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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

CRAIG KELLER

Plaintiff,

vs.

CITY COUNCIL OF THE CITY OF BURIEN  
and CITY OF BURIEN, a municipal corporation,  
Defendants,

JULIE WISE, Director of King County Elections  
Department,

Interested Party.

No.

**COMPLAINT AND APPLICATION  
FOR WRIT OF MANDATE**

**URGENT ELECTION-RELATED  
MATTER**

**INTRODUCTION**

After citizens of the City of Burien signed initiative petitions in significant (and legally sufficient) numbers, the City Council failed to take either of the steps required by law to ensure the measure is either adopted or placed on the ballot. From the City's most recent council meeting, the reason is obvious. A majority of the City Council is opposed to what the citizens of

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(425) 453-6206

1 Burien who signed petitions want and is willing to disregard the law, even against the advice of  
2 the City Attorney who warned that the City could be sued for taking no action. Unfortunately,  
3 this suit is necessary to ensure the City of Burien's compliance with the law and the opportunity  
4 to exercise the power of the ballot box.

### 5 PARTIES

6 1. Plaintiff Craig Keller is a resident of King County of the State of Washington, a  
7 taxpayer within the City of Burien, and the sponsor and proponent of Proposition 1 in the City of  
8 Burien.

9 2. Defendant, City of Burien (City) is a municipal corporation organized and  
10 operating under the laws of the State of Washington in King County. The Defendant City  
11 Council of City of Burien is the governing body of the City with duties hereinafter alleged.

12 3. Interested Party Julie Wise is the Director of the King County Elections  
13 Department and is named only because Defendant's duties have an effect on Julie Wise's  
14 compliance with her own duties as the elections officer for King County.

### 15 FACTS

16 4. The City code authorizes initiative and referenda at the city level. Section  
17 1.10.010 of the Burien Municipal Code provides:

18 The citizens of the city of Burien, Washington, are granted the powers of  
19 initiative and referendum as provided for in RCW 35A.11.080 as now in effect  
20 or as hereafter amended. Pursuant to RCW 35A.11.100, these powers shall be  
exercised in the manner set forth in RCW 35.17.240 through 35.17.360 as now  
in effect or as hereafter amended. [Ord. 71 § 1, 1993]

21 5. Plaintiff submitted to the City Clerk of Burien a petition containing the names,  
22 addresses and signatures of voters of the City of Burien for Proposition 1 to be placed on the  
23 ballot.

1           6.       On July 21, 2017, King County Elections Director, Julie Wise, notified Burien  
2 that Proposition 1 had a sufficient number of signatures. *See* Exhibit A attached hereto.

3           7.       Upon notification that the initiative petition had sufficient signatures, the City had  
4 two choices under RCW 35.17.260.

5           Ordinances may be initiated by petition of registered voters of the city filed with  
6 the commission. If the petition accompanying the proposed ordinance is signed  
7 by the registered voters in the city equal in number to twenty-five percent of the  
8 votes cast for all candidates for mayor at the last preceding city election, and if it  
9 contains a request that, unless passed by the commission, the ordinance be  
10 submitted to a vote of the registered voters of the city, the commission shall  
11 either:

12           (1) **Pass the proposed ordinance without alteration** within twenty  
13 days after the county auditor's certificate of sufficiency has been received by the  
14 commission; or

15           (2) Immediately after the county auditor's certificate of sufficiency for  
16 the petition is received, **cause to be called a special election to be held on the**  
17 **next election date**, as provided in RCW 29A.04.330, provided that the  
18 resolution deadline for that election has not passed, for submission of the  
19 proposed ordinance without alteration, to a vote of the people unless a general  
20 election will occur within ninety days, in which event submission must be made  
21 on the general election ballot.

22 RCW 35.17.260 (emphasis added).

23           8.       The way in which cities can cause a special election to be called is governed by  
RCW 29A.04.330(2). In this case, the “next election date” as required by RCW 35.17.260,  
would be general election date in November. RCW 29A.04.330(d) provides that cities must  
notify the County election official by the primary election date. This year the primary election  
date was August 1, 2017.

          9.       In light of the August 1st deadline, the City held an emergency meeting of the  
City Council on July 31st to address its choices of response to Proposition 1 having obtained a  
certificate confirming a sufficient number of signatures had been gathered.

1           10.    At that July 31, 2017 emergency city council meeting, the City Council decided  
2 neither to adopt Proposition 1 as a city ordinance without alteration, nor to notify the King  
3 County Elections Department that Proposition 1 should be placed on the ballot for the decision  
4 of City of Burien voters by the August 1st deadline in RCW 29A.04.330(d).

5           11. Plaintiffs inquired with the King County Elections Department about the practical  
6 deadline for placing items on the ballot. Plaintiffs learned from the Deputy Prosecutor, Janine  
7 Joly, that items for the November ballot must be transmitted to the King County Elections  
8 Division no later than August 25, 2017, in order for ballots to be printed and sent to overseas  
9 voters. Other deadlines, such as the drafting of a ballot title by the City Attorney and the pro and  
10 con statements for the voters pamphlet must be completed by August 25, 2017 as well.

11    **FIRST CAUSE OF ACTION**

12    **(Petition for Writ of Mandate).**

13           12.    Plaintiff repeats and realleges the allegations in paragraphs 1 through 11 and  
14 incorporates them by reference as if fully set forth herein.

15           13.    RCW 7.16.150 provides the basis for a writ of mandate:  
16                   It may be issued by any court, except a district or municipal court, to any inferior  
17                   tribunal, corporation, board or person, to compel the performance of an act which  
                    the law especially enjoins as a duty resulting from an office, trust or station.

18 RCW 7.16.150.

19           14.    Given the short time frame for ensuring that the citizens of Burien who signed a  
20 petition has any meaning whatsoever, there is no “plain, speedy and adequate remedy in the  
21 ordinary course of law.” RCW 7.16.170.

22           15.    The Burien City Council has a clear duty under RCW 35.17.260 to take one of  
23 two options, either adopt the ordinance “without alteration” or submit it for the ballot at the next

1 election. The statute contemplates cities taking immediate action after learning of the sufficient  
2 number of petition signatures. If the city chooses to adopt the initiative as an ordinance, the  
3 adoption must occur within 20 days of the county's certificate of sufficiency. These extra twenty  
4 days give time for the City to comply with requirements for public notice of proposed ordinances  
5 and first and second readings, if applicable.

6 16. If the City is not going to pass the proposed ordinance without alteration, it must  
7 “[i]mmediately after the county auditor’s certificate of sufficiency for the petition is received,  
8 caused to be called a special election to be held at the **next election date.**” RCW 35.17.330(2)  
9 (emphasis added). This contemplates that upon receipt of the certificate of sufficiency the City  
10 must decide either to place the initiative on the ballot or start the process for adopting the  
11 measure so that it is adopted within 20 days. The statute gives the City only two options. Here,  
12 the City did neither, in violation of its duties under the statute.

13 17. Refusing to act is not one of the legal options. Just as the Supreme Court in  
14 *Philadelphia II v. Gregoire*, 128 Wn.2d 707 (1996) held that the Attorney General had no  
15 authority under state law to refuse to prepare a ballot title even if the Attorney General believed  
16 (and was ultimately correct in believing) that the initiative was invalid, the City Council has no  
17 authority under state law simply to take no action.

18 18. An argument could be made that its failure to immediately cause the initiative to  
19 be placed on the ballot means that the City has committed to adopting the measure without  
20 alteration. Plaintiff does not take such an aggressive stance, but believes the City still has the  
21 opportunity to make a choice even though it has violated the law with its current delay. However,  
22 the requested writ of mandate unfortunately is necessary for the City to make a choice.  
23

1           19.     While a writ of mandate will not issue where the government agency or official  
2 has discretion, the court can compel the City Council to exercise its discretion. *State ex rel.*  
3 *Stephens v. Odell*, 61 Wn.2d 476, 480 (1963) (mandate appropriate to compel county board to  
4 exercise its discretion). A writ of mandate is available to compel action, when refused, in  
5 matters involving judgment and discretion, but not to direct exercise of judgment or discretion in  
6 a particular way. *Benedict v. Board of Police Pension Fund Com'rs of Seattle*, 35 Wash.2d 465  
7 (1950). While the City has discretion on whether to adopt the measure or place it on the ballot,  
8 Plaintiff here is asking the Court to compel the City to decide which course it wants to take.

9           20.     It is important to remember the constitutional setting on the issue at hand. The  
10 initiative process is a protected form of expression under the First Amendment to the United  
11 States' Constitution. *Buckley v. American Constitutional Law Foundation, Inc.* , 525 U.S. 182  
12 (1999); *Meyer v. Grant*, 486 U.S. 414 (1988); *Pickering v. Board of Education*, 391 U.S. 563  
13 (1968). It is also protected under our state Constitution's protection of free speech and the right  
14 to petition government for redress of grievances. Article I, Sections 4 and 5 of the Washington  
15 Constitution.

16           21.     The City should not be able to take no action and frustrate the right of citizens to  
17 either have their proposed initiative adopted or placed on the ballot at the next election, here, the  
18 election in November.

19           WHEREFORE, the Plaintiff prays as follows:

20           1.     That a writ of mandate issue directing the City Council to either adopt  
21 Proposition 1 into the City code or transmit to King County Elections a request that Proposition 1  
22 be placed on the November 2017 ballot, in a form identical or similar to what is attached hereto  
23 as Exhibit B.


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2. For such other and further relief as is just and equitable.

RESPECTFULLY submitted this 2<sup>nd</sup> day of August, 2017.

STEPHENS & KLINGE LLP

By:   
Richard M. Stephens, WSBA #21776  
Attorneys for Plaintiff

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(425) 453-6206

*Exhibit A*





**King County**

Department of Elections  
Julie Wise, Director

vote!

July 21, 2017

Monica Lusk, City Clerk  
City of Burien  
400 SW 152<sup>nd</sup> St, Ste 300  
Burien, WA 98166

RE: Sufficiency of Signatures – City of Burien Initiative No.1 petition

Dear Monica Lusk:

King County Elections has completed verification of the signatures submitted to our office for the City of Burien Initiative No.1 petition (repeal of Ordinance 651).

Of the 4,953 signatures that were compared against those on file with our office, 3,648 were determined to be registered voters. Since that number met the requirement of 3,643, it is determined that the petition is sufficient. A certificate of sufficiency is enclosed.

If you have questions, please feel free to contact me directly at 206-477-4140.

Sincerely,

Julie Wise  
Director

Enclosure

cc: Beth Ratzlaff, Program Supervisor of Voter Services  
File Copy



**King County  
Department of Elections**

---

## **CERTIFICATE OF SUFFICIENCY**

**THIS IS TO CERTIFY** that the petition, originally submitted on July 11, 2017 to the King County Elections Department, regarding the City of Burien Proposition No. 1, has been examined and the signatures thereon carefully compared with the registration records of the King County Elections Department, and as a result of such examination, found the signatures to be sufficient under the provisions of the Revised Code of Washington 35.21.005.

Dated this 21st day of July 2017

---

Julie Wise, Director

**vote!**



# Petition Result Breakdown

## Burien Initiative No.1

### Burien Initiative No. 1 to Repeal City of Burien Ordinance 651

<b>Signatures Required</b>	<b>3643</b>		
<b>Raw Count</b>	<b>4,953</b>		
<b>Sample Size</b>	<b>4,953</b>	<i>Percent of Sigs</i>	<i>Percent of</i>
<b>Sigs Checked</b>	<b>4,953</b>	<i>Checked</i>	<i>Sample Size</i>
<b>Sigs Not Checked</b>	<b>0</b>		0.0 %
<b>Sigs Valid</b>	<b>3,648</b>	73.7 %	73.7 %
<b>Sigs Invalid</b>	<b>1,305</b>	26.3 %	26.3 %
Duplicated	222	4.0 %	4.5 %
Non-duplicate Invalids	1,083	22.0 %	21.9 %

RESULT ABBR	RESULT DESCRIPTION		
Approved	Approved	3,648	73.7 %
NotReg	Not Registered	475	9.6 %
Duplicate	Signed more than once	222	4.5 %
CantIdentfy	Cannot Identify	15	0.3 %
NoSig	No Signature	1	0.0 %
SigNoMatch	Signatures Don't Match	53	1.1 %
OutOfDist	Out of District	535	10.8 %
Withdrawn	Withdrawn Signature	1	0.0 %
BlankSigLine	Blank Signature Line	3	0.1 %

STATISTICS SUMMARY	Value	% Raw	% Req		
Pages Processed	2677	136.0 %			
Total Checked	4953	100.0 %	136.0 %		
Uncorrected Valid	3648	73.7 %	100.1 %	<b>Min Required (95%):</b>	<b>3460.9</b>
Duplicate Adjustment	0			<b>Min Required to pass</b>	
Estimated Valid	3648	73.7 %	100.1 %	<b>Based on Sample (110%):</b>	<b>4007.3</b>

*Exhibit B*

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Defendant,  
  
JULIE WISE, Director of King County Elections  
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Interested Party.

No.  
  
**[PROPOSED] WRIT OF MANDATE**  
  
**URGENT ELECTION-RELATED**  
**MATTER**

After considering Plaintiff's Application for Writ of Mandate and any opposition thereto and hearing the argument of counsel on August \_\_\_\_\_, 2017, the Court finds that a writ of mandate should issue based on the following findings and conclusion.

Proposition 1 of the City of Burien is an initiative which the King County election official certified as having sufficient signatures and that fact was communicated to the City of

1 Burien on July 21, 2017. The City Council had until August 1, 2017 to notify the King County  
2 elections department that a special election should be called on Proposition for the November  
3 2017 election.

4 The City Council had a duty under RCW 35.17.260 to either adopt Proposition 1 as an  
5 ordinance without alteration or to call for a special election on Proposition 1 for the November  
6 2017 election. While the City Council considered its options before August 1, 2017, it chose to  
7 take neither of the options the statute allows.

8 The Court finds that it has authority to compel the City Council to exercise its discretion  
9 and the Court does so now.

10 This writ of mandate compels the City Council of the City of Burien either to adopt  
11 Proposition 1 as an ordinance without alteration or to cause Proposition 1 to be placed on the  
12 November 2017 ballot by notifying Julie Wise or appropriate King County Elections Department  
13 official of the City Council's decision no later than August \_\_\_, 2017

14  
15 DONE IN OPEN COURT THIS \_\_\_\_\_ day of August, 2017

16  
17 \_\_\_\_\_  
18 King County Superior Court Judge

19 Presented by:

20 STEPHENS & KLINGE LLP

21 By: 

22 Richard M. Stephens, WSBA #21776  
23 Attorneys for Plaintiff