane from having its sweeping measures placed on the ballot.

"This case is really different because we are saying they didn't follow the process," says Eichstaedt, who notes that this a "novel question" for the court to consider.

Under Spokane's initiative process, city lawyers issue an opinion on the legality of the initiative and then write for it an accompanying ballot title and brief narrative, which cannot be modified.

The lawsuit Eichstaedt is planning on filing later this week in Spokane Superior Court will argue that the added text was "biased and prejudicial" and supporters broke the law by adding it to the petitions outside of the city's initiative process.



Rick Eichstaedt

Jackie Murray, the initiative's sponsor, couldn't be reached for comment. But Councilman Mike Fagan, who has advised and supported the initiative campaign, says he doubts that Eichstaedt will prevail.

"Shame on the Center for Justice for going after something that we already have a legal opinion on, costing the taxpayers' money to defend this," says Fagan.

Fagan says that Mike Piccolo, a city attorney, has already issued an opinion stating that because supporters didn't modify the ballot title, summary or format, it was acceptable for them to add the language.

For the last 16 years, Fagan has worked as co-director of Voters Want More Choices, a political action committee that has sponsored ballot initiatives intended to lower taxes in Washington. He says that his group has often added language to its petitions that express the urgency of the issue and appealing to volunteers.

"The Center for Justice is reaching," says Fagan. "This is such a huge national issue."

On Monday, Spokane City Council voted to send the petitions to the county for validation. If the