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No. 84921-8

**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, and Tim Eyman,

Respondents.

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SUPREME COURT
STATE OF WASHINGTON
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**[PROPOSED] AMICUS CURIAE BRIEF OF
THE CITY OF SEATTLE**

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**I. INTRODUCTION AND STATEMENT OF
INTEREST OF AMICUS CURIAE**

Amicus Curiae the City of Seattle is a municipal corporation organized as a first class charter city. Pursuant to the authority granted by RCW 46.63.170, Seattle operates 30 automated traffic safety cameras at 21 different arterial intersections. Like Mukilteo, Seattle's charter provides for initiative and referendum rights. Although an initiative regarding safety cameras has not been filed in Seattle, Seattle has been involved in significant litigation about its safety cameras, and it is possible that in the future Seattle will face an initiative regarding safety cameras. If such an initiative is filed, Seattle will be required to determine whether or not it is subject to the initiative power. Consequently, any statements this Court makes regarding automated traffic safety cameras and the initiative and referendum power is of significant interest to the City of Seattle.

If this Court grants review in this case and considers the issue of whether a local initiative may prohibit automated traffic safety cameras, Seattle respectfully requests that the Court hold that safety cameras are not a permissible topic for local initiatives or referenda. Under this Court's well-established precedent, the state law permitting local jurisdictions to install and use safety cameras contains language delegating the decision whether to use these cameras to the governing body of each local

jurisdiction, not to the jurisdiction itself. Seattle takes no position on the other issues in this litigation, nor does Seattle take a position on whether this Court should accept review. Given the unusual procedural posture and expedited nature of this appeal, Seattle simply requests that should this Court accept review and consider the issue of whether local initiatives regarding automated traffic safety cameras are permitted, it hold that safety cameras are not an appropriate topic for local initiatives or referenda.

II. ARGUMENT

This Court has held that “[a]n 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, 261, 138 P.3d 943 (2006) (citing *Leonard v. City of Bothell*, 87 Wn.2d 847, 853, 557 P.2d 1306 (1976); *State ex rel. Guthrie v. City of Richland*, 80 Wn.2d 382, 384, 494 P.2d 990 (1972)). In *Malkasian*, an initiative was proposed in Sequim that would have “require[d] the city council of Sequim to obtain ratification by the voters before issuing citywide revenue bonds authorized under RCW 35.41.030.” *Id.* at 255. State law, however, explicitly permitted “the legislative body of a city or town” to issue revenue bonds under certain circumstances.” RCW 35.51.030 (emphasis added). This Court viewed RCW 35.51.030’s

language as “unambiguously grant[ing] the legislative body of the city the authority over revenue bonds under multiple provisions in chapter 35.41 RCW,” pointing to and emphasizing the phrase “legislative body” in the statute. *Malkasian*, 157 Wn.2d at 262.

The operative language in the statute authorizing automated traffic safety cameras is substantively identical to the bond authority statute at issue in *Malkasian*, allowing “[t]he appropriate *local legislative authority*” to “enact an ordinance allowing” safety cameras to be used. RCW 46.63.170(1)(a). “Legislative authority” and “legislative body” both refer “exclusively [to] the mayor and city council and not the electorate.” *Malkasian*, 157 Wn.2d at 265 (internal citations omitted). As such, it is immaterial that RCW 35.51.030 refers to the “legislative body” while RCW 46.63.170(1)(a) refers to the “legislative authority.” Like the state’s delegation of revenue bond authority to the governing bodies of cities discussed in *Malkasian*, the state delegated the authority to install and use automated traffic safety cameras to local governing bodies. That power may not be delegated to the voters of local jurisdictions, so an initiative attempting to prohibit or restrict safety cameras in Mukilteo is illegal and should be prohibited.¹

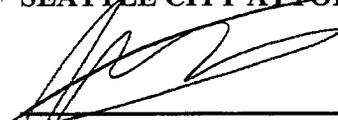
¹ The parties apparently dispute whether the proposed Mukilteo initiative is a binding initiative or a nonbinding advisory ballot. Seattle takes no

III. CONCLUSION

If this Court accepts review and addresses the issue of whether the installation or use of automated traffic safety cameras is a proper subject for local initiatives or referenda, Amicus Curiae the City of Seattle respectfully requests that this Court hold that such local initiatives and referenda are prohibited.

Respectfully submitted this 3rd day of September, 2010.

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position on this question—if the proposed measure is a binding initiative, it is impermissible under *Malkasian*, but if this Court deems the measure a nonbinding advisory ballot, it is beyond the scope of this amicus curiae brief.

CERTIFICATE OF SERVICE

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I certify that on September 3, 2010, I caused a true and correct copy of the
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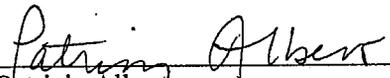
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I declare under penalty of perjury under the laws of the State of Washington that
the foregoing is true and correct to the best of my knowledge.

Signed at Seattle, Washington, this 3rd day of September, 2010.


Patricia Albert

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