

68473-6

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No. 68473-6
COURT OF APPEALS,
DIVISION I,
OF THE STATE OF WASHINGTON

CITY OF MONROE,

Appellant,

v.

SEEDS OF LIBERTY,

Respondent.

OPENING BRIEF OF APPELLANT CITY OF MONROE

J. Zachary Lell, WSBA #28744
Kristin N. Eick, WSBA #40794
Attorneys for Appellant
OGDEN MURPHY WALLACE, P.L.L.C.
1601 Fifth Avenue, Suite 2100
Seattle, Washington 98101-1686
Tel: 206.447.7000/Fax: 206.447.0215

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A. INTRODUCTION

This appeal arises from a purported citizen initiative in the City of Monroe targeting the City's Automated Traffic Safety Camera program. Faced with severe doubts about the initiative's legitimacy, the City exercised a legal option that Washington municipalities have enjoyed for several decades: It commenced a declaratory judgment action seeking a determination regarding the validity of the measure and whether it should be placed on a future election ballot. The City's complaint, which named Respondent Seeds of Liberty and the other sponsors of the initiative as defendants, sought only declaratory relief and did not request an injunction or damages.

In granting partial summary judgment to the City, the Superior Court correctly ruled that most of the proposed measure exceeded the scope of the local initiative power and was invalid. However, the court inexplicably refused to invalidate a section of the initiative that required the City to hold a nonbinding "advisory vote" on its camera ordinance. Based upon this determination, the Superior Court also imposed sanctions against the City under RCW 4.24.525, Washington's Strategic Lawsuits Against Public Participation (SLAPP) statute, concluding that the City's lawsuit had interfered with Seeds of Liberty's public participation rights.

The Superior Court's ruling on these points was clearly erroneous and should be reversed. Under Washington law, the power to legislate regarding local Automated Traffic Safety Camera programs is vested exclusively in city councils and cannot be exercised through the initiative and referendum power. And, contrary to the Superior Court's ruling, this principle fully encompasses local initiatives that purport to require an advisory vote on the same prohibited topic. Any uncertainty in this regard was conclusively removed by the Supreme Court's recent decision in *Mukilteo Citizens for Simple Government v. City of Mukilteo*, ___ Wn.2d ___, 272 P.3d 227 (2012), which invalidated a local initiative virtually identical to the challenged Monroe measure—inclusive of an advisory vote provision.

The Superior Court's Anti-SLAPP ruling was equally flawed. Seeds of Liberty's motion under RCW 4.24.525 should have been denied under the plain terms of that statute because the City should have been deemed the prevailing party on the merits. More fundamentally, the court erred by applying the Anti-SLAPP statute in this context at all. The authority of municipalities to determine the validity of local initiative measures through the declaratory judgment process is well-established in Washington; nothing in the Anti-SLAPP statute or relevant caselaw

remotely suggests that liability under RCW 4.24.525 attaches under these circumstances. Simply stated, the City of Monroe commenced the underlying action for the sole purpose of determining the legal status of a highly suspect ballot proposition. In no manner did the City target or otherwise interfere with the initiative sponsors' public participation rights.

For these reasons, the Court of Appeals is respectfully requested to reverse the Superior Court's decision and to vacate the Anti-SLAPP judgment against the City.

B. ASSIGNMENTS OF ERROR

In accordance with RAP 10.3(a)(4), the City assigns error to the following rulings of the Superior Court:

1. First Assignment of Error

The Superior Court erred by severing Section 3 of Monroe Initiative No. 1 from the otherwise invalid body of that measure.

Issues Presented by First Assignment of Error:

(a) Does the entire subject matter of local Automated Traffic Safety Cameras exceed the initiative and referendum power as defined by Washington law? [Yes]

(b) Can a local legislative body be compelled to hold an advisory vote? [No]

2. Second Assignment of Error

The Superior Court erred by granting Respondent Seeds of Liberty's special motion to strike under RCW 4.24.525.

Issues Presented by Second Assignment of Error:

(a) Should Respondent's special motion to strike under RCW 4.24.525 have been denied where the City should have been deemed the prevailing party on the merits of the underlying claim? [Yes]

(b) Does a municipality incur liability under RCW 4.24.525 for exercising its right to seek a declaratory judgment regarding the validity of a proposed citizen initiative? [No]

C. STATEMENT OF THE CASE

1. Factual Background: Monroe Initiative No. 1.

The underlying factual and procedural background of this matter is largely undisputed. In 2005, the Washington Legislature enacted RCW 46.63.170, which authorized municipalities to utilize Automated Traffic Safety Cameras (ATSC) as a traffic control and enforcement mechanism. *See* Laws of 2005, ch. 167, § 1. Exercising this authority, the Monroe City Council established its own ATSC program by ordinance in 2007.

CP 350, 353-58.¹ The City's regulations are codified at Chapter 10.14 MMC of the Monroe Municipal Code (MMC), which contains provisions governing the placement, use, operation and enforcement procedures for the City's Automated Traffic Safety Camera program. An "Automated Traffic Safety Camera" is defined by the City's ordinance as:

a device that uses a vehicle sensor installed to work in conjunction with an intersection traffic control system, a railroad grade crossing control system or a speed measuring device, and a camera synchronized to automatically record one or more sequenced photographs, microphotographs or electronic images of the rear of a motor vehicle at the time the vehicle fails to stop when facing a steady red traffic control signal or an activated railroad grade crossing control signal, or exceeds a speed limit in a school speed zone as detected by a speed measuring device.

MMC 10.14.020(D).²

Monroe is a non-charter city organized under the Optional Municipal Code of Title 35A RCW and has formally adopted the local initiative and referendum powers pursuant to RCW 35A.11.080- .100. *See* MMC 1.08.010; MMC 1.12.010. In January 2011, a petition for a local

¹ Pursuant to RAP 10.4(f), references herein to the Clerks Papers utilize the designation "CP".

² The City's definition of Automated Traffic Safety Camera essentially tracks the corresponding statutory definition. *See* RCW 46.63.170(5).

initiative was commenced by Respondent Seeds of Liberty and other organizations. *CP 351, 360-61*. The purported initiative sought to repeal the City's existing ATSC ordinance, impose voting and approval predicates for the City's future use of traffic cameras, limit the amount of fines imposed for camera infractions, and require an advisory vote of local citizens:

BE IT ENACTED BY THE
PEOPLE OF THE CITY OF MONROE:

Section 1. New Chapter 10.14. A new chapter 10.14 is hereby added to the Monroe Municipal Code to read as follows:

10.14.110 Automatic Ticketing Cameras: The City of Monroe and for-profit companies contracted by the City of Monroe may not install or use automatic ticketing cameras to impose fines from camera surveillance unless such a system is approved by a two-thirds vote of the City Council and a majority vote of the people at an election.

1. For the purposes of this chapter, "automatic ticketing cameras" means a device that uses a vehicle sensor installed to work in conjunction with an intersection traffic control system, or a speed measuring device, and a camera synchronized to automatically record one or more sequenced photographs, microphotographs, or electronic images of the rear of a motor vehicle at the time the vehicle fails to stop when facing a steady red traffic control

signal, or exceeds a speed limit as detected by a speed measuring device.

10.14.120 Fines: If two-thirds of the City Council and a majority of Monroe voters at an election approve a system of automatic ticketing cameras to impose fines from camera surveillance, the fine for infractions committed shall be a monetary penalty of no more than the least expensive parking ticket imposed by law enforcement in the city limits of Monroe.

Section 2. Chapter 10.14 (Ordinance 002/2007 allowing automatic ticketing cameras) is hereby repealed.

Section 3. Advisory Vote: Any ordinance that authorizes the use of automatic ticketing cameras enacted after January 1, 2007, must be put on the ballot as an advisory vote of the people at the next general election.

Section 4. Severability: If any provision of this act or its application to any person or circumstances is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

*CP 361.*³

On June 17, 2011, the measure (“Monroe Initiative No. 1”) was certified by the Snohomish County Auditor as containing the requisite number of signatures for a local initiative. *CP 351, 366.* Gravely

³ Monroe Initiative No. 1 is set forth in its entirety in Appendix A.

concerned about the validity of this proposal under state law, the Monroe City Council passed a resolution declaring that Monroe Initiative No. 1 exceeded the scope of the local initiative power and directed the City not to place the initiative on the electoral ballot. *CP 351, 369-70*. The City Council also authorized the Monroe Mayor to file a declaratory judgment action concerning the measure. *CP 351, 369-70*.

2. Procedural History: The City's Declaratory Judgment Lawsuit and Superior Court Decision.

On July 15, 2011, the City filed its Complaint for Declaratory Relief in Snohomish County Superior Court, naming Seeds of Liberty and the other sponsors of Monroe Initiative No. 1 as defendants in the suit. *CP 379*. The only relief requested by the City's complaint was a judicial determination regarding the validity of the proposed measure; the complaint did not seek injunctive relief or damages against any party. *CP 383-84*.

The City subsequently moved for summary judgment. *CP 335*. In its opposition briefing, Seeds of Liberty asserted a special motion to strike under RCW 4.24.525 (the Anti-SLAPP statute), contending that the City's declaratory judgment lawsuit was "based upon an action involving public participation and petition" within the scope of that law. *CP 271, 273*.

The Honorable George N. Bowden of the Snohomish County Superior Court heard oral argument for the parties' respective motions on September 21, 2011. After an additional round of supplemental briefing, Judge Bowden issued a letter ruling on January 19, 2012. The ruling granted the City's motion for summary judgment as to Sections 1 and 2 of Monroe Initiative No. 1, concurring with the City that these provisions exceeded the local initiative power and were invalid. *CP 102-05*. But the Superior Court denied the City's motion with respect to the advisory vote mandate contained in Section 3 of the measure, and severed this provision from the body of the initiative. *CP 102-05*. Based upon this determination, the Superior Court granted Seeds of Liberty's special motion to strike under RCW 4.24.525, reasoning that the City's declaratory judgment lawsuit burdened and interfered with the initiative sponsors' public participation rights. *CP 102-05*.

On February 13, 2012, the Superior Court formalized the substance of its letter ruling by entering its "Order Denying in Part and Granting in Part Plaintiff's Motion for Summary Judgment and Granting In Part Seeds of Liberty's Special Motion to Strike". *CP 5-7*. The court subsequently entered an "Order Granting [Seeds of Liberty's] Motion for Attorneys' Fees and Costs and for Entry of Judgment" and a final Judgment the

following day, assessing a total of \$24,977 in statutory penalties, attorneys' fees and costs against the City under the Anti-SLAPP statute. *CP 8-12, 13-15.*

The City timely filed its Notice of Appeal On March 8, 2012, challenging the Superior Court's decisions. *CP 3.*

D. ARGUMENT

The challenged portions of the Superior Court's ruling are grounded upon two fundamentally wrong premises: First, that the local initiative process may be utilized to compel a municipality to conduct an advisory vote—even where the underlying subject matter exceeds the initiative power. Second, that liability under Washington's Anti-SLAPP statute applies to a declaratory judgment action seeking a judicial determination regarding the validity of a local ballot measure.

Both of these assumptions are deeply flawed. In invalidating a local initiative virtually identical to Monroe Initiative No. 1, the Washington Supreme Court has conclusively rejected any assertion that a city can be coerced into holding an advisory vote. Likewise, nothing in the text, legislative history or relevant caselaw concerning RCW 4.24.525 suggests that Anti-SLAPP sanctions apply under the circumstances

implicated by the instant case. As a matter of law, the Superior Court's ruling on these points was erroneous and should be reversed.

1. Standard of Review.

The Court of Appeals reviews a summary judgment decision *de novo*, engaging in the same inquiry as the trial court. *Lake v. Woodcreek Homeowners Ass'n*, 169 Wn.2d 516, 526, 243 P.3d 1283 (2010). Summary judgment is warranted if there is no genuine issue regarding any material fact and where the moving party—here the City of Monroe—is entitled to judgment as a matter of law. CR 56(c). With respect to construction of the statutes implicated by this appeal, statutory interpretation involves a question of law that is also subject to *de novo* review. *See, e.g., Lake*, 169 Wn.2d at 526 (citing *Rozner v. City of Bellevue*, 116 Wn.2d 342, 347, 804 P.2d 24 (1991)). The Superior Court's decision in the instant matter is accordingly entitled to no deference on appeal.

2. The Superior Court Erred by Severing Section 3 of Monroe Initiative No. 1.

- a. The entire subject matter of Automated Traffic Safety Cameras is beyond the scope of the local initiative power.

The right of direct legislation (*i.e.*, initiative and referendum) at the municipal level is established by statute in Washington. *See, e.g., City of*

Port Angeles v. Our Water-Our Choice, 170 Wn.2d 1, 7-8, 239 P.3d 589 (2010). In Monroe and other cities that are organized under the Optional Municipal Code, the right may only be exercised locally if the city has formally adopted the powers of initiative and referendum. *Id.* at 8 n.2; RCW 35A.11.080 -.100. The City of Monroe has adopted these powers. *See* MMC 1.08.010; MMC 1.12.010.

Even in cities that have adopted the initiative and referendum process, however, the local right of initiative is not absolute. *See, e.g.* RCW 35A.11.090 (listing numerous exceptions to initiative power for various subjects); *Leonard v. City of Bothell*, 87 Wn.2d 847, 849-50, 537 P.2d 1306 (1976) (initiative power inapplicable to administrative acts). One of the chief limitations provides that where state law grants a power specifically to a local legislative body rather than to the municipality generally, that power is not subject to direct legislation by initiative or referendum. *See, e.g., City of Sequim v. Malkasian*, 157 Wn.2d 251, 261 138 P.3d 943 (2006) (“An initiative is beyond the scope of the initiative power if the initiative involves powers granted by the legislature to the governing body of a city, rather than the city itself.”). As Washington courts have repeatedly acknowledged, allowing a local initiative under these circumstances would “interfere with the exercise of a power

delegated by state law to the governing body of the city.” *City of Port Angeles v. Our Water-Our Choice*, 145 Wn. App. 869, 882, 188 P.3d 533 (2008) *aff’d by Our Water-Our Choice*, 170 Wn.2d at 16 (citing *Priorities First v. City of Spokane*, 93 Wn. App. 406, 411, 968 P.2d 431 (1998)).

The power to legislate with respect to Automated Traffic Safety Camera programs is vested exclusively in local legislative bodies. The enabling statute for these programs, RCW 46.63.170, provides in relevant part:

(1) The use of automated traffic safety cameras for issuance of notices of infraction is subject to the following requirements:

(a) The appropriate *local legislative authority* must first enact an ordinance allowing for their use to detect one or more of the following: Stoplight, railroad crossing, or school speed zone violations. At a minimum, the local ordinance must contain the restrictions described in this section and provisions for public notice and signage.

RCW 46.63.170(1)(a) (emphasis added).

Two recent cases interpreting RCW 46.63.170 have held, unequivocally, that the statute’s reference to the “local legislative authority” precludes the exercise of the initiative power in the context of Automated Traffic Safety Camera programs. In *American Traffic*

Solutions (ATS), Inc. v. City of Bellingham, 163 Wn. App. 427, 260 P.3d 245 (2011), *rev. denied*, 173 Wn.2d 1029 (2012), this Court cited RCW 46.63.170 to invalidate a purported initiative seeking to repeal and constrain the City of Bellingham’s camera program:

RCW 46.63.170 specifies that in order to use automatic traffic safety cameras for the issuance of traffic infractions, the “appropriate local legislative authority must first enact an ordinance allowing for their use.” For more than 70 years, Washington courts have consistently construed similar provisions as the grant of authority to the local legislative body:

“It is well-settled that in the context of statutory interpretation, a grant of power to a city’s governing body (“legislative authority” or “legislative body”) means exclusively the mayor and city council and not the electorate.”

Initiative No. 2011–01 expressly restricts that authority by conditioning its use on a concurrence by the majority of the voters. The subject matter of the initiative is therefore clearly beyond the scope of the local initiative power. Initiative No.2011–01 is invalid.

ATS, 163 Wn. App. at 434 (internal citation and punctuation omitted).

The *ATS* decision was subsequently reaffirmed by the Supreme Court in *Mukilteo Citizens for Simple Government v. City of Mukilteo*, ____ Wn.2d ____, 272 P.3d 227 (2012):

In RCW 46.63.170(1)(a), the legislature granted to *local legislative bodies* the exclusive power to legislate on the subject of the use and operation of automated traffic safety cameras[. . .]. . . . *The legislature's grant of authority does not extend to the electorate.*

Mukilteo Citizens, 272 P.3d at 233 (emphasis added). As a result of *ATS* and *Mukilteo Citizens*, it is now beyond question that initiatives concerning local Automated Traffic Safety Camera programs are invalid as a matter of law.

b. Section 3 of Monroe Initiative No. 1 is invalid.

Citing the *ATS* decision, the Superior Court correctly ruled that the bulk of Monroe Initiative No. 1—including the provisions that would have repealed the City's existing ATSC ordinance, limited the amount of infraction fines, and imposed procedural requirements on the enactment of any new camera program—were invalid. *CP 6*. But the court inexplicably departed from State law by severing the advisory vote requirement in Section 3 of the measure, reasoning that:

Section 3 does not intrude upon the governing body's authority with respect to automated traffic cameras because an advisory vote is not binding on the City. The governing body remains free to disregard whatever preference may be expressed by the voters. Section 3 is presumptively valid, especially in the

context of a pre-election challenge. Section 3 addresses a legislative rather than an administrative function in that, if approved by the voters, it would create an ordinance calling for advisory votes if the governing body contemplates future contracts for automated traffic cameras. Furthermore, there is no explicit constitutional or statutory prohibition upon an initiative that seeks to inform a governing body of the wishes of the voters on the subject matter of legislation that is properly vested in that governing body.

CP 103.

There is no legal basis for this distinction. Section 3 of Monroe Initiative No. 1 is just as invalid as the stricken provisions of that measure, and for the same reason: It modifies, encroaches upon and usurps the exclusive power of the Monroe City Council over the City's ATSC program. The Superior Court's conclusion on this point was clearly erroneous and should be reversed.

- (1) The advisory vote provision impermissibly modifies the Monroe City Council's exclusive legislative authority.

First, and most fundamentally, Section 3 of Monroe Initiative No. 1 suffers from the same fatal defect as the two sections that were properly invalidated by the Superior Court: Its underlying subject matter involves the exercise of a power—enactment of local Automated Traffic Safety

Camera regulations—that has been delegated specifically to the Monroe City Council by the enabling statute. *See* RCW 46.63.170(1)(a). “It is well-settled that. . . a grant of power to a city’s . . . ‘legislative authority’ . . . means exclusively the mayor and city council and not the electorate.” *Malkasian*, 157 Wn.2d at 265. Because RCW 46.63.170 vests the power to legislate locally on this entire topic solely in city councils, it precludes the local initiative and referendum process from infringing upon this exclusive grant of authority.

By purporting to impose a public advisory vote requirement on a previously enacted City ordinance, Section 3 of Monroe Initiative No. 1 disregards the judicial limitations that have been placed on the initiative power, as well as their underlying rationale:

[W]here the general law grants authority to the governing body of a city, the exercise of that authority may not be subject to repeal, amendment or *modification* by the people through the initiative process.

Malkasian, 157 Wn.2d at 261-62 (citing *State ex rel. Guthrie v. City of Richland*, 80 Wn.2d 382, 384, 494 P.2d 990 (1972)) (emphasis added).

In violation of this principle, Section 3 of the initiative modifies the Monroe City Council’s power to enact local traffic camera ordinances pursuant to RCW 46.63.170 by subjecting the Council’s exercise of this

authority to a *post facto* advisory vote. Washington law is clear that where a particular subject is beyond the initiative power, attempts to condition the city council's exercise of that power by requiring a public vote are prohibited. *See, e.g., Priorities First v. City of Spokane*, 93 Wn. App. 406, 410-13, 968 P.2d 431 (1998). There is no rational basis to differentiate a binding public vote from a nonbinding advisory vote in this context; both are improper modifications to and infringements upon the local legislative process.

The Washington Supreme Court's *Mukilteo Citizens* decision controls this point and requires reversal of the Superior Court's ruling.⁴ At issue in *Mukilteo Citizens* was a proposed initiative ("Mukilteo Proposition 1") targeting the City of Mukilteo's traffic camera ordinance. *Mukilteo Citizens*, 272 P.3d at 229. The Mukilteo measure contained precisely the same components as Monroe Initiative No. 1: It repealed the City of Mukilteo's existing ATSC ordinance; it purported to forbid the City from installing a new camera system without certain legislative and popular approvals; it limited the amount of fines for camera surveillance fines; and it required an advisory vote. *Id.* at 230. Indeed, apart from

⁴ The Supreme Court's decision in *Mukilteo Citizens* was issued three weeks after the Superior Court's ruling in the instant case.

minor identifying references specific to each city, the Mukilteo measure is a near verbatim replica of Monroe Initiative No. 1. *Compare CP 361 with Appendix B.*⁵

In direct contrast to the Superior Court’s ruling in the instant case, the Supreme Court invalidated the challenged Mukilteo initiative *in toto* and did not sever or otherwise preserve the advisory vote provision of that measure. *Mukilteo Citizens*, 272 P.3d at 233-34. Instead, the Court concluded—categorically—that “[b]ecause automated traffic safety cameras are not a proper subject for local initiative power, Proposition 1 is invalid because it is beyond the initiative power.” *Mukilteo Citizens*, 272 P.3d at 233.

Mukilteo Citizens reflects and reaffirms a basic tenet of the local initiative power. Because the entire power to legislate locally regarding Automated Traffic Safety Camera programs may *only* be exercised by a city council, an initiative purporting to require the city council to hold an advisory vote as a predicate or adjunct to the exercise of this authority is *per se* invalid. Stated differently, where a particular topic exceeds the initiative power, the entire subject matter of that issue is immune from direct legislation—regardless of how the legislation is framed. *See, e.g.,*

⁵ A certified copy of the resolution authorizing the Mukilteo ballot measure at issue in *Mukilteo Citizens* is appended to this brief as Appendix B.

Malkasian, 157 Wn.2d at 260-66; *Coppernoll v. Reed*, 155 Wn.2d 290, 299, 119 P.3d 318 (2005); *Seattle Bldg. & Constr. Trades Council v. City of Seattle*, 94 Wn.2d 740, 746-50, 620 P.2d 82 (1980). Parsing individual sections of an invalid initiative is disallowed where each of the sections relates to the forbidden topic. As Washington courts have consistently held, “the *subject matter* of the initiative is either proper for direct legislation or it is not.” *Malkasian*, 157 Wn.2d at 260 (emphasis added); *Coppernoll*, 155 Wn.2d at 299.

The Superior Court’s decision disregards this principle and irreconcilably contradicts the plain holding of *Mukilteo Citizens*. It should be reversed accordingly.

- (2) Only a binding popular vote can be compelled through the initiative and referendum process.

The Superior Court’s severance of Section 3 was also erroneous because it presumed—falsely—that the Monroe City Council could be compelled by outside parties to hold an advisory vote in the first instance. Any suggestion to this effect was flatly rejected by *Mukilteo Citizens*. In contrast to the State law mechanisms for presenting a valid initiative or referendum petition, the Supreme Court explained that “[t]here are no

statutory or constitutional provisions imposing a duty on a city council to call for an ‘advisory’ vote.” *Mukilteo Citizens*, 272 P.3d at 231.

The Superior Court in the instant case erroneously focused upon the inverse of this principle, emphasizing that “there is no explicit constitutional or statutory *prohibition*” upon an initiative that mandates an advisory vote. *CP 103* (emphasis added). As the *Mukilteo Citizens* decision clarifies, however, the Superior Court’s analysis disregards the legal difference between an advisory vote and a lawful initiative. “An initiative is direct legislation by the people, while an advisory vote is a nonbinding poll of the citizen population.” *Mukilteo Citizens*, 272 P.3d at 231 (citing RCW 35.17.260 and RCW 29A.72.290). While a binding popular vote can be compelled through the initiative process, *see* RCW 35.17.260 *et al*, Washington law recognizes no mechanism by which a local legislative body can be similarly forced to hold a nonbinding advisory vote. *Mukilteo Citizens*, 272 P.3d at 231.⁶

⁶ The Washington Supreme Court’s *Mukilteo Citizens* decision is consistent with caselaw from other jurisdictions recognizing that the initiative power cannot be utilized to compel an advisory vote. *See, e.g., State ex rel. Brant v. Beermann*, 350 N.W.2d 18, 23 (Neb. 1984) (rejecting proposed nuclear freeze initiative as “nothing more than a nonbinding expression of public opinion”); *City of Eugene v. Roberts*, 756 P.2d 643 (Or. App. 1988), *aff’d*, 756 P.2d 630 (Or. 1988) (striking advisory measure deemed as nothing more than a nonbinding proposition or question); *City of Litchfield v. Hart*, 29 N.E.2d 678, 679 (Ill. App. 1940) (nonbinding expression of opinion on questions of public policy is not equivalent to initiative or referendum); *Paisner v. Attorney Gen.*, 458 N.E.2d 734

By embedding an advisory vote mandate within the body of Monroe Initiative No. 1, Seeds of Liberty has essentially attempted to circumvent the statutory deadline governing the referendum power. The practical effect of Section 3 would be to require the City to conduct a *post facto* public vote on its existing ATSC ordinance, which was enacted in 2007. *CP 350, 353-58; CP 361*. The only legally recognized means of mandating a post-adoption public vote on a municipal ordinance is through the referendum process codified at RCW 35.17.230 -.250. The deadline for filing a referendum petition is 30 days after passage of the ordinance by the local legislative body. *Id.* Section 3 of Monroe Initiative No. 1 seeks to bypass this statutory deadline by forcing a popular vote on the City's ATSC ordinance several years after its original adoption. *CP 361*. The Superior Court clearly erred by sanctioning this approach, which finds no support in Washington law.

- (3) Pursuant to RCW 29A.04.330, only a local legislative body may call for an advisory vote.

In severing Section 3, the Superior Court also erroneously disregarded and misconstrued an entirely separate statute that further demonstrates the invalidity of that provision. By definition, an advisory

(Mass. 1983) (affirming power to refuse certification of proposed initiative that did not propose binding law).

ballot requires a special election because it involves an isolated, issue-specific vote that is not required to be held on a fixed date at recurring intervals. See RCW 29A.04.175; RCW 29A.04.073. Washington law vests local legislative bodies with the exclusive authority to call special elections for this purpose:

The county auditor, as ex officio supervisor of elections, *upon request in the form of a resolution of the governing body of a city, town, or district*, presented to the auditor prior to the proposed election date, may call a special election in such city, town, or district, and for the purpose of such special election he or she may combine, unite, or divide precincts.

RCW 29A.04.330(2) (emphasis added).

In rejecting the applicability of RCW 29A.04.330, the Superior Court stated simply that “the exclusive grant of power to the City Council to inform the Auditor to place a matter on the ballot is a procedural, rather than a substantive, authorization.” *CP 103*. The court cited no precedent for this extraordinary conclusion, which finds no support in either the text of RCW 29A.04.330 or Washington caselaw. By its terms, the statute predicates local advisory votes upon a resolution adopted by the municipality’s *governing body*. As explained in detail *supra*, where an enabling statute grants a power specifically to a local legislative body, that

power is not subject to direct legislation by initiative or referendum. *See, e.g., Malkasian*, 157 Wn.2d at 261-62. The Superior Court erroneously disregarded this principle as it relates to RCW 29A.04.330.

(4) Section 3 would impermissibly compel the City to perform an administrative act.

Finally, the local initiative power cannot be exercised with respect to administrative—as opposed to legislative—functions. *See, e.g., Our Water-Our Choice*, 170 Wn.2d at 8. “A local government action is administrative if it furthers (or hinders) a plan the local government or some power superior to it has previously adopted.” *Id.* at 10. In determining whether a particular proposed initiative measure is an administrative matter, the court examines whether the details of the initiative form a “new policy or plan” indicative of a legislative act, modifications of “a plan already adopted by the legislative body itself, or some power superior to it,” indicative of an administrative act. *Id.* at 14.

This limitation is fatal to Section 3 of Monroe Initiative No. 1. The advisory vote required by that provision would not create a “new policy or plan”, but rather would seek nonbinding voter input regarding a *pre-existing* policy—*i.e.*, the City’s previously enacted Automated Traffic Safety Camera program. It is thus an inherently administrative function. *See, e.g., Our Water-Our Choice*, 170 Wn.2d at 12-13 (initiative seeking

to repeal previously-enacted ordinances establishing fluoridate water supply plan was administrative); *Ruano v. Spellman*, 81 Wn.2d 820, 505 P.2d 447 (1973) (initiative filed to prevent construction of stadium after county council had voted to build it was administrative); *Heider v. City of Seattle*, 100 Wn.2d 874, 675 P.2d 597 (1984) (ordinance changing the name of previously constructed street was administrative). The advisory vote provision of Monroe Initiative No. 1 would compel the City to perform an administrative act and as such is invalid.

3. The Superior Court Erred by Imposing Anti-SLAPP Sanctions Under RCW 4.24.525.

Washington's Anti-SLAPP statute creates a special cause of action for claimants whose public participation rights have been wrongfully interfered with. *See* RCW 4.24.525. An aggrieved party bringing a motion to strike a claim under the statute has the initial burden of showing by a preponderance of the evidence that the challenged claim is based on "an action involving public participation and petition." RCW 4.24.525(4)(b). If the moving party meets this burden, the burden shifts to the responding party to establish by clear and convincing evidence a probability of prevailing on the claim. *Id.*

In granting Seeds of Liberty's Anti-SLAPP motion, the Superior Court noted that "Seeds of Liberty was named as a defendant in this suit

because it sponsored an initiative petition and the suit sought to invalidate the petition it proposed.” *CP 6*. The court further reasoned that the City’s lawsuit

burdens the initiative sponsors with having to defend the right of voters to express their opinions and weigh in on a matter that will directly affect them. As such, the initiative concerns an action involving public participation and the inherent rights of citizens to petition their government.

CP 103.

This ruling profoundly misconstrues and misapplies RCW 4.24.525. As the *Mukilteo Citizens* decision now clarifies beyond doubt, Seeds of Liberty’s motion should have been denied because the City should have prevailed on the underlying claim as a matter of law. More fundamentally, the Superior Court disregarded the purpose and effect of the Anti-SLAPP statute by applying it to the City’s declaratory judgment action in the first instance. The court’s ruling on this issue was clearly erroneous and should be reversed.

- a. Seeds of Liberty’s Anti-SLAPP motion should have been denied because the City should have been deemed the prevailing party on the underlying claim.

As explained *supra*, *Mukilteo Citizens* controls the substantive disposition of this appeal and requires reversal of the Superior Court’s

ruling on the merits. In severing Section 3 of Monroe Initiative No. 1, the Superior Court’s ruling directly contradicts the Supreme Court’s *Mukilteo Citizens* decision, which invalidated an identical advisory vote provision along with the balance of the initiative at issue in that case. *Mukilteo Citizens*, 272 P.3d at 230, 233; Appendix A. The Supreme Court emphatically rejected any suggestion that the initiative process can be used to compel a city to hold an advisory vote. *Id.* at 231 (“There are no statutory or constitutional provisions imposing a duty on a city council to call for an ‘advisory’ vote.”). It is now beyond question that Section 3 of Monroe Initiative No. 1 is invalid and that the Superior Court erred by severing it.

This determination also necessarily mandates reversal of the Superior Court’s Anti-SLAPP ruling. A trial court must deny a special motion under RCW 4.24.525 where the responding party demonstrates by clear and convincing evidence “a probability of prevailing on the claim”. RCW 4.24.525(4)(b). *Mukilteo Citizens* clarifies that the City should have prevailed in full on the underlying “claim”—*i.e.*, its declaratory judgment lawsuit.⁷ Under these circumstances, Seeds of Liberty’s special motion

⁷ The Anti-SLAPP statute defines a claim as “any lawsuit, cause of action, claim, cross-claim, counterclaim, or judicial pleading or filing requesting relief[.]” RCW

under RCW 4.24.525 fails as a matter of law. *See, e.g., ATS*, 163 Wn. App. at 434-35 (vacating Anti-SLAPP award where trial court’s ruling on the merits was reversed on appeal).

- b. Anti-SLAPP liability does not apply to a municipality’s declaratory judgment lawsuit seeking pre-election review of a proposed initiative.

Entirely separate from the substantive outcome of the City’s declaratory judgment action, the Superior Court’s most fundamental error was applying RCW 4.24.525 under the circumstances of this case at all. The court’s ruling to this effect disregarded several decades of Washington precedent, as well as persuasive authority from other jurisdictions, that should have dictated a contrary result.

- (1) The City’s lawsuit was not an action involving public participation and petition within the meaning of RCW 4.24.525.

In determining whether the Anti-SLAPP statute applies to a particular claim, the threshold question concerns whether the underlying matter is an “action involving public participation and petition” within the meaning of that law. *See* RCW 4.24.525(2). The statute defines this term by enumerating several protected activities.⁸ *Id.* While the Superior Court

4.24.525(1)(a). Accordingly, the relevant “claim” for purposes of the instant matter is the City’s declaratory judgment lawsuit seeking invalidation of Monroe Initiative No. 1.

⁸ RCW 4.24.525(2) specifically lists the following as “actions involving public participation and petition:

did not explicitly identify which of these activities the City's lawsuit allegedly burdened, the court's reference to the initiative sponsors' "inherent right to petition their government" correlates most closely to RCW 4.24.525(2)(e). *CP 103*. This subsection protects the moving party's *constitutional* rights from encroachment:

Any other lawful conduct in furtherance of the exercise of the *constitutional* right of free speech in connection with an issue of public concern, or in furtherance of the exercise of the *constitutional* right of petition.

RCW 4.24.525(2)(e) (emphasis added). This provision likewise effectuates the primary legislative purpose underlying the Anti-SLAPP

(a) Any oral statement made, or written statement or other document submitted, in a legislative, executive, or judicial proceeding or other governmental proceeding authorized by law;

(b) Any oral statement made, or written statement or other document submitted, in connection with an issue under consideration or review by a legislative, executive, or judicial proceeding or other governmental proceeding authorized by law;

(c) Any oral statement made, or written statement or other document submitted, that is reasonably likely to encourage or to enlist public participation in an effort to effect consideration or review of an issue in a legislative, executive, or judicial proceeding or other governmental proceeding authorized by law;

(d) Any oral statement made, or written statement or other document submitted, in a place open to the public or a public forum in connection with an issue of public concern; or

(e) Any other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public concern, or in furtherance of the exercise of the constitutional right of petition.

statute, which was to address “concern[s] about lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances.” Laws of 2010, ch. 118.

In concluding that the City’s lawsuit triggered liability under RCW 4.24.525 as an alleged constitutional infringement, the Superior Court ignored a critical point: The local powers of initiative and referendum in Washington are derived from *statute*, not a constitutional right of free speech or petition.

Though the right to state-wide initiative is protected by our state constitution, there is no similar constitutional protection or right of local initiative. Wash. Const. art. II, § 1. The legislature did not grant optional initiative powers in noncharter code cities. . . . until 1973.

City of Port Angeles, 145 Wn. App. at 879 (citing RCW 35A.11.080; 1973 Wash. Laws, 1st Ex.Sess. Ch. 81 § 1). While initiative and referendum powers are available to code cities, they do not arise automatically and must instead be affirmatively adopted utilizing the procedures set forth in RCW 35A.11.080. Contrary to the Superior Court’s ruling, these powers do not involve the exercise of a constitutional right within the meaning of the Anti-SLAPP statute.

- (2) Municipalities have a well-established right to determine the validity of a proposed initiative through the declaratory judgment process.

As explained above, Washington law recognizes no constitutional right in the local initiative process. Even more fundamentally, there is no constitutional privilege to bring an *invalid* initiative. Washington courts have routinely invalidated petition-based measures that exceed the scope of initiative and referendum power. *See, e.g., City of Port Angeles*, 145 Wn. App. at 883; *City of Seattle v. Yes for Seattle*, 122 Wn. App. 382, 388-91, 93 P.3d 176 (2004); *Philadelphia II v. Gregoire*, 128 Wn.2d 707, 709, 911 P.2d 389, *cert. denied*, 519 U.S. 862 (1996); *Malkasian*, 157 Wn2d at 261; *1000 Friends of Wash. v. McFarland*, 159 Wn.2d 165, 173, 149 P.3d 616 (2006); *Snohomish County v. Anderson*, 123 Wn.2d 151, 152-53, 868 P.2d 116 (1994).

The appropriate mechanism for determining the validity of a legally suspect ballot measure is for the affected municipality to seek a declaratory judgment. *See Malkasian*, 157 Wn.2d at 260 (“It is well-settled that it is proper to bring such. . . . challenges prior to an election.”) A longstanding body of Washington caselaw acknowledges and sanctions this approach. *See, e.g., City of Port Angeles*, 145 Wn. App. at 188; *Anderson*, 123 Wn.2d at 154-55; *Malkasian*, 157 Wn.2d at 259-61;

Whatcom County v. Brisbane, 125 Wn.2d 345, 884 P.2d 1326 (1994); *Yes for Seattle*, 122 Wn. App. at 386; *McFarland*, 159 Wn.2d at 171; *Philadelphia II*, 128 Wn.2d at 716-17.

Pre-election declaratory judgment lawsuits are not merely authorized by Washington law; they are judicially encouraged as a means of preventing unlawful usurpation of local legislative power and ensuring that improper measures are kept from the ballot. *See, e.g., City of Port Angeles*, 145 Wn. App. at 882-83 (citing *King County v. Taxpayers of King County*, 133 Wn.2d 584, 608, 949 P.2d 1260 (1997)) (the “people cannot deprive the City’s legislative authority of the power to do what the constitution and/or a state statute specifically permit it to do. . . . To allow the initiatives to proceed on the basis of police power, or some other general theory, would be to undermine the legislative grant of authority to the local legislative body[.]”) Courts have accordingly rejected attempts to demonize the plaintiff municipality in this context. *See, e.g., Malkasian*, 157 Wn.2d at 272 (“Far from being the villains. . . , the city council brought this action in line with its duty to both uphold and enforce the law and to represent the people of their community.”)

It is equally well-established that the sponsors of the challenged initiative are properly named as defendants in declaratory judgment

lawsuits of this type. *See, e.g., Malkasian*, 157 Wn.2d at 269-70 (citing cases); *Brisbane*, 125 Wn.2d at 347; *Snohomish County v. Anderson*, 124 Wn.2d 834, 881 P.2d 240 (1994); *Maleng v. King County Corr. Guild*, 150 Wn.2d 325, 76 P.3d 727 (2003). The Supreme Court has explained the rationale for this approach:

In this case, like so many others, the local officials had a valid concern that the proposed initiative was outside the initiative power. Numerous cases illustrate that the sponsor of the proposed measure, the person or persons who engaged in the efforts and actions to draft an initiative or referendum, gather signatures, circulate the measure, and place the measure on the ballot, defends the measure it proposes prior to election.

....

This alignment of parties is consistent with justiciability and standing requirements that parties in a legal action be adversarial and have sufficient opposing interests in the matter.

Malkasian, 157 Wn.2d at 269-70 (internal citation omitted).

By imposing Anti-SLAPP sanctions against the City, the Superior Court's ruling implicitly presumes that RCW 4.24.525 was intended to legislatively overrule or modify this longstanding and well-established authority. This assumption is erroneous as a matter of law. "The legislature is presumed to know the law in the area in which it is

legislating, and statutes will not be construed in derogation of the common law absent express legislative intent to change the law.” *Wynn v. Earwin*, 163 Wn.2d 361, 371, 181 P.3d 806 (2008). Nothing in the text or legislative history of RCW 4.24.525 remotely suggests any intent to abrogate a city’s traditional right to seek judicial review of a legally questionable initiative measure. *See, e.g.*, Laws of 2010, ch. 118, §§ 1-2; SSB 6395, 61st Leg., 2010 Reg. Sess. (2010); H. Bill Rep. SSB 6395 (2010); Final Bill Rep. SSB 6395 (2010).

In light of this principle and the voluminous caselaw cited above, the Superior Court fundamentally erred by imposing Anti-SLAPP sanctions in this context and by concluding that the City’s declaratory judgment action wrongfully “burdened” Seeds of Liberty with the obligation to defend Monroe Initiative No. 1 in the lawsuit. *CP 103*. By bringing its lawsuit, the City of Monroe was exercising a well-established legal option to determine the validity of Monroe Initiative No. 1. Seeds of Liberty, as the sponsor of the measure, was likewise properly named as a defendant. Contrary to the Superior Court’s ruling, RCW 4.24.525 simply does not apply under these circumstances.

(3) The Superior Court erred by disregarding California caselaw.

Finally, in imposing Anti-SLAPP liability against the City, the Superior Court improperly ignored highly persuasive California authority. The Washington Legislature closely modeled RCW 4.24.525 after California's Anti-SLAPP statute, and local courts have relied heavily upon California case law to interpret the statute. *See, e.g., Aronson v. Dog Eat Dog Films, Inc.*, 738 F. Supp. 2d 1104, 1109 (W.D. Wash. 2010). The Superior Court erred as a matter of law in concluding that “[c]ases interpreting California’s statute are not persuasive” in this context. *CP 103*.

California courts have squarely addressed—and rejected—the argument that a municipality’s pre-election declaratory judgment action is subject to Anti-SLAPP liability. In the highly analogous case of *City of Riverside v. Stansbury*, 155 Cal. App. 4th 1582, 66 Cal.Rptr.3d (2007), the city sought a declaratory judgment on a proposed voter initiative concerning the city’s eminent domain authority. *Stansbury*, 155 Cal. App. 4th at 1585-86. The initiative sponsors filed an Anti-SLAPP motion against the city, alleging that the declaratory judgment lawsuit violated their First Amendments rights. *Id.* at 1586-87. In denying the motion, the

California Court of Appeals acknowledged the high bar for Anti-SLAPP liability:

[T]hat a cause of action arguably may have been triggered by protected activity does not entail that it is one arising from such In the anti-SLAPP context, the critical point is whether the plaintiff's cause of action itself was based on an act in furtherance of the defendant's right of petition or free speech.

Id. at 1588.

The *Stansbury* court proceeded to reject the same premise that was erroneously accepted by the Superior Court in the instant case—*i.e.*, that the City's declaratory judgment lawsuit arose from a constitutionally protected activity:

By its declaratory relief action, the City was simply asking for guidance as to the constitutionality of the proposed initiative. Indeed, the City did nothing to limit respondents' activities in connection with the initiative, nor did the City, by its action, otherwise impact respondents' First Amendment rights. Moreover, it was proper for the City to initiate its declaratory relief action as a means of disputing, in a preelection challenge, the validity of the initiative.

Id. at 1590-91 (citing cases).

The California Supreme Court's decision in *City of Cotati v. Cashman*, 29 Cal. 4th 69, 52 P.3d 695 (2002), is also highly persuasive.

In *Cotati*, the city responded to a challenge to its rent control ordinance by requesting a declaratory judgment on the ordinance's validity. The California Supreme Court refused to impose Anti-SLAPP sanctions against the city, finding that the underlying lawsuit did not arise from protected speech but instead merely sought a judicial determination regarding the constitutionality of the subject ordinance. The *Cotati* court explained that "the actual controversy giving rise to both actions—the fundamental basis of each request for declaratory relief—was the same underlying controversy respecting [the] ordinance." *Stansbury*, 155 Cal. App. 4th at 1590 (citing *Cotati*, 29 Cal. 4th at 80).

California's courts have rejected the argument that a citizen's right to petition his government is sacrosanct and immune from *any* governmental interference under the Anti-SLAPP statute:

In taking this position, *Stansbury* overlooks the fact there is no constitutional right to place an invalid initiative on the ballot. Moreover, he ignores entirely the body of law which recognizes pre-election challenges to initiative measures.

Id. at 1592 (emphasis in original).

The reasoning underlying these California decisions is equally applicable in the instant case. Like the municipalities at issue *Stansbury* and *Cotati*, the City of Monroe's lawsuit was "simply asking for

guidance” regarding the validity of Monroe Initiative No. 1 and “did nothing to limit [Seeds of Liberty’s] activities in connection with the initiative.” *Stansbury*, 155 Cal. App. 4th at 1590-91. Significantly, the City did not prohibit or otherwise interfere with Seeds of Liberty’s efforts in collecting signatures for its initiative petition. Upon receiving the petition the City duly forwarded it to the County Auditor for certification pursuant to state law. *See* RCW 35A.01.040; RCW 35.17.280; *CP 351, 366*. But, in accordance with a lengthy body of Washington precedent, the City ultimately refused to place this measure on the election ballot and instead sought a judicial declaration to resolve legitimate concerns regarding its validity. In imposing Anti-SLAPP sanctions against the City under these circumstances, Superior Court’s ruling suffers from the same fundamental fault identified by California’s judiciary: It “ignores entirely the body of law which recognizes pre-election challenges to initiative measures.” *Stansbury*, 155 Cal. App. 4th at 1592.

The *Stansbury* and *Cotati* opinions are directly on point and should have been considered persuasive authority in the Superior Court’s Anti-SLAPP analysis. *See, e.g., Aronson*, 738 F. Supp. 2d at 1109. The Superior Court’s failure to accord this caselaw *any* weight contributed

materially to the court's erroneous Anti-SLAPP ruling and further warrants reversal of this deeply flawed decision.

E. CONCLUSION

The Superior Court erred as a matter of law by severing the advisory vote requirement contained in Section 3 of Monroe Initiative No. 1. *Mukilteo Citizens* controls this point and flatly repudiates the Superior Court's analysis and conclusion. It is now beyond question both that the entire subject matter of Automated Traffic Safety Cameras exceeds the scope of the initiative power and that a municipality cannot be compelled to hold an advisory vote—particularly one that relates to a forbidden topic. Monroe Initiative No. 1 is invalid in its entirety.

This conclusion necessarily requires reversal of the Superior Court's Anti-SLAPP ruling, which was based upon the now-disproved premise that the City should not prevail on the merits of its declaratory judgment action. Imposing Anti-SLAPP sanctions in this context was likewise erroneous given the longstanding body of Washington precedent authorizing pre-election ballot measure challenges.

For the reasons set forth above, the Court of Appeals is respectfully requested to reverse the Superior Court's decision and to vacate the judgment against the City.

RESPECTFULLY SUBMITTED this 11th day of May, 2012.

Respectfully submitted,

OGDEN MURPHY WALLACE, P.L.L.C.

By 
J. Zachary Lell, WSBA #28744
Kristin N. Eick, WSBA #40794
Attorneys for Appellant

APPENDIX A

Sample Petition entitled “Let the People Decide on Red Light Cameras in Monroe”

LET THE PEOPLE DECIDE ON RED LIGHT CAMERAS IN MONROE

- Repeals government-imposed automatic ticketing cameras
- Requires city government to get voter approval if they try again
- Removes profit-motive by limiting fines
- Protects democracy and due process

Proposed Ballot Title: Monroe Initiative No. 1 concerns automatic ticketing cameras. This measure would prohibit Monroe from using camera surveillance to impose fines unless two-thirds of the Council and voters approve, limit fines, repeal Ordinance 002/2007 allowing the machines, and mandate an advisory vote.

Proposed Ballot Summary: This measure would prohibit the City of Monroe or for-profit companies contracted by Monroe to use automatic ticketing cameras to impose fines from camera surveillance unless it's approved by a two-thirds vote of the City Council and a vote of the people at an election. This measure would also limit fines, repeal Ordinance 002/2007/Chapter 10.14 allowing automatic ticketing cameras, and require an advisory vote of the people for machines authorized after January, 2007.

BE IT ENACTED BY THE PEOPLE OF THE CITY OF MONROE:

Section 1. New Chapter 10.14. A new chapter 10.14 is hereby added to the Monroe Municipal Code to read as follows:
10.14.150 Automatic Ticketing Cameras: The City of Monroe and for-profit companies contracted by the City of Monroe may not install or use automatic ticketing cameras to impose fines from camera surveillance unless such a system is approved by a two-thirds vote of the City Council and a majority vote of the people at an election.

1. For the purposes of this chapter, "automatic ticketing camera" means a device that uses a vehicle sensor installed in conjunction with an inductive loop device system, or a speed measuring device, and a camera synchronized to automatically record one or more unwarped photographs, microphotographs, or electronic images of the rear of a motor vehicle at the time the vehicle fails to stop when facing a steady red traffic control signal, or exceeds a speed limit as detected by a speed measuring device.

10.14.150 Fines: If two-thirds of the City Council and a majority of Monroe voters at an election approve a system of automatic ticketing cameras to impose fines from camera surveillance, the fine for violations committed shall be a secondary penalty of no more than the local supervisor parking ticket imposed by law enforcement in the city limits of Monroe.

Section 2. Chapter 10.14 (Ordinance No. 002/2007 allowing automatic ticketing cameras) is hereby repealed.

Section 3. Advisory Vote: Any ordinance that authorizes the use of automatic ticketing cameras enacted after January 1, 2007, must be put on the ballot for an advisory vote of the people at the next general election.

Section 4. Severability: If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

WARNING

Every person who signs this petition with any other than his or her true name, or who knowingly signs more than one of these petitions, or signs a petition seeking an election when he or she is not a legal voter, or signs a petition when he or she is otherwise not qualified to sign, or who makes herein any false statement, shall be guilty of a misdemeanor.

Concise statement of the action or relief sought: We, the undersigned voters of Monroe, require that, unless passed by the City Council, this ordinance – Monroe Initiative No. 1 – be submitted to a vote of the registered voters of the city of Monroe, subject to the requirements of Monroe Municipal Code Chapter 1.12 and RCW 35A.11.080-100.

Print Name (Monroe voters ONLY)	Signature	Address	City	Date
1.			Monroe	
2.			Monroe	
3.			Monroe	
4.			Monroe	
5.			Monroe	
6.			Monroe	
7.			Monroe	
8.			Monroe	
9.			Monroe	
10.			Monroe	

Returned petitions to: Seeds of Liberty, PO Box 852, Monroe, WA, 98272, ph: 425-616-8154, fax: 425-463-1027, www.BanCams.com/monroe, ly@seedsofliberty.org
 Our goal is to collect signatures test enough to qualify for the May ballot. Sponsored by Seeds of Liberty, BanCams.com, WA Campaign for Liberty, and VotersWantMoreChoices.com

APPENDIX B

Resolution No. 2010-22



11930 CYRUS WAY • MUKILTEO, WASHINGTON 98275

Office of the City Clerk 425.263.8005

CERTIFICATION

I, Christina J. Boughman, City Clerk of the City of Mukilteo, hereby certify that the attached copy of Resolution No. 2010-22 consisting of four pages is a true and correct copy of the original Resolution approved by the City Council on July 19, 2010.

Certified this 3rd day of May, 2012.



A handwritten signature in cursive script that reads "Christina J. Boughman".

Christina J. Boughman, City Clerk

City of Mukilteo, Washington
RESOLUTION NO. 2010-22

A RESOLUTION OF THE CITY OF MUKILTEO, WASHINGTON, PURSUANT TO RCW 35.17.260 CALLING AN ELECTION TO BE HELD IN CONJUNCTION WITH THE NOVEMBER GENERAL ELECTION FOR SUBMISSION OF A PROPOSED INITIATIVE ORDINANCE TO A VOTE OF THE PEOPLE, AND INSTRUCTING THE CITY CLERK REGARDING PRESENTATION AND PUBLICATION.

WHEREAS, the City Council of the City of Mukilteo has been presented with an Initiative Petition requesting enactment of an ordinance to prohibit use of automated traffic safety cameras to detect stoplight infractions and school speed zone violations without a two-thirds vote of the City Council and a majority vote of the electorate, establishing a maximum fine for infractions, repealing chapter 10.05 of the Mukilteo Municipal Code relating to use of automated traffic safety cameras to detect stoplight infractions and school speed zone violations, and calling for an advisory vote of the people for any ordinance that authorizes the use of such systems; and

WHEREAS, the City Council desires to hear from the qualified electorate on the issues addressed in the Initiative Petition, regardless of whether the subject matter is subject to the initiative process; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF MUKILTEO, WASHINGTON,
RESOLVES AS FOLLOWS:

Section 1. Call for Election. Pursuant to RCW 35.17.260, the Mukilteo City Council requests the Snohomish County Auditor to place upon the general election ballot in the City of Mukilteo, Snohomish County, on November 2, 2010, a proposition for the purpose of

submitting to the qualified electors of the City whether or not to enact an initiative ordinance, a copy of which is attached hereto as Exhibit A and incorporated herein.

Section 2. Ballot Proposition. The ballot title for the aforementioned proposition shall read as follows:

Initiative Measure

Mukilteo Initiative No. 2 concerns automatic ticketing machines. This measure would prohibit Mukilteo from using camera surveillance to impose fines unless two-thirds of the Council and a majority of the voters approve, limit fines, repeal Ordinance 1246 allowing the machines, and mandate an advisory vote.

Should this measure be enacted into law?

Yes.....[]

No.....[]

Section 3. Duties of City Clerk. The City Clerk is hereby authorized and directed to furnish promptly to the Snohomish County Auditor a certified copy of this Resolution. The City Clerk is further directed and authorized to publish the proposed Initiative Ordinance in the official newspaper of the City not less than five (5) nor more than twenty (20) days prior to the November election date.

Section 4. Local Voters' Pamphlet. The City Attorney is directed to prepare and submit the explanatory statement for the ballot proposition as required by the administrative rules of the Snohomish County Auditor. The arguments for and against the ballot proposition shall be prepared by the committees appointed by the Council pursuant to RCW 29A.32.280.

RESOLVED by the City Council and APPROVED by the Mayor this 19th day of

July, 2010.

APPROVED:



MAYOR JOE MARINE

ATTEST/AUTHENTICATED:



CHRISTINA J. BOUGHMAN, CITY CLERK

{ASB802671.DOC;1\00014.900000\}

FILED WITH THE CITY CLERK: 7-19-10
PASSED BY THE CITY COUNCIL: 7-19-10
RESOLUTION NO. 2010-22

Exhibit A

Section 1. New Chapter 10.06. A new chapter 10.06 is hereby added to the Mukilteo Municipal Code to read as follows:

10.06.010. Automated Ticketing Machines. The City of Mukilteo and for-profit companies contracted by the City of Mukilteo may not install or use automated ticketing machines to impose fines from camera surveillance unless such a system is approved by a two-thirds vote of the City Council and a majority vote of the people at an election.

1. For the purposes of this chapter, “automated ticketing machines” means a device that uses a vehicle sensor installed to work in conjunction with an intersection traffic control system or a speed measuring device, and a camera synchronized to automatically record one or more sequenced photographs, microphotographs or electronic images of the rear of a motor vehicle at the time the vehicle fails to stop when facing a steady red traffic control signal, or exceeds a speed limit as detected by a speed measuring device.

10.06.020 Fines. If two-thirds of the City Council and a majority of Mukilteo voters at an election approve a system of automated ticketing machines to impose fines from camera surveillance, the fine for infractions committed shall be a monetary penalty of no more than the least expensive parking ticket imposed by law enforcement in the city limits of Mukilteo.

Section 2. Chapter 10.05 (Ordinance No. 1246 allowing automated ticketing machines) is hereby repealed.

Section 3. Advisory Vote. Any ordinance that authorizes the use of automated ticketing machines enacted after January 1, 2010, must be put on the ballot as an advisory vote of the people at the next general election.

Section 4. Severability. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

No. 68473-6

COURT OF APPEALS,
DIVISION I,
OF THE STATE OF WASHINGTON

CITY OF MONROE,

Appellant,

v.

SEEDS OF LIBERTY,

Respondent.

DECLARATION OF SERVICE

J. Zachary Lell, WSBA #28744
Kristin N. Eick, WSBA #40794
Attorneys for Appellant
OGDEN MURPHY WALLACE, P.L.L.C.
1601 Fifth Avenue, Suite 2100
Seattle, Washington 98101-1686
Tel: 206.447.7000/Fax: 206.447.0215

ORIGINAL

DECLARATION OF SERVICE

I, N. Kay Richards, make the following true statement.

On the 11th day of May, 2012, I provided **Opening Brief of**

Appellant City of Monroe in the following manner:

Original Via Legal Messenger:

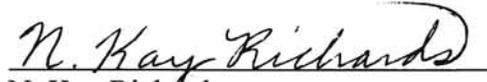
Court of Appeals, Division I

Copy Via E-mail and Legal Messenger:

Richard M. Stephens
GROEN STEPHENS & KLINGE, LLP
11100 NE 8th Street, Suite 750
Bellevue WA 98004
stephens@gsklegal.pro

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

EXECUTED at Seattle, Washington this 11th day of May, 2012.


N. Kay Richards