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SUPREME COURT  
OF THE STATE OF WASHINGTON

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CITY OF LONGVIEW, a Washington municipal corporation,

Respondent/Cross-Appellant,

v.

MIKE WALLIN, an individual,

Appellant,

and

BANCAMS.COM, an unknown entity; WA CAMPAIGN FOR  
LIBERTY, a Washington non-profit corporation; VOTERSWANT  
MORECHOICES.COM, an unknown entity; COWLITZ COUNTY, a  
municipal corporation; and KRISTINA SWANSON, Cowlitz County  
Auditor,

Additional Respondents.

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REPLY BRIEF OF RESPONDENT/CROSS-APPELLANT  
CITY OF LONGVIEW

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## 1. INTRODUCTION

The City Council of the City of Longview is specifically delegated the authority to enact legislation regarding automated traffic safety cameras (“safety cameras”). RCW 46.63.170. That grant of power to the local governing body precludes any local initiative on the same subject. Nevertheless, a group of initiative sponsors brought Longview Initiative No. 1 to the City, which would have repealed the City’s safety camera ordinance, required supermajorities and public votes to validate any future safety camera ordinances, limit allowable fines, and require an advisory vote at a special election for any future safety camera ordinance. The City sought a declaratory judgment that the initiative was beyond the scope of the local initiative power because the subject of safety cameras was specifically delegated to the Longview City Council. On March 8<sup>th</sup>, this court reaffirmed again that long-held rule of law in *Mukilteo Citizens for Simple Government v. City of Mukilteo*, \_\_\_ Wn.2d \_\_\_, 272 P.3d 227 (2012).

The *Mukilteo Citizens* case involved a local initiative that is identical in every respect to Longview Initiative No. 1. Just as in the *Mukilteo Citizens* case, this Court should hold that subject matter of safety

cameras is outside the scope of the local initiative power and that advisory votes, which are not legislation, are also outside the local initiative power.<sup>1</sup>

## 2. ARGUMENT

### 2.1 This Court's Decision in *Mukilteo Citizens* Is Dispositive.

When the Washington Legislature delegates a subject matter to the legislative body of a city, initiatives regarding that subject are beyond the scope of the local initiative power.

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.

*City of Sequim v. Malkasian*, 157 Wn.2d 251, 138 P.2d 943 (2006). In this case, the Washington Legislature delegates the subject of automated traffic safety cameras to the “local legislative authority.” RCW 46.63.170.

Just last month, this Court held that an local initiative identical to Longview Initiative No. 1 was beyond the scope of the local initiative power. *Mukilteo Citizens for Simple Government v. City of Mukilteo*, \_\_\_ Wn.2d \_\_\_, 272 P.3d 227 (2012) (attached as **Appendix A**). The Mukilteo local initiative in that case was identical, almost word-for-word to Longview Initiative No. 1 in this case. *See Appendices B and C* to

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<sup>1</sup> In this Reply Brief, the City addresses the Wallin's arguments in response to the City's cross-appeal. However, as *Mukilteo Citizens* is dispositive, the Court need not reach these other arguments.

this brief, which attaches those initiatives.<sup>2</sup> Just like Longview Initiative

No. 1, the Mukilteo initiative:

Forbade the city of Mukilteo from installing an automated traffic safety camera system unless approved by two-thirds of the voters; limited the amount of fines that could be imposed for infractions arising from camera surveillance, and repealed the existing ordinance allowing automated safety cameras. [Mukilteo] Initiative 2 also provided that any new automated traffic safety ordinance had to be put to an advisory vote.

*Mukilteo Citizens*, 272 P.3d 227 (Appendix A at 4). This Court held that the subject matter of that Mukilteo initiative was beyond the local initiative power:

We hold that because the legislature expressly granted authority to the governing body of the city of Mukilteo to enact ordinances on the use of automated traffic safety cameras, the subject matter of Proposition 1 [approving Mukilteo Initiative No. 2] is not within the initiative power.

*Id.* In addition, both the majority and the dissenting opinions in *Mukilteo Citizens*, the Court recognized that advisory votes are beyond the scope of the initiative power because they are not legislation. *Id.* (Appendix A at 5 and 9).

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<sup>2</sup> The only difference is that Section 3 of the Mukilteo initiative requires advisory votes for any safety camera legislation passed after January 1, 2010. Section 3 of the Longview initiative requires advisory votes for any safety camera legislation passed after January 1, 2007.

The decision in *Mukilteo Citizens* is dispositive of this case. In *Mukilteo Citizens*, the Court held that the *entire* Mukilteo initiative (including Section 3 that requires advisory votes for any safety camera ordinance enacted after January 1, 2010) was beyond the scope of the local initiative power. Because Longview Initiative No. 1 is identical, the entirety of Longview Initiative No. 1 is beyond the scope of the local initiative power.

Section 3 is also beyond the scope of the initiative power for the independent reason that the local initiative power extends only to the enactment of legislation. *Mukilteo Citizens*, 272 P.3d 227 (Appendix A at 5 and 9); *Ruano v. Spellman*, 81 Wn.2d 820, 823, 505 P.2d 447 (1973). Section 3 calls for an advisory vote regarding the existing Longview safety camera ordinance (enacted after January 1, 2007), and for advisory votes for any future safety camera ordinance. *See* Appendix C. Because advisory votes are not within the initiative power, Section 3 is not within the initiative power.

In his reply brief, appellant Wallin attempts to distinguish Section 3 from advisory votes by arguing Section 3 is “legislation” because it mandates advisory votes, and is not an advisory vote itself. Reply at 8. This is a distinction without a difference. The subject matter

of Section 3 1 is creating advisory votes; advisory votes are outside the initiative power, and Section 3 is therefore outside the initiative power. The trial court erred when it held that Section 3 was within the scope of the initiative power.

**2.2 Section 3 of Longview Initiative No. 1 Calls for Special Elections. But Calling for Special Elections is Specifically Delegated to the Longview City Council.**

When the Legislature grants a power to the local legislative body, that power is not subject to initiative. *Malkasian*, 157 Wn.2d at 261-262; *Priorities First v. City of Spokane*, 93 Wn. App. 406, 411, 968 P.2d 431 (1998), *review denied*, 137 Wn.2d 1035 (1999). In addition to being beyond the local initiative power because it creates advisory votes, Section 3 of Longview Initiative No. 1 is beyond the initiative power because only the Longview City Council may call a special election.

Under Washington law, a “general election” is an election that is “required to be held **on a fixed date recurring at regular intervals.**” RCW 29A.04.073 (emphasis added). Any other election is a “special election.” RCW 29A.04.175. Special elections may be held on the same date as a general election. *Id.*

In order to hold a special election, the Legislature requires the “**governing body of a city**” to request the special election by passing a

resolution. RCW 29A.04.330(2). The governing body of the city must serve their resolution on the County Auditor 45 days prior to the date for the special election. RCW 29A.04.330(3).

Section 3 of Longview Initiative No. 1 purports to set up a series of advisory votes – both the existing Longview safety camera ordinance and any future safety camera ordinances would require an advisory vote. These would clearly be special elections because they are not on any fixed date recurring at regular intervals (years could go by without amendments to the City’s ordinance). Because calling special elections is specifically delegated to the “governing body” of the City by RCW 29A.04.330(2), Section 3 is beyond the scope of the local initiative power.

Wallin does not contest the fact that special elections are beyond the scope of the local initiative power. In fact, Wallin’s only argument on reply is that advisory votes would only be held “during” a general election. Reply at 13. But as seen above, while special elections can be held on the same date as a general election, that does not make them general elections. An election is a general election only if it is “required to be held on a fixed date recurring at regular intervals.” RCW 29A.04.073. The advisory votes called for in Section 3 clearly do not meet that definition, and are special elections. Only the Longview City

Council may call for a special election. For that independent reason, the trial court erred when it held that Section 3 was within the local initiative power.

**2.3 Section 3 of Longview Initiative No. 1 Is Not Severable from the Main Body of the Initiative.**

The trial court also erred when it held that Section 3 was severable from the main body of Longview Initiative No. 1. Even were Section 3 valid, it cannot be severed if it would not accomplish the legislative purpose of the initiative. *City of Seattle v. Yes For Seattle*, 122 Wn. App. 382, 393, 93 P.3d 176 (2004), *review denied*, 153 Wn.2d 1020 (2005); *Priorities First*, 93 Wn. App. at 413.

The initiative may not be severed, however, if the valid and invalid portions are so connected that the valid portions would be “useless to accomplish the legislative purpose.”

*Yes For Seattle*, 122 Wn. App. at 393. Here, Section 3 cannot accomplish the legislative purpose of Initiative No. 1 for two separate reasons.

First, Section 3 calls for advisory votes – which are not legislative at all. Therefore, an advisory vote could never accomplish the legislative purpose of Longview Initiative No. 1.

Second, the central role of Longview Initiative No. 1 is to rescind the City’s safety camera ordinance (Section 2) and to require supermajority Council votes and public approval at an election to pass any

new safety camera legislation (Section 1). Calling for advisory votes, which have no legislative effect, does not accomplish that purpose.

In his reply, Wallin argues that the severance clause is sufficient guarantee that the voters would consider Section 3 separately and that Section 3 is “volitionally separate.” Reply at 14. But severance clauses are not a sufficient guarantee. *McGowan v. State*, 148 Wn.2d 278, 60 P.2d 267 (2002) (severance clause is “not necessarily dispositive”); *Yes For Seattle*, 122 Wn.2d at 393. And the test for severability is not some “volitional” intent, as suggested by Wallin, but whether the severed portion of the initiative would “accomplish the legislative purpose” of the initiative. Advisory votes do not accomplish that legislative purpose, and the trial court erred in allowing Section 3 to be severed from the main body of Longview Initiative No. 1.

#### **2.4 The Trial Court Erred by Failing to Grant the City’s Motion to Voluntarily Dismiss.**

A plaintiff may dismiss upon motion at any time before the conclusion of its case. CR 41(a)(1)(B). Dismissal is required unless the case is a class action, derivative suit, or unless counterclaims have been pleaded. CR 41. The trial court denied the City’s motion solely because Wallin had filed a special motion to strike under RCW 4.24.525. A

special motion to strike is **not** a counterclaim, and the trial court decision was clear error.

As explained in the City's Response Brief, the City learned from the County Auditor, prior to the hearing on Wallin's special motion to strike, that the initiative sponsors had not submitted sufficient signatures (almost half the signatures submitted were invalid). Not wishing to spend public money on a lawsuit that might be unnecessary, the City moved to voluntarily dismiss its Complaint. The trial court incorrectly denied the City's motion, holding that Wallin's special motion to strike was "in the nature of" a counterclaim.

The trial court decision was clear error because a motion to strike is not a counterclaim. A counterclaim must be in a pleading, and the allowed pleadings are enumerated in CR 7(a). CR 13. Wallin did not file an answer or counterclaim.

In his reply, Wallin argues that his special motion to strike stayed all pending motions under RCW 4.24.525(5)(c), so the trial court correctly denied the City's motion. Reply at 26. Wallin's argument is irrelevant because the trial court did not stay the City's motion to voluntarily dismiss (which was not "pending" at the time of Wallin's motion in any case). Rather, the trial court heard the City's motion to voluntarily dismiss, and

Wallin has not assigned error to the trial court's failure to stay the City's motion.<sup>3</sup> Moreover, under RCW 4.24.525(5)(c), the trial court has discretion to hear motions if it wishes.

Wallin also argues that a special motion to strike is “in the *nature* of a counterclaim” even though he admits it is not a “traditional counterclaim” and was not made in a pleading, as required by CR 41 in order to deny a voluntary motion to dismiss. Reply at 27. Presumably, Wallin thinks a special motion to strike is “in the *nature* of” a counterclaim because it allows an award of sanctions. But many types of motions, such as motions for sanctions for discovery violations, allow for sanctions. None of those motions are counterclaims as required by CR 41(a)(1)(B)(3) in order to deny a voluntary motion to dismiss. Thus, by failing to grant the City's motion, as required by CR 41(a)(1)(B), the trial court committed error.

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<sup>3</sup> In reply, Wallin also complains that the City brought its motion to voluntarily dismiss on shortened time. Reply at 25. But Wallin did not assign error to the trial court decision granting the City's motion to shorten time, and does not argue before this Court that the trial court erred in shortening time to hear the City's motion.

## **2.5 The Trial Court Properly Denied Wallin's Special Motions to Strike.**

As shown above, the City clearly prevails on the merits of its declaratory judgment claim. As this Court recently held in *Mukilteo Citizens*, an initiative identical to Longview Initiative No. 1 was beyond the scope of the local initiative power because local legislation regarding automated traffic safety cameras was specifically delegated to the Longview City Council by the Legislature. *Mukilteo Citizens*, 272 P.3d 227 (Appendix A at 4); *see also American Traffic Solutions, Inc., v. City of Bellingham*, 163 Wn. App 427, 260 P.3d 245 (2011).

The trial court correctly denied Wallin's special motions to strike under RCW 4.24.525, holding that the City would likely prevail on its claims. At the eventual summary judgment hearing, the trial court correctly held that the primary sections of the initiative were specifically delegated to the City Council and beyond the scope of the local initiative power. As discussed above, Section 3 of Longview Initiative No. 1 is also beyond the scope of the local initiative power because advisory ballots are not legislation, because the Legislature specifically delegated calling special elections to the City Council, and because it cannot be severed as it does not accomplish the primary "legislative purpose" of the initiative.

For all those reasons, the trial court correctly held that the City would likely prevail on the merits of its claim.

There are two additional reasons why the City would prevail against a special motion to strike: (1) the City's declaratory judgment action, seeking merely to determine whether Longview Initiative No. 1 was within the scope of the local initiative power, and if so to save the expense of an unwarranted election; and (2) the City's declaratory judgment action is exempt under RCW 4.24.525(3).

**2.5.1 The City's Declaratory Judgment Action Did Not Prevent or Seek to Prevent Public Participation.**

A special motion to strike may only be brought if the claim raised is "based on an action in public participation." RCW 4.24.525(4)(a); RCW 4.24.525(2). The reason for this special remedy, as explained by the Legislature, is to curb "lawsuits brought primarily to chill the valid exercise of constitutional rights of freedom of speech and petition for the redress of grievances." 2010 Wash. Laws, Chapter 118.

Wallin is correct that his activities in sponsoring Longview Initiative No. 1, circulating petitions, gathering signatures, and submitting those petitions to the City Council are actions in public participation. But the City's declaratory judgment action did not seek to prohibit or affect in any way those types of activities. The only relief sought by the City was

a declaration as to whether Longview Initiative No. 1 was within the scope of the local initiative power, and, if not, an injunction prohibiting the County Clerk from placing the initiative on the ballot. Wallin's public participation activities were not affected in the slightest – with or without the City's lawsuit, Wallin was free to speak out and to petition the government. Accordingly, this Court should find that the City's declaratory judgment action was not an action against public participation.

The state of California has an anti-SLAPP statute similar to RCW 4.24.525, and on which RCW 4.24.525 was modeled. Calif. Code of Civil Proc. §§ 425.16 and 425.17. California courts have held that a pre-election declaratory injunction action to determine the validity of an initiative is not within the scope of the California anti-SLAPP statute. *City of Riverside v. Stansbury*, 155 Cal. App. 4<sup>th</sup> 1582, 1590-91 (2007) (declaratory judgment action to determine validity of initiative did not limit speech rights and was therefore not subject to anti-SLAPP statute); *City of Cotati v. Cashan*, 29 Ca. 4<sup>th</sup> 69 (2002) (same). Wallin attempts unsuccessfully to distinguish *Stansbury* and *Cashan* by saying that California has different case law related to initiatives. Wallin's objection misses the point. The procedural posture and the rationale of those cases are directly on point – if a city files a pre-election challenge to an initiative

merely to determine whether it is within the scope of the initiative power, that does not limit speech rights and should not be subject to the anti-SLAPP provisions of RCW 4.24.525. That same result applies here. *See Malkasian*, 157 Wn.2d at 268-269 (naming initiative sponsor when testing initiative pre-election was proper conduct).

*City of Santa Monica v. Stewart*, 126 Cal. App. 4<sup>th</sup> 43 (2005), which is cited by Wallin, is completely off point. *Stewart* was not pre-election initiative challenge. Rather, in *Stewart*, the citizens of Pasadena had already passed a valid initiative limiting former government employees from receiving donations from beneficiaries of their discretionary decisions while the employees were in office. Pasadena had failed to take the steps to implement the initiative; the sponsors sued the city; and the city counterclaimed against the sponsors. The city's suit was so meritless that the court awarded not only fees under the anti-SLAPP statute but fees under a private attorney general theory. However, the *Stewart* case was not a pre-election challenge seeking to determine what an initiative was valid to go to the ballot and is not analogous to this case. It is also worth noting, that cases citing *Stewart* have either distinguished the case or declined to follow its holdings. *See, e.g., Stansbury*, 155 Cal. App. 4<sup>th</sup> at 1593.

Because the City's lawsuit in *this* case did not seek to limit speech rights or limit Wallin's ability to petition the government, the Court should find that these types of actions by local government – legitimately seeking to determine whether a proposed initiative is within the initiative power – should not be subject to the RCW 4.24.525.

**2.5.2 The City's Declaratory Judgment Action Is Exempt from Special Motions to Strike Pursuant to RCW 4.24.525(3).**

Actions brought by the prosecuting attorney to enforce laws aimed at public protection are exempt from the special motion to strike provisions of the anti-SLAPP statute. RCW 4.24.525(3). In this case, the City's prosecuting attorney brought the City's declaratory judgment motion to enforce the provisions of Longview Municipal Code ("LMC") limiting the availability of local initiatives. That ordinance prohibits local initiatives where "the power of the city to legislate on the subject matter is derived from a grant of power by the state legislature directly to the city council or other corporate authorities ... ." LMC 1.35.020(10).

As with other actions brought by the City's prosecuting attorney, this lawsuit was brought to protect the interest of the public – to prevent the public from having to fund an election that violated LMC 1.35.020(10). This Court should hold that these types of actions – to

protect the public from unnecessary expense from initiatives that are not allowed under the City's Municipal Code – meet the terms of the exemption in RCW 4.24.525(3).

In his reply, Wallin argues (with no citation to authority) that this exemption should only apply to criminal prosecutions. Reply at 34. But the exemption in RCW 4.24.525(3) is not drafted that narrowly. This Court should not construe it to prevent public prosecutors from raising claims to protect the public finances without having to face special motions to strike.<sup>4</sup>

**2.6 The City's Declaratory Judgment Claim Did Not Violate Wallin's Rights to Free Speech and to Petition the Government.**

For over 75 years, this Court has recognized that a city may seek pre-election review of a proposed initiative to determine whether the initiative is within the scope of the local initiative power. *City of Port Angeles v. Our Water--Our Choice*, 170 Wn.2d 1, 7-8, 239 P.3d 589 (2010); *Neils v. City of Seattle*, 185 Wash. 269, 276, 53 P.2d 848 (1936).

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<sup>4</sup> Construing a similar provision in the California anti-SLAPP statute, California courts have held that the public prosecutor exemption in that statute is much broader than criminal prosecutions, and include such subjects as campaign expenditure laws. *City of Long Beach v. Calif. Citizens for Neighborhood Empowerment*, 11 Cal. App. 4<sup>th</sup> 302 (2003).

These types of actions do not prevent initiative sponsors from speaking or writing about their proposed legislation, do not prevent initiative sponsors from circulating petitions or gathering signatures, and do not prevent initiative sponsors from petitioning the government for a change in the law. The City of Longview's declaratory judgment action in this case is identical. The City did not prevent, or seek to prevent, Wallin from any free speech activities. Rather, the City's lawsuit sought a determination of whether the proposed initiative is within the scope of the local initiative power.

Wallin complains about supposedly being "hailed into court, and forced to defend the initiative." Reply at 37. The City was required to *name* Wallin as an indispensable party to its action. *Malkasian*, 157 Wn.2d at 268-269. But no one forced Wallin to appear and defend whether the Longview Initiative No. 1 is within the scope of the local initiative power. In fact, none of the other initiative sponsors bothered to appear in the lawsuit. Even so, Wallin fails completely to explain in his Reply how his right to free speech may have been impaired. He was certainly not prevented from speaking out and writing about automated traffic safety cameras, from circulating petitions, from gathering signatures, and from petitioning the City Council to change the law. In

fact, Mr. Wallin has no constitutional guarantee to bring a local initiative, because that right is only allowed by the Legislature. *City of Port Angeles*, 170 Wn.2d at 7-8; RCW 35A.11.080.

Wallin's only citation to authority is to the *Coppernoll* case, which stated a concern that substantive pre-election challenges to state-wide initiatives "may" infringe on "free speech values." *Coppernoll v. Reed*, 155 Wn.2d 290, 119 P.3d 318 (2005). The *Coppernoll* case is not relevant for two reasons. First, *Coppernoll* involved a state-wide initiative, and state-wide initiatives do have protection under the Washington Constitution. Wash. Constitution Art. II, §1. Second, *Coppernoll* involved a substantive pre-election challenge to that initiative – whether the initiative, if passed, would be unconstitutional or otherwise unenforceable. Neither is the case here. Longview Initiative No. 1 is a local initiative; and the City's challenge merely seeks to determine whether the initiative is within the scope of the local initiative power. More important to Wallin's argument regarding freedom of speech, however, is that he has presented absolutely no evidence that his speech or his ability to petition the government have been impaired.

### 3. CONCLUSION

The City of Longview requests the Court to affirm the trial court decision that primary sections of Longview Initiative No. 1 is outside the scope of the local initiative power; to affirm the trial court decision denying Wallin's special motions to strike; to overturn the trial court decisions that §3 of Longview Initiative No. 1 is within the scope of the local initiative power and can be severed from the main portions of Longview Initiative No. 1; and to correct the trial court's decision denying the City's motion to voluntarily dismiss; and to overturn the trial court's decision denying the City's motion for reconsideration.

SUBMITTED this 13<sup>th</sup> day of April, 2012.

CITY OF LONGVIEW



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#### 4. APPENDICES

- A. *Mukilteo Citizens for Simple Government v. City of Mukilteo*, \_\_\_ Wn.2d \_\_\_, 272 P.3d 227 (2012).
- B. Petition for Mukilteo Initiative No. 2.
- C. Petition for Longview Initiative No. 1.

# APPENDIX A

Westlaw

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 (Cite as: 272 P.3d 227)

Page 1

Supreme Court of Washington.  
**MUKILTEO CITIZENS FOR SIMPLE GOVERNMENT**, an unincorporated association of Mukilteo residents, Appellants,

v.

CITY OF MUKILTEO, a Washington municipal corporation; Christine Boughman, in her official capacity as City Clerk for the City of Mukilteo; Snohomish County, a political subdivision of the State of Washington; Carolyn Weikel, in her official capacity as Snohomish County Auditor, Respondents, Nicholas Sherwood; Alex Rion; and Tim Eyman, Respondents/Intervenors.

No. 84921-8.  
 March 8, 2012.

**Background:** Association of city residents filed complaint against city and county, seeking declaratory and injunctive relief to prevent placement on election ballot of proposition repealing ordinance that authorized use of automated traffic safety cameras in city. Initiative's sponsors were permitted to intervene. The Superior Court, Snohomish County, Michael T. Downes, J., denied relief. The Supreme Court granted direct review.

**Holdings:** The Supreme Court, Madsen, C.J., held that

- (1) association had standing to bring complaint on behalf of its members;
- (2) proposition in question was an initiative, as opposed to an advisory vote;
- (3) automated traffic safety cameras were not a proper subject for local initiative because legislature expressly granted authority to governing body of city to enact ordinances on the use of automated traffic safety cameras; and
- (4) postelection review as to validity of initiative, which was passed by city electorate, was appropriate despite alleged mootness of issue.

Reversed.

J.M. Johnson, J., filed a dissenting opinion in which Charles W. Johnson, and Tom Chambers, JJ., and Gerry L. Alexander, Justice Pro Tem, joined.

West Headnotes

[1] **Associations 41** ↪ 20(1)

41 Associations

41k20 Actions by or Against Associations

41k20(1) k. In general. Most Cited Cases

**Municipal Corporations 268** ↪ 108.3

268 Municipal Corporations

268IV Proceedings of Council or Other Governing Body

268IV(B) Ordinances and By-Laws in General

268k108 Initiative

268k108.3 k. Initiative procedure. Most Cited Cases

Association of city residents had standing to bring complaint on behalf of its members, seeking to invalidate, and to enjoin from placement on election ballot, initiative measure that would repeal city ordinance authorizing use of automated traffic safety cameras; association members would otherwise have had standing to sue in their own right as city residents who were eligible to vote, interest that association sought to protect was germane to a stated organizational purpose of public safety, and requested relief did not require the participation of individual members.

[2] **Associations 41** ↪ 20(1)

41 Associations

41k20 Actions by or Against Associations

41k20(1) k. In general. Most Cited Cases

An organization has standing to bring suit on behalf of its members when: (1) its members would otherwise have standing to sue in their own right; (2) the interests it seeks to protect are germane to

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the organization's purpose; and (3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.

**[3] Municipal Corporations 268 ↪108.3**

268 Municipal Corporations  
268IV Proceedings of Council or Other Governing Body  
268IV(B) Ordinances and By-Laws in General  
268k108 Initiative  
268k108.3 k. Initiative procedure.  
Most Cited Cases

Proposition placed on election ballot that repealed city ordinance authorizing use of automated traffic safety cameras in city was an "initiative," as opposed to an advisory vote, petition for placement of proposition on ballot cited statute governing submission of a local initiative, proposition expressly set out the language of a proposed new ordinance, and, city council followed procedures for submitting an initiative to voters, proposition complied with statute setting a ballot form title form that local initiatives were required to follow, and another proposition on same ballot was expressly titled an advisory vote. West's RCWA 29A.72.050(2), 29A.72.290, 35.17.260.

**[4] Municipal Corporations 268 ↪108.3**

268 Municipal Corporations  
268IV Proceedings of Council or Other Governing Body  
268IV(B) Ordinances and By-Laws in General  
268k108 Initiative  
268k108.3 k. Initiative procedure.  
Most Cited Cases

Statement in city council resolution directing placement of proposition on election ballot, to the effect that city council desired to hear from qualified electorate on the issues addressed in the proposition, regardless of whether the subject matter was subject to the initiative process, was insufficient to overcome clear intent of proponents to bind

the city council or the plain language of proposition asking voters to enact a repeal of ordinance authorizing use of automated traffic safety cameras in city.

**[5] Municipal Corporations 268 ↪108.2**

268 Municipal Corporations  
268IV Proceedings of Council or Other Governing Body  
268IV(B) Ordinances and By-Laws in General  
268k108 Initiative  
268k108.2 k. Matters subject to initiative. Most Cited Cases

Automated traffic safety cameras were not a proper subject for local initiative power because legislature expressly granted authority to governing body of city to enact ordinances on the use of automated traffic safety cameras, and, therefore, initiative placed on election ballot that repealed ordinance authorizing use of such cameras in city was invalid. West's RCWA 46.63.170.

**[6] Municipal Corporations 268 ↪108.2**

268 Municipal Corporations  
268IV Proceedings of Council or Other Governing Body  
268IV(B) Ordinances and By-Laws in General  
268k108 Initiative  
268k108.2 k. Matters subject to initiative. Most Cited Cases

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.

**[7] Municipal Corporations 268 ↪60**

268 Municipal Corporations  
268II Governmental Powers and Functions in General  
268k60 k. Powers and functions of council or other governing body. Most Cited Cases

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### **Municipal Corporations 268 ↪168**

268 Municipal Corporations  
268V Officers, Agents, and Employees  
268V(A) Municipal Officers in General  
268k166 Authority and Powers  
268k168 k. Mayor or other chief executive. Most Cited Cases  
A grant of power to a city's legislative authority or legislative body means exclusively the mayor and city council and not the electorate.

### **[8] Municipal Corporations 268 ↪108.2**

268 Municipal Corporations  
268IV Proceedings of Council or Other Governing Body  
268IV(B) Ordinances and By-Laws in General  
268k108 Initiative  
268k108.2 k. Matters subject to initiative. Most Cited Cases

### **Municipal Corporations 268 ↪108.6**

268 Municipal Corporations  
268IV Proceedings of Council or Other Governing Body  
268IV(B) Ordinances and By-Laws in General  
268k108.5 Referendum  
268k108.6 k. In general; nature and source of power. Most Cited Cases  
When the legislature enacts a general law granting authority to the legislative body or legislative authority of a city, that legislative body's authority is not subject to repeal, amendment, or modification by the people through the initiative or referendum process.

### **[9] Municipal Corporations 268 ↪60**

268 Municipal Corporations  
268II Governmental Powers and Functions in General  
268k60 k. Powers and functions of council or other governing body. Most Cited Cases

Court looks to the language of the relevant statute to determine the scope of the authority granted from the state legislature to a local governing body.

### **[10] Municipal Corporations 268 ↪108.3**

268 Municipal Corporations  
268IV Proceedings of Council or Other Governing Body  
268IV(B) Ordinances and By-Laws in General  
268k108 Initiative  
268k108.3 k. Initiative procedure. Most Cited Cases

Postelection review as to validity of initiative measure, passed by city's electorate, that repealed ordinance authorizing use of automated traffic safety cameras was appropriate, despite alleged mootness of the issue; matter involved a public dispute, an authoritative determination was desirable to provide future guidance to public officers, and issue was not only likely to recur, but was currently recurring in other cities where initiative's sponsors had active petitions on their website to challenge the adoption of red light cameras in those cities.

### **[11] Action 13 ↪6**

13 Action  
13I Grounds and Conditions Precedent  
13k6 k. Moot, hypothetical or abstract questions. Most Cited Cases  
Absent a justiciable controversy, an issue is moot

### **[12] Action 13 ↪6**

13 Action  
13I Grounds and Conditions Precedent  
13k6 k. Moot, hypothetical or abstract questions. Most Cited Cases  
An issue is not moot if a court can provide any effective relief.

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John Benjamin Kerr Schochet, Seattle City Attorney's Office, Seattle, WA, Amicus Curiae on behalf of City of Seattle.

MADSEN, C.J.

¶ 1 This case involves a preelection challenge to an initiative measure, Proposition 1, which repealed an ordinance governing the use of automated traffic safety cameras in the city of Mukilteo. The trial court declined to grant an injunction, and Proposition 1 was placed on the November 2, 2010, Snohomish County general election ballot.

¶ 2 We hold that because the legislature expressly granted authority to the governing body of the city of Mukilteo to enact ordinances on the use of automated traffic safety cameras, the subject matter of Proposition 1 is not within the initiative power.

#### FACTS

¶ 3 Mukilteo is a noncharter code city that operates under Title 35A RCW. The city has adopted the code city initiative and referendum power provided under RCW 35A.11.080 –.100. Mukilteo Municipal Code (MMC) 1.14.010; *see* Clerk's Papers (CP) at 42. Under RCW 35A.11.100, the powers of initiative and referendum in noncharter code cities are to be exercised as set forth in RCW 35.17.240–.360.

¶ 4 In 2005, the Washington State Legislature authorized local governments to enact ordinances that allow the use of automated traffic safety cameras to issue notices of traffic infractions. Former RCW 46.63.170 (2005). On May 17, 2010, the city of Mukilteo enacted Ordinance 1246, authorizing and setting forth the guidelines for use of auto-

mated traffic safety cameras. On the same day, the city council authorized the mayor to enter into a contract with American Traffic Solutions to supply the city with automated traffic cameras.

¶ 5 In June 2010, a petition for Mukilteo Initiative 2 was commenced. Shortly thereafter, residents of the city of Mukilteo submitted Initiative 2 to the Mukilteo city clerk for inclusion on the ballot. Initiative 2 forbade the city of Mukilteo from installing an automated traffic safety camera system unless approved by two-thirds of the voters, limited the amount of fines that could be imposed for infractions arising from camera surveillance, and repealed the existing ordinance allowing automated traffic safety cameras. Initiative 2 also provided that any new automated traffic safety ordinance had to be put on the ballot for an advisory vote. The petition's proposed ballot title was Mukilteo Initiative 2.

¶ 6 On June 21, 2010, the Mukilteo City Council rescinded its authorization for the mayor to enter into a contract on behalf of the city with American Traffic Solutions. At a July 19, 2010 meeting, the Mukilteo City Council approved Resolution 2010–22, which directed the Mukilteo city clerk to provide the Snohomish County auditor with a certified copy of the resolution and asked the auditor to place Initiative 2 on the November 2, 2010, city ballot. The resolution included a recital that states “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.” CP at 84.

¶ 7 After the July 19, 2010 meeting, the **Mukilteo Citizens for Simple Government (MCSG)**, an unincorporated association of Mukilteo residents, filed a complaint in Snohomish County Superior Court against the city of Mukilteo, the city clerk, Snohomish County, and the county auditor seeking a declaration that an initiative was beyond the scope of the local initiative powers and an injunction preventing the inclusion of the measure on the ballot. The initiative's sponsors were permitted to

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intervene in the action.

¶ 8 The superior court ruled that the challenge to the initiative was premature and denied the motion for injunction. Mukilteo Citizens filed a notice of direct appeal of the court's ruling and an emergency motion for accelerated review. We declined accelerated review but granted the request for direct review.

¶ 9 In the meantime, Initiative 2 was placed on the November 2010 city of Mukilteo ballot as Proposition 1.<sup>FN1</sup> The measure passed with a 70.71 percent favorable vote.<sup>FN2</sup> On April 25, 2011, the Mukilteo City Council adopted Ordinance 1275, repealing Ordinance 1246 (chapter 10.05 MMC).<sup>FN3</sup> The council enacted chapter 10.06 MMC, which revoked authorization for the use of automated traffic safety cameras in Mukilteo.

#### ANALYSIS

[1][2] ¶ 10 As a threshold issue, we are asked to decide whether MCSG has standing to challenge the validity of this ballot measure. "An organization 'has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.'" *Am. Legion Post No. 149 v. Dep't of Health*, 164 Wash.2d 570, 595, 192 P.3d 306 (2008) (quoting *Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 343, 97 S.Ct. 2434, 53 L.Ed.2d 383 (1977)). MCSG's members have standing to sue in their own right as it consists of Mukilteo residents who are eligible to vote. The interest MCSG seeks to protect (use of red-light cameras) is germane to a stated organizational purpose (public safety), and the relief requested (invalidation of Proposition 1) does not require the participation of individual members. Accordingly, we hold MCSG has standing to bring this chal-

[3] ¶ 11 Several of the arguments raised in this

case turn on whether Proposition 1 was an initiative or an advisory vote. MCSG contends that Proposition 1 was an invalid initiative, while the city of Mukilteo argues it was an advisory vote. An initiative is direct legislation by the people, while an advisory vote is a nonbinding poll of the citizen population. *See* RCW 35.17.260; RCW 29A.72.290. RCW 35.17.260 establishes rules governing initiatives that, when satisfied, require a city to either pass the proposed ordinance without alteration or submit the proposed ordinance to the registered voters. There are no statutory or constitutional provisions imposing a duty on a city council to call for an "advisory" vote.

¶ 12 To discern the nature of Proposition 1 we begin with the language of the measure. The petition that was submitted to the Mukilteo City Council stated: "We, the undersigned voters of Mukilteo, require that, unless passed by the City Council, this ordinance Mukilteo Initiative No. 2—be submitted to a vote of the registered voters of the City of Mukilteo, subject to the requirements of *RCW 35.17.260*. " CP at 82 (emphasis added). RCW 35.17.260 is, as mentioned, the statute governing requirements for submission of a local initiative. Under this statute, a city council has only two options when an initiative petition is submitted to it; either enact the measure as an ordinance or submit it to the voters to determine whether to enact the measure. The statute provides no other course. By invoking the statute, the petitioners called for enactment of the measure as an initiative.

¶ 13 Initiative 2 would add a new chapter to the municipal code to be "ENACTED BY THE PEOPLE OF THE CITY OF MUKILTEO" ("[a] new chapter 10.06 is *hereby added to the Mukilteo Municipal Code* "). CP at 82 (emphasis added). Mukilteo Initiative 2 expressly sets out the language of a proposed new ordinance and unquestionably contemplates a vote of the people to enact it by initiative. The measure submitted to the council establishes procedural bars for the council to hurdle, should it wish to enact another ordinance allowing

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camera tickets, and provides for the repeal of Ordinance 1246.

¶ 14 Upon receipt of Initiative 2, the city council proceeded in accord with procedures for submitting an initiative to the voters. The city council passed Resolution 2010–22, which stated that the council had been presented with an “Initiative Petition requesting enactment of an ordinance to prohibit use of automated traffic safety cameras,” and resolved: “Pursuant to RCW 35.17.260,” the council requests the Snohomish county auditor “to place upon the general election ballot ... a proposition for the purpose of submitting to the qualified electors ... whether or not to enact an *initiative ordinance*.” CP at 84–85 (emphasis added). The city council explicitly stated that Proposition 1 was an initiative and directed the Snohomish County auditor to place the proposition on the ballot pursuant to RCW 35.17.260.

¶ 15 Proposition 1 included a ballot title and explanatory statement mirroring the language of Mukilteo Initiative 2. It required the Mukilteo City Council to repeal Ordinance 1246 and restricted the council’s ability to act with respect to future ordinances governing automated traffic safety cameras. Proposition 1’s ballot title states:

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?

*Snohomish County Local Voters’ Pamphlet, General Election* (Nov. 2, 2010).

¶ 16 As it appeared in the official *Snohomish County Local Voters’ Pamphlet*, Proposition 1 also complied with the procedural requirements for initiatives. RCW 29A.72.050(2) provides a ballot title

form that local initiatives are to follow:<sup>FN4</sup>

For an initiative to the people, or for an initiative to the legislature for which the legislature has not proposed an alternative, the ballot title must be displayed on the ballot substantially as follows:

Initiative Measure No .... concerns (statement of subject). This measure would (concise description). Should this measure be enacted into law?

Yes .....

No .....

As required by the statute, Proposition 1’s title contains (1) the initiative measure number—“Mukilteo Initiative No. 2,” (2) the word “concerns” is followed by a statement of the subject matter, i.e., “concerns automatic ticketing machines,” (3) the concise description of the measure is provided, i.e., “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,” and (4) it contains a proper “yes or no” question, i.e., “Should this measure be enacted into law?” Because Proposition 1’s ballot title contained all of the elements spelled out in RCW 29A.72.050(2), it appears to have followed the procedural requirements for initiatives. *Compare Snohomish County Local Voters’ Pamphlet, supra*, with RCW 29A.72.050(2).

¶ 17 The city, though, argues that Proposition 1 concerned only an advisory vote. This is unsupported in context. On the same ballot as Proposition 1 appeared, the very next item submitted to the voters was Proposition 2, a clear example of an advisory vote.<sup>FN5</sup> Proposition 2 was titled “Advisory Vote on South Mukilteo Annexation.” *Snohomish County Local Voters’ Pamphlet, General Election Sample Ballot* (Nov. 2, 2010). Proposition 2 read as follows:

The Mukilteo City Council is considering annex-

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ation of the area commonly referred to as the South Mukilteo Annexation Area. This annexation would add approximately 11,000 residents and approximately double the City's commercial acreage. What is your position on the proposed South Mukilteo Annexation?

*Id.* The proposition then asked the voters to indicate whether they supported, opposed, or had no opinion about annexation.

¶ 18 When compared with Proposition 2, a clearly marked advisory vote, the city's contention that Proposition 1 was an advisory vote is unsupported.

[4] ¶ 19 The intervenors attempt to reframe the issue as one in which the city was simply soliciting input from the electorate. The intervenors rely on one phrase found in Resolution 2010–22 for this argument.

[T]he 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.

CP at 84; *see* Br. of Resp'ts/Intervenors–Defs. at 11. This language, which is ambiguous at best, is insufficient to overcome the clear intent of the proponents to bind the city council or the plain language of Proposition 1 asking voters to enact law. In the alternative, the intervenors claim that “[w]hile the face on the initiative does not assert that it is an advisory vote, if the voters approve the measure it could be simply treated as one.” Br. of Resp'ts/Intervenors–Defs. at 12. This assertion is contrary to the statutes governing initiatives and advisory votes.

¶ 20 Finally, we reject the intervenors' contention that if the city chose not to consider Initiative 2 as advisory and instead treated it as enacting an ordinance, this would simply be an example of conditional legislation. As explained below, the initiative on its face would enact legislation that is beyond

the scope of the initiative power, and calling it conditional legislation does not alter that fact.

¶ 21 We hold that Proposition 1 was historically, in substance, and procedurally an initiative.

[5][6][7][8][9] ¶ 22 Next, we consider whether the subject of safety camera tickets is beyond the scope of the initiative power. “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.” *City of Sequim v. Malkasian*, 157 Wash.2d 251, 261, 138 P.3d 943 (2006). “[A] grant of power to the city's” legislative authority or legislative body “means exclusively the mayor and city council and not the electorate.” *Id.* at 265, 138 P.3d 943. When the legislature enacts a general law granting authority to the legislative body (or legislative authority) of a city, that legislative body's authority is not subject to “repeal, amendment, or modification by the people through the initiative or referendum process.” *Id.*; *see also State ex rel. Guthrie v. City of Richland*, 80 Wash.2d 382, 384, 494 P.2d 990 (1972); *Leonard v. City of Bothell*, 87 Wash.2d 847, 852–53, 557 P.2d 1306 (1976). We look to the language of the relevant statute to determine the scope of the authority granted from the legislature to the local governing body. *See Malkasian*, 157 Wash.2d at 262–63, 138 P.3d 943; *Am Traffic Solutions, Inc. v. City of Bellingham*, 163 Wash.App. 427, 260 P.3d 245 (2011).

¶ 23 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 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.” Also, automated traffic safety cameras may be used during the 2009–2011 fiscal biennium “if the local legislative authority first enacts an ordinance authorizing the use.” RCW 46.63.170(1)(c). The legislature's grant of authority does not

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extend to the electorate.

[10][11][12] ¶ 24 Proposition 1 attempted to expressly restrict the authority of Mukilteo's legislative body to enact red light cameras by requiring a two-thirds vote of the electorate for approval and by limiting the amount of traffic fines. Because automated traffic safety cameras are not a proper subject for local initiative power, Proposition 1 is invalid because it is beyond the initiative power.<sup>FNG</sup>

#### CONCLUSION

¶ 25 We hold that MCSG had standing to challenge Proposition 1. Additionally, we hold that Proposition 1 was historically, in substance, and procedurally an initiative. Finally, we hold that Proposition 1 exceeds the scope of the initiative power because it involves powers granted by the legislature to the governing bodies of cities; under RCW 46.63.170 only the city of Mukilteo is authorized to enact ordinances governing the use and operation of automated traffic safety cameras.

¶ 26 We reverse the trial court's order denying declaratory relief.

WE CONCUR: SUSAN OWENS, MARY E. FAIRHURST, DEBRA L. STEPHENS, and CHARLES K. WIGGINS, Justices.

J.M. JOHNSON, J. (dissenting).

¶ 27 This appeal asks us to consider a preelection challenge to city of Mukilteo Proposition 1 (Prop 1), an advisory vote opposing automated traffic safety cameras ("red-light cameras") in that city. Prop 1 was placed on the November 2010 general election ballot and endorsed by over 70 percent of Mukilteo voters. The Mukilteo City Council then voted to repeal the red-light cameras ordinance. The parties do not dispute the status of the law in Mukilteo; red-light cameras are no longer authorized. The majority does not claim anything unlawful was done here. The people exercised their right to petition. The city council put a relevant advisory issue on the ballot. The voters expressed a strong

position and the city council repealed a disfavored ordinance. As there is no justiciable controversy for us to resolve, the appeal is moot. Thus, I respectfully dissent.

#### A. *The Appeal Is Moot*

¶ 28 We may reach the merits of a trial court's decision to deny declaratory relief only if there is a "justiciable controversy" for the court to resolve pursuant to chapter 7.24 RCW. *Walker v. Munro*, 124 Wash.2d 402, 411, 879 P.2d 920 (1994); *Fed. Way Sch. Dist. No. 210 v. State*, 167 Wash.2d 514, 529, 219 P.3d 941 (2009). Otherwise, the case is moot and should be dismissed.<sup>FNI</sup>

¶ 29 We have defined "justiciable controversy" as:

(1) ... an actual, present and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement, (2) between parties having genuine and opposing interests, (3) which involves interests that must be direct and substantial, rather than potential, theoretical, abstract or academic, and (4) a judicial determination of which will be final and conclusive.

*Diversified Indus Dev Corp. v. Ripley*, 82 Wash.2d 811, 815, 514 P.2d 137 (1973).

¶ 30 Here, there is no longer an actual, present and existing dispute. Prop 1 was placed on the ballot and an election was held. Red-light cameras were opposed by voters, and the city council has repealed Ordinance 1246 (chapter 10.05 MMC), which had authorized the use of red-light cameras. Additionally, the actual state of the law in Mukilteo is not in dispute (Mukilteo Initiative 2 differs from Ordinance 1275).<sup>FN2</sup> Both parties concede Ordinance 1275, which repealed Ordinance 1246, represents the current state of the law in Mukilteo, whether that is because Prop 1 was not effective as an initiative<sup>FN3</sup> or because Prop 1 was an initiative outside the scope of the local initiative power.<sup>FN4</sup> An injunction to prevent Prop 1 from being placed on

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the ballot would have no effect years after the election was final.

¶ 31 The only issue that conceivably remains is whether the subject matter addressed by Prop 1 (the use of red-light cameras) is outside the scope of the local initiative power. We should not reach this issue because the issue placed on the ballot was avowedly an advisory vote, not an initiative. Rendering a judgment on a hypothetical issue, therefore, would be tantamount to issuing an advisory opinion. This court, however, is not authorized by the Uniform Declaratory Judgments Act (chapter 7.24 RCW) to render advisory opinions or pronouncements upon abstract or speculative questions. *Munro*, 124 Wash.2d at 418, 879 P.2d 920 (citing *Wash. Beauty Coll., Inc. v. Huse*, 195 Wash. 160, 164, 80 P.2d 403 (1938)). Any remaining issue is academic, and it is not possible for the court to provide effective relief. Thus, such issue is also moot. *Klickitat County Citizens Against Imported Waste v. Klickitat County*, 122 Wash.2d 619, 631, 860 P.2d 390, 866 P.2d 1256 (1993).

*B. Prop 1 Was an Advisory Vote*

¶ 32 RCW 29A.32.241 requires local voters' pamphlets to include the text of each ballot measure, an explanatory statement, and the arguments for and against each measure. RCW 29A.32.241(4), (5). The purpose of this requirement is straightforward: citizens should not be bound by a measure that they did not have the opportunity to examine thoroughly prior to voting on it.

¶ 33 Prop 1 did not include the text of Mukilteo Initiative 2. Prop 1, therefore, could not have been effective as an initiative. This was instead an advisory vote. As explained above, this conclusion renders moot the issue of whether the subject matter addressed by Prop 1 is outside the scope of the local initiative power.

¶ 34 Finally, the record does not disclose why the Mukilteo City Council voted to place Prop 1 on the ballot rather than Mukilteo Initiative 2.<sup>FNS</sup> However, no party sought to compel Mukilteo Initi-

ative 2 to be placed on the ballot. Any Mukilteo residents who are concerned about such detail have available political remedies. Because the ordinance authorizing red-light cameras has been repealed per the wishes of Mukilteo voters, these issues have all been resolved politically rather than through judicial processes. Our system accommodates and relies on such resolution.

Conclusion

¶ 35 I would hold that **Mukilteo Citizens for Simple Government's** appeal is moot. Prop 1, an advisory vote opposing red-light cameras, was placed on the November 2010 ballot and endorsed by over 70 percent of Mukilteo voters. The city council has repealed the ordinance allowing the use of red-light cameras in Mukilteo. The matter was appropriately and constitutionally resolved through the political process. Not every issue requires judicial resolution. There is no justiciable controversy for us to resolve, and an injunction at this point would have no effect. Thus, I would affirm the trial court and respectfully dissent.

WE CONCUR: CHARLES W. JOHNSON, and TOM CHAMBERS, Justices, and GERRY L. AL-EXANDER, Justice Pro Tem.

FN1. *Snohomish County Local Voters' Pamphlet, General Election* (Nov 2, 2010).

FN2. Snohomish County General Election Results, available at <http://www.co.snohomish.wa.us/audit-or/Elections/1110Final/ecurrent-1110.htm>.

FN3. Mukilteo Ordinance 1275.

FN4. Pursuant to RCW 29A.36.071(1), in a ballot title for a local measure, including referenda and any other question submitted to the voters, "[t]he ballot title must conform with the requirements and be displayed substantially as provided under RCW 29A.72.050."

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FN5. Mukilteo Proposition 2 was the ballot measure directly following Proposition 1 on the sample ballot.

FN6. The dissent is correct that we may only reach the merits of a case if there is a “justiciable controversy” pursuant to chapter 7.24 RCW. *Walker v. Munro*, 124 Wash.2d 402, 879 P.2d 920 (1994). Absent a “justiciable controversy” the issue is moot. *Klickitat County Citizens Against Imported Waste v. Klickitat County*, 122 Wash.2d 619, 631, 860 P.2d 390, 866 P.2d 1256 (1993). However, “[a]n issue is not moot if a court can provide any effective relief.” *Malkasian*, 157 Wash.2d at 259, 138 P.3d 943 (citing *State v. Turner*, 98 Wash.2d 731, 733, 658 P.2d 658 (1983)). We have unmistakably held that a postelection subject matter challenge to an initiative falls within the definition of “justiciable controversy.” *Malkasian*, 157 Wash.2d at 261, 138 P.3d 943.

Even assuming mootness, this court adopted the following criteria to determine if a case, although moot, warrants review: “(1) whether the issue is of a public or private nature; (2) whether an authoritative determination is desirable to provide future guidance to public officers; and (3) whether the issue is likely to recur.” *Hart v. Dep’t of Soc. & Health Servs.*, 111 Wash.2d 445, 448, 759 P.2d 1206 (1988). There is also an “arguable” fourth factor: “the level of genuine adverseness and the quality of advocacy of the issues.” *Id.* All four factors demonstrate that review is warranted this case; this is a public dispute; an authoritative determination is desirable to provide future guidance to public officers; this issue is not only likely to recur, it is recurring (currently, the intervenors have active petitions on their website to chal-

lenge the adoption of red light cameras in the cities of Bellingham, Longview, Monroe, Redmond and Wenatchee Washington State BanCams.com, <http://bancams.com/petition> (last visited Mar. 2, 2011)); and this case has been adequately briefed and argued.

FN1. *Klickitat County Citizens Against Imported Waste v. Klickitat County*, 122 Wash.2d 619, 631, 860 P.2d 390, 866 P.2d 1256 (1993). “An appeal is moot where it presents purely academic issues and where it is not possible for the court to provide effective relief.” *Id.*

FN2. This difference may have a legal effect only on hypothetical issues not raised in this lawsuit.

FN3. *See, e.g.*, Br. of Resp’ts City of Mukilteo and Christina Boughman at 3.

FN4. *See, e.g.*, Appellant’s Opening Br. at 8–15.

FN5. The notable differences would have restricted adoption of red-light cameras by later councils.

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## **APPENDIX B**



# APPENDIX C

# LET THE PEOPLE DECIDE ON RED LIGHT CAMERAS IN LONGVIEW



- 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:** Longview Initiative No. 1 concerns automatic ticketing cameras. This measure would prohibit Longview from using camera surveillance to impose fines unless two-thirds of the Council and voters approve, limit fines, repeal Ordinance #3157 allowing the machines, and mandate an advisory vote.

**Proposed Ballot Summary:** This measure would prohibit the City of Longview or for-profit camera companies contracted by Longview 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 #3157/Chapter 11.04.020-11.04.180 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 LONGVIEW:**

**Section 1.** New Chapter 11.04. A new chapter 11.04 is hereby added to the Longview Municipal Code to read as follows:

**11.04.210 Automatic Ticketing Cameras.** The City of Longview and for-profit companies contracted by the City of Longview 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.

**11.04.220 Fines:** If two-thirds of the City Council and a majority of Longview 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 Longview.

**Section 2.** Chapter 11.04 (Ordinance #3157 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 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 Longview, require that, unless passed by the City Council, this ordinance – Longview Initiative No. 1 – be submitted to a vote of the registered voters of the city of Longview, subject to the requirements of Longview Municipal Code Chapter 1.35 and RCW 35A.11.080.

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

Return signed petitions to: Mike Wallin, PO Box 2191, Longview, WA 98632, Phone: 360-560-3636, Fax: 360-442-7856, michaelwallin@hotmail.com, www.BanCams.com/Longview  
 Our goal is to collect signatures fast enough to qualify for the May ballot. Sponsored by Mike Wallin, Joshua Sutner, BanCams.com, WA Campaign for Liberty, and VotersWantMoreChoices.com

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON  
Apr 13, 2012, 2 17 pm  
BY RONALD R. CARPENTER  
CLERK

RECEIVED BY E-MAIL

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

CITY OF LONGVIEW, a Washington  
municipal corporation,

No. 86554-0

Respondent,

(Cowlitz County Superior Court  
No.11-2-00634-5)

v.

DECLARATION OF SERVICE

MIKE WALLIN, an individual,

Appellant

and

BANCAMS.COM, an unknown entity; WA  
CAMPAIGN FOR LIBERTY, a Washington  
non-profit corporation;  
VOTERSWANTMORECHOICES.COM, an  
unknown entity; COWLITZ COUNTY, a  
municipal corporation; and KRISTINA  
SWANSON, Cowlitz County Auditor,

Additional Respondents.

Helen M. Stubbert declares:

I am a legal assistant at Foster Pepper PLLC. I hereby certify and declare that on April  
13, 2012, I caused a true and correct copy of Reply Brief of Respondent/Cross-Appellant City of

DECLARATION OF SERVICE - 1

FOSTER PEPPER PLLC  
1111 THIRD AVENUE, SUITE 3400  
SEATTLE, WASHINGTON 98101-3299  
PHONE (206) 447-4400 FAX (206) 447-9700

1 Longview, and this Declaration of Service, to be served on the following, in the manner  
2 indicated:

3 **Attorneys for Mike Wallin**

4 Richard M. Stephens  
5 Groen Stephens & Klinge LLP  
6 11100 N.E. 8th Street, Suite 750  
7 Bellevue, WA 98004  
8 Email: [stephens@gsklegal.pro](mailto:stephens@gsklegal.pro)

- Via U.S. Mail
- Via Facsimile
- Via Messenger
- Via Email

9 **Attorneys for Cowlitz County and**  
10 **Kristina Swanson**

11 Douglas E. Jensen  
12 Chief Civil Deputy Prosecutor  
13 Cowlitz County Prosecutor's Office  
14 312 S.W. 1st Avenue  
15 Kelso, WA 98626  
16 Email: [jensend@co.cowlitz.wa.us](mailto:jensend@co.cowlitz.wa.us)

- Via U.S. Mail
- Via Facsimile
- Via Delivery
- Via Email

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

19 Executed at Seattle, Washington this 13th day of April, 2012.

20   
21 \_\_\_\_\_  
22 Helen M. Stubbert

**OFFICE RECEPTIONIST, CLERK**

---

**From:** OFFICE RECEPTIONIST, CLERK  
**Sent:** Friday, April 13, 2012 2:17 PM  
**To:** 'Helen Stubbert'  
**Subject:** RE: No 86554-0 (Longview v Wallin, et al )

Received 4/13/12

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

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**From:** Helen Stubbert [<mailto:stubh@foster.com>]  
**Sent:** Friday, April 13, 2012 2:17 PM  
**To:** OFFICE RECEPTIONIST, CLERK  
**Subject:** No. 86554-0 (Longview v. Wallin, et al.)

Attached for filing today in the referenced matter are Reply Brief of Respondent/Cross-Appellant City of Longview, and Declaration of Service

Thank you

*Helen Stubbert  
Legal Assistant to Roger A Pearce  
Patrick J Schneider  
Steven J Gillespie  
Russell D Terry  
J Scott Galloway  
Foster Pepper PLLC  
1111 - 3rd Ave , Ste 3400  
Seattle WA 98101  
(206) 447-4679  
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