

## Citizens' Guide to Spokane Proposition I

### *The Community Bill of Rights Proposal*

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### Key Findings

1. Proposition I is similar to one already rejected by voters in 2009.
2. The proposal involves four different topics, and could face legal challenges under the state's single-subject rule.
3. If approved, the measure is likely to cost taxpayers millions in lawsuits and expanded benefits for city employees.
4. Under the proposal, city homeowners could sue each other on behalf of local waterways.
5. The "Community Bill of Rights" violates state law in the way it treats corporations.

### Background

This November, voters in the city of Spokane will again be asked to approve an amendment to the City Charter establishing a "Community Bill of Rights." The proposed amendment will appear on the ballot as Proposition 1.<sup>1</sup> The measure is being promoted by a political action committee that says its goal is to "overturn corporate governance."<sup>2</sup>

Voters in Spokane have already rejected the idea of a Community Bill of Rights, defeating a measure similar to Proposition 1 by a 75 percent to 25 percent margin in 2009. This time, supporters of the "Bill of Rights" are proposing a scaled-back version that would give the Spokane River the same rights as a human being, expand the legal authority of neighborhoods, expand union power in the workplace and reduce the role of corporate businesses in Spokane.

### Charter Amendment Platform

The group proposing the idea is called Envision Spokane. Founded by the Community Environmental Legal Defense Fund, it is made up of more than two dozen unions, community organizations and groups with ties to national organizations.

Envision Spokane says this year's proposal will ensure that "big developers, corporations and the city government" respect the natural environment, and if they don't, "it gives us the legal muscle to make sure they do."<sup>3</sup>

The text of the 2011 version of the "Community Bill of Rights" is shorter, but still includes controversial provisions:

1. Neighborhoods have the right to determine their future.
2. The right to a healthy Spokane River and aquifer.
3. Employees have the right to constitutional protections in the workplace.
4. Corporate powers shall be subordinate to people's rights.

The first three of these proposals were also part of the 2009 ballot measure.<sup>4</sup> For this year's version, supporters significantly altered how these

<sup>1</sup> "Proposition No. 1, A City Charter Amendment Establishing a Community Bill of Rights," Ballot Titles for November 8, 2011 General Election, Spokane County Elections, at [wei.secstate.wa.gov/spokane/ElectionInformation/Documents/Election%20Information/2011/Ballot%20Titles%20for%20November%208.pdf](http://wei.secstate.wa.gov/spokane/ElectionInformation/Documents/Election%20Information/2011/Ballot%20Titles%20for%20November%208.pdf).

<sup>2</sup> Envision Spokane campaign website, [www.envisionspokane.org/index.html](http://www.envisionspokane.org/index.html), August 2011.

<sup>3</sup> "Community Bill of Rights," Envision Spokane website; What, Why and How, [www.envisionspokane.org/whatwhyhow1.html](http://www.envisionspokane.org/whatwhyhow1.html), August 2011.

<sup>4</sup> "Citizens' Guide To Proposition 4 in Spokane: Community Bill of Rights," Carl Gipson, Washington Policy Center, September 2009.

proposals are described, presumably in an effort to gain more support. The following is a comparison of how these provisions were described when voters rejected them in 2009, and how they are presented in the 2011 ballot measure.

2009 Proposal	2011 Proposal
The natural environment has the right to exist and flourish.	The right to a healthy Spokane River and Aquifer.
Residents have the right to determine the future of their neighborhoods.	Neighborhood residents have the right to reject development and zoning changes.
Workers have right to employee neutrality when unionizing.	Employees have the right to constitutional protections in workplace.

The ballot title has also been changed to describe the measure as “securing” rights, rather than adding new ones. The ballot title reads:

Initiative No. 2011-1, designated as Ordinance No. C-34757, proposes that the City Charter be amended to add a Community Bill of Rights, which secures the right of neighborhood residents to approve re-zonings proposed for significant new development, recognizes the right of neighborhood residents to reject development which violates the city charter or the city’s comprehensive plan, expands protections for the Spokane River and Spokane Valley – Rathdrum Prairie Aquifer and provides constitutional protections in the workplace. Should this measure be approved?  
 Yes  No<sup>5</sup>

Proposition 1 supporters say if voters reject their proposal again, they will keep returning it to the ballot until it is approved.<sup>6</sup>

### Policy Analysis

As in 2009, the Community Bill of Rights proposal for 2011 raises several practical questions. Numerous environmental protection laws and workers’ rights protections already exist in state and federal law. In addition, the text of Proposition 1 provides no guidance explaining how its provisions would be enforced locally, or what public entity would be financially responsible for carrying them out.

Sponsors of the Community Bill of Rights say the proposed changes to the city charter would not put a financial burden on taxpayers. An analysis of Proposition 1, however, shows citizens would likely shoulder a much heavier tax burden if the measure passes. The city of Spokane would be responsible for paying for lawsuits to defend the measure and the city’s economy could be stifled by provisions of the bill.

Like the 2009 version, the 2011 Community Bill of Rights proposal gives citizens an unclear idea of exactly what the measure would do. Two years ago, Spokane City Council members placed advisory propositions on the ballot, asking voters for advice about how to deal with the financial burden imposed by the measure. In 2011, however, the Spokane City Council decided by a vote of four to three not to place advisory propositions on the ballot, giving voters no sense that the measure will result in reduced services or increased taxes. Envision Spokane says the Council’s decision to not give voters additional information “will certainly have more ‘yes’ votes go our way.”<sup>7</sup>

<sup>5</sup> Ballot Title, City of Spokane Proposition 1, Spokane County Elections Office.

<sup>6</sup> “Revenge of Prop. 4,” *The Inlander*, August 10, 2011, at [www.inlander.com/spokane/article-16834-revenge-of-prop-4.html](http://www.inlander.com/spokane/article-16834-revenge-of-prop-4.html).

<sup>7</sup> “Unfettered bill of rights”, *The Inlander*, August 18, 2011, at [www.npaper-wehaa.com/inlander/2011/08/18/s1/#?page=17&article=1356250](http://www.npaper-wehaa.com/inlander/2011/08/18/s1/#?page=17&article=1356250).

## Legal Questions

The 2011 Community Bill of Rights proposal raises a number of important legal questions. The ballot measure contains more than one subject and may be struck down as unconstitutional by state courts. Washington state's constitution says that "no bill shall embrace more than one subject, and that shall be expressed in the title."<sup>8</sup> This provision also applies to ballot measures, which are treated as bills under state law.

In the Washington State Supreme Court opinion *Burien vs. Kiga*, the court defined a violation of the single-subject rule: "When a measure embodies two unrelated subjects, it is impossible for the court to assess whether each subject would have received majority support if voted on separately.... It necessarily required the voters who supported one subject of the measure to vote for an unrelated subject they might or might not have supported."<sup>9</sup> Proposition 1 specifically embraces four different topics, and it is likely to face judicial scrutiny.

In addition, the city of Spokane's own charter requires that no ballot measure contain "more than one subject."<sup>10</sup> If voters approved the measure, the city would be forced to spend taxpayer dollars in court to defend Proposition 1 against the city's own laws and against state law.

While Proposition 1 supporters assume the city will be sued to overturn the measure should it pass, there may also be lawsuits filed by citizens wishing to use the courts to define what each provision actually means. The vagueness of the proposal will contribute to confusion among city officials charged with implementing its provisions.

In fact, Envision Spokane previously admitted the vagueness of its proposal would likely lead to court challenges. Supporters say some of the rights should be clarified by the courts or by further city legislation that broadens the terms used in the proposition.<sup>11</sup> Passage of Proposition 1 would likely lead to costly lawsuits and to uncertainty over what authority city officials have to enforce its provisions. The following sections analyze Proposition 1's four main provisions.

### I. Neighborhoods Have the Right to Determine Their Future

Citizens of Spokane are represented by seven city council members. Six of them are elected in three different council districts in Spokane. The seventh member, the Council President, is elected city wide. Under Proposition 1, however, the power of the city council would be limited, and much of its current governing authority would shift to unelected members of neighborhood councils. Spokane currently has more than two dozen neighborhood councils. Proposition 1 would require that all zoning changes be approved by a majority of the affected neighborhood. Any neighborhood council would also be able to block "commercial, industrial, or residential development" in its area, effectively ending building and modernization in many parts of the city.

The text of Proposition 1 does not define the meaning of "neighborhood majorities," making it less likely citizens will be able to enjoy open and transparent government. The proposition doesn't explain whether homeowners, business owners and other key resident groups would be included in the definition.

Currently, residents in the city of Spokane already participate in determining the future of their neighborhoods through elections, monitoring city council meetings and by debating the city's comprehensive plan. Furthermore, the Spokane City Council has held its meetings in neighborhood councils to keep in contact with constituents.

<sup>8</sup> Washington State Constitution, Article II, Section 19.

<sup>9</sup> See 144, Wn.2d 819, *Burien vs. Kiga*, Sept. 2001.

<sup>10</sup> Spokane City Charter, Section 13, at [www.spokanecity.org/services/documents/charter/#Sec13](http://www.spokanecity.org/services/documents/charter/#Sec13).

<sup>11</sup> "Envision Spokane makes response," by Kai Huschke, *Spokane Journal of Business*, July 2009.

## 2. The Right to a Healthy Spokane River and Spokane Aquifer

Proposition 1 seeks to guarantee the “right to a healthy Spokane River and Aquifer.” To do that, the proposal grants the river and aquifer “inalienable rights to exist and flourish.”<sup>12</sup> Essentially, Proposition 1 supporters are seeking to give the Spokane River and Spokane Valley-Rathdrum Prairie Aquifer the same legal standing as a human being.

Under such a charter amendment, a citizen of Spokane, for example, would have legal standing to file lawsuits against the city or even a fellow citizen on behalf of the Spokane River or Aquifer. If a citizen believed his neighbor was harming the river by using soap to wash his car, he could file a lawsuit on behalf of the river. Proposition 1 says, “The City of Spokane and any resident of the City or group of residents have standing to enforce and protect these rights.”<sup>13</sup>

Currently, Washington state law provides for the protection of the Spokane River and other water ways under the authority of the Department of Ecology. Efforts to assign legal rights to nature or the environment are not new. The guarantee of rights for the environment has been added into constitutions in Ecuador and Switzerland. These provisions give legal recourse on behalf of the environment to anyone who feels the rights of the environment are being infringed or denied.

Richard Stewart, a law professor at New York University, points out that suing on behalf of the environment can often lead people to confuse how they feel about the environment with what is actually good or bad for it. He points out that it is not nature assigning value to action, rather actions are judged through subjective litigation.<sup>14</sup>

## 3. Employees Have the Right to Constitutional Protections In the Workplace

Again, the text of this provision does not describe exactly how it would work in practice. This provision is vague and redundant, and seems to give union executives more power than they already have. Proposition 1 says workers shall possess rights granted to them by both the United States and Washington state bills of rights. It does not say how or whether those rights are currently being infringed. The Proposition also seeks to create a new legal right: That “unionized workplaces shall possess the right to collective bargaining.”<sup>15</sup>

Collective bargaining is a series of secret negotiations between an employer and labor union executives. Proposition 1 does not include any limitations on this new power. Accordingly, this measure alone could cost city taxpayers and business owners millions of dollars in new costs.

Expanding the secret collective bargaining process would undoubtedly lead to increased costs for local governments. A clear example occurred last November when Governor Christine Gregoire asked state employee union executives to return to the negotiating table to discuss employee health costs. The governor asked unions to agree that state employees contribute 25 percent of the cost of their monthly health care coverage, a level that is typical in the private sector.

Union executives refused the governor’s request. After a series of secret closed-door meetings, union executives agreed to a small increase to just 15 percent of the cost of health coverage, up from the current level of 12 percent. The financial obligation of taxpayers was reduced slightly from 88 percent to 85 percent of employee health care costs. The union’s rejection of the governor’s request

<sup>12</sup> “Community Bill of Rights,” at [www.envisionspokane.org/communitybillofrights.html](http://www.envisionspokane.org/communitybillofrights.html).

<sup>13</sup> Ibid.

<sup>14</sup> “Should nature be able to take you to court?” Rebecca Tuhus-Dubrow, *The Boston Globe*, July 19, 2009.

<sup>15</sup> “Community Bill of Rights,” at [www.envisionspokane.org/communitybillofrights.html](http://www.envisionspokane.org/communitybillofrights.html).

contributed significantly to the \$5.2 billion shortfall in the 2011–13 state budget.<sup>16</sup>

Collective bargaining for government workers, specifically, is not considered absolute. Federal government workers do not have collective bargaining. President Franklin D. Roosevelt warned that collective bargaining should not be transferred to public service. He explained, “Since their own services have to do with the functioning of the Government, a strike of public employees manifests nothing less than an intent on their part to prevent or obstruct the operations of Government until their demands are satisfied. Such action, looking toward the paralysis of Government by those who have sworn to support it, is unthinkable and intolerable.”<sup>17</sup>

More than 95 percent of government employees working for the city of Spokane already collectively bargain against their fellow taxpayers. The Community Bill of Rights proposal would tie the hands of business owners and government officials, who may wish to suspend or adjust collective bargaining agreements in difficult economic times. Collective bargaining severely hampers the ability of local governments and business owners to control costs, without necessarily improving the product workers deliver.

In the past year, lawmakers in Wisconsin, Tennessee and Massachusetts have limited the collective bargaining process in their states. The Massachusetts plan saved taxpayers in cities and towns \$100 million.<sup>18</sup> In Wisconsin, new rules limiting collective bargaining talks to deciding salary levels saved one school district millions of dollars and saved a number of teacher jobs.<sup>19</sup>

#### 4. Corporate Powers Shall be Subordinate to Peoples’ Rights

Proposition 1 says “corporations and other business entities ... shall not be deemed to be persons, nor possess any other legal rights, privileges, powers or protections.” Again, the text of the proposal conflicts with laws already enacted by higher jurisdictions.

Federal and state law define corporations as legal persons, with specific rights and responsibilities under the law. A corporation is a group of people who voluntarily join together to engage in legal economic activity for their mutual benefit. In 2010, the U.S. Supreme Court, in the *Citizens United vs. Federal Elections Commission* decision, confirmed this principle by describing corporations as “associations of citizens” which the government may not prohibit from engaging in free political speech.<sup>20</sup>

Washington state law recognizes corporations as having the same right as individuals to engage in legal commerce. The Revised Code of Washington states, “Every corporation has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs.”<sup>21</sup>

Proposition 1 works against both federal and state law by telling people in Spokane who join together in a voluntary corporation that they have less ability to engage in legal commerce than people who are not part of a corporation. It is unlikely this provision would survive legal challenges in state or federal court.

<sup>16</sup> “Collective bargaining and the influence of public sector unions,” Paul Guppy, Washington Policy Center, February 2011, at [www.washingtonpolicy.org/publications/legislative/collective-bargaining-and-influence-public-sector-unions-washington-state](http://www.washingtonpolicy.org/publications/legislative/collective-bargaining-and-influence-public-sector-unions-washington-state).

<sup>17</sup> “FDR on collective bargaining for public employees,” *Intellectual Takeout*, February 24, 2011, at [intellectualltakeout.org/blog/fdr-collective-bargaining-public-employees](http://intellectualltakeout.org/blog/fdr-collective-bargaining-public-employees).

<sup>18</sup> House votes to restrict unions, *The Boston Globe*, available online at [www.boston.com/news/politics/articles/2011/04/27/house\\_votes\\_to\\_limit\\_bargaining\\_on\\_health\\_care/](http://www.boston.com/news/politics/articles/2011/04/27/house_votes_to_limit_bargaining_on_health_care/).

<sup>19</sup> Union curbs rescue Wisconsin school district, *The Washington Examiner*, June 30, 2011, at [www.washingtonexaminer.com/politics/2011/06/union-curbs-rescue-wisconsin-school-district](http://www.washingtonexaminer.com/politics/2011/06/union-curbs-rescue-wisconsin-school-district).

<sup>20</sup> *Citizens United vs. FEC*, United States Supreme Court, Opinion of the Court, Page 33, [www.law.cornell.edu/supct/pdf/08-205P.ZO](http://www.law.cornell.edu/supct/pdf/08-205P.ZO).

<sup>21</sup> Revised Code of Washington 23B.03.020.

## Conclusion

During the August 2011 primary election, the Spokane City Council placed eight amendments to the city charter before voters. Each amendment was voted on separately — a move that was in compliance with the city and state’s single-subject rule.

In contrast, Proposition 1, the Community Bill of Rights proposal, places four distinct issues on the ballot as one measure. The City Council in Spokane could have blocked the placement of this resolution on the ballot on the grounds it violated the single-subject rule of not only the city charter, but the state constitution as well. If Proposition 1 is passed, the city of Spokane will likely become involved in a series of costly lawsuits, as different groups in the community seek to overturn or alter its provisions.

Perhaps most troubling is that Envision Spokane changed the language of the proposal in an effort to overcome its past electoral defeat, while a majority of Spokane City Council members were unwilling to give voters more information about the impact the changes in each item would have.

The provisions of Proposition 1 are not only vague but also redundant. The proposal removes authority from the city council and shifts it to unelected neighborhood councils. While contending that “majorities” in that neighborhood would have the ultimate say, the Proposition gives no definition of who would be counted as part of the “neighborhood majority,” or what process would be used to express its will.

The proposal gives the legal rights of a human person to the Spokane River and the Spokane Valley – Rathdrum Prairie Aquifer, opening the door for citizens to sue each other or the City of Spokane on behalf of these waterways.

While purporting to give workers constitutional protections in the workplace – something they already have – Proposition 1 actually seeks to cement the role of the secret collective bargaining process for all unionized workers in the city, likely costing taxpayers and business owners millions of dollars.

Finally, the measure seeks to overturn federal and state law by proclaiming corporations cannot be recognized as legal persons. In the same proposal, Envision Spokane activists seek to reduce the rights of people like shareholders and employees joined together in a corporation, while trying to extend legal rights to inanimate objects like the Spokane River and Aquifer. As a result, business owners would have increased incentive to re-locate to bordering communities in Idaho or the Spokane Valley.

Supporters of Proposition 1 say their goal is to create an “economically and environmentally sustainable Spokane.”<sup>22</sup> However, research shows these four provisions will curtail the rights of residents doing businesses in the city of Spokane, harm the economic climate, encourage businesses to move out of Spokane and force taxpayers to pay for a flurry of lawsuits.

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<sup>22</sup> “What Do We Want? And Who Decides? Spokane Seeking a Community Bill of Rights,” by Kai Huschke, Envision Spokane, at [stirtoaction.wordpress.com/2011/03/29/what-do-we-want-and-who-decides/](http://stirtoaction.wordpress.com/2011/03/29/what-do-we-want-and-who-decides/), March 29, 2011.