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SUPERIOR COURT
SNOHOMISH COUNTY
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Supreme Court No. 84921-8

Snohomish County Superior Court No. 10-2-06342-9

**IN THE SUPREME COURT
OF THE STATE OF WASHINGTON**

Mukilteo Citizens for Simple Government,

Appellant,

v.

City of Mukilteo, Christine Boughman, Snohomish County,
Carolyn Weikel, Nicholas Sherwood, Alex Rion, Tim Eyman,

Respondents.

**APPELLANT'S ANSWER TO
THE CITY OF SEATTLE'S AMICUS CURIAE BRIEF**

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I. INTRODUCTION

By order dated September 23, 2010, the Court accepted for filing the Amicus Curiae Brief of the City of Seattle (“Seattle Br.”) and directed the parties to file a response to that brief no later than October 18, 2010. Appellant Mukilteo Citizens for Simple Government (“Mukilteo Citizens”) respectfully submits this brief pursuant to the Court’s Order. As set forth below, Seattle’s Amicus Brief raises three issues that merit additional emphasis. First, Seattle highlights the critical need for appellate review of the scope of the local initiative power for similarly-situated cities across the state. Second, Seattle correctly notes that this Court’s opinion in *City of Sequim v. Malkasian*, 157 Wn.2d 251, 138 P.3d 943 (2006), is directly on point in holding that “[a]n initiative is beyond the scope of the [local] initiative power if the initiative involves powers granted by the legislature to the governing body of a city, rather than the city itself.” *Id.* at 261 (internal citations omitted). Finally, Seattle does not refute – because it cannot – that the measure proposed as Mukilteo Initiative No. 2 is a binding initiative that, if passed, will repeal existing law and enact new law. Each of these issues is addressed briefly below.

II. ANALYSIS

A. **Seattle's Amicus Brief Highlights The Critical Need For Appellate Review Of The Scope Of The Local Initiative Power To Provide Needed Guidance To Cities Across The State.**

Seattle's amicus brief properly underscores that the issue before the Court has broad application to municipalities across the state. Seattle Br. at 1. Over 20 cities in Washington (including Seattle) currently use automated traffic safety cameras, and more are scheduled to install them in the near future. One of the sponsors of Mukilteo Initiative No. 2 has publicly stated his intent to bring similar initiatives in other cities. Guidance from the Court regarding the scope of the local initiative power will give cities certainty by (a) confirming the authority of local legislative authorities to enact new legislation in cities that do not currently have automated traffic safety cameras, and (b) assuring cities that currently use automated traffic safety cameras that their enacting ordinances are not subject to repeal or amendment by local initiative or referendum. For these reasons, and for the additional reasons set forth in Mukilteo Citizens' prior briefing, the Court should squarely address this issue in its opinion.

B. **Seattle's Amicus Brief Correctly Asserts That *Malkasian* Is Directly On Point.**

Seattle correctly notes that the operative language in RCW 46.63.170(1)(a), the statute authorizing automated traffic safety cameras, is substantively identical to the statutory language at issue in *Malkasian*.

Seattle Br. at 3. In *Malkasian*, the Court held that because the state delegated revenue bond authority to the governing bodies of cities, that power could not be delegated to the voters of local jurisdictions.

Malkasian, 157 Wn.2d at 265. Here, too, the Legislature delegated power to the “local legislative authority” to “enact an ordinance” providing for the use of automated traffic safety cameras. RCW 46.63.170(1)(a). As such, consistent with well established state law, the power to enact an ordinance governing the use of automated traffic safety cameras is *not subject* to local initiatives or referenda. The Court should so rule.

C. Seattle Does Not Refute – Because It Cannot – That Mukilteo Initiative No. 2 Is A Binding Initiative And Impermissible Under Washington Law.

Seattle correctly argues that if the measure is deemed a binding initiative, it is impermissible under *Malkasian*. Seattle Br. at 3-4 n. 1. Seattle does not refute Mukilteo Citizen’s assertion that Initiative No. 2 is a binding initiative and not a non-binding advisory vote. Indeed, as set forth more fully in Mukilteo Citizen’s prior briefing, the facts make clear that Mukilteo Initiative No. 2 is a binding initiative. The initiative will repeal existing legislation and enact new legislation “by the people of the City of Mukilteo” to become effective immediately. There is nothing “advisory” about it. Seattle does not suggest otherwise.

III. CONCLUSION

For all the foregoing reasons, the Court should rule – consistent with Seattle’s amicus brief – that the installation and use of automated traffic safety cameras is not a proper subject for local initiatives or referenda.

Respectfully submitted this 18th day of October, 2010.

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CERTIFICATE OF SERVICE

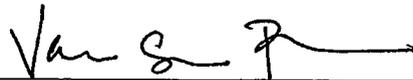
I, Vanessa Power, certify under penalty of perjury under the laws of the State of Washington that, on October 18, 2010, I caused the foregoing document to be served on the persons listed below in the manner shown:

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APPELLANT'S ANSWER TO THE CITY OF SEATTLE'S AMICUS CURIAE BRIEF

The following information is provided in accordance with the Court's rules for e-filing:

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Case number: 84921-8

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