

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON

2011 MAY -11 P 1:30

BY RONALD R. CARPENTER

No. 84921-8

CLERK

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

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

MUKILTEO CITIZENS FOR SIMPLE  
GOVERNMENT, an unincorporated  
association of Mukilteo residents,

Petitioners,

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,

Respondent,

and

NICHOLAS SHERWOOD, ALEX RION  
AND TIM EYMAN,

Intervenor-Defendants.

INTERVENOR-  
DEFENDANTS'  
RESPONSE TO  
CITY'S REQUEST  
FOR JUDICIAL  
NOTICE

FILED AS  
ATTACHMENT TO EMAIL

ORIGINAL

The City of Mukilteo (City) filed a Request for Judicial Notice. Respondents/Intervenor-Defendants (Intervenors) file this brief response.

Intervenors do not oppose the Court taking judicial notice of a newly enacted ordinance. CR 9(i); *Town of Forks v. Fletcher*, 33 Wn.App. 104, 652 P.2d 16 (1982). However, they do respond to the suggestion that the initiative at issue in this case was purely advisory simply because of the City Council's independent legislative decision adopted on April 25th of this year.

The City notes that the April 25, 2011, ordinance "reaffirms its earlier position that the matter on the ballot was advisory only—and not an initiative." Request for Judicial Notice at 2. The City states that, because the election has occurred and the City Council has treated the election as being purely advisory, "the issue of whether the ballot measure was **advisory** in nature or an initiative can be put to rest." Request for Judicial Notice at 3 (emphasis added).

This new ordinance only demonstrates the City's position and is insufficient for the Court to decide conclusively whether the initiative was merely advisory or actually enacting an ordinance. The issue in this case is whether the initiative was properly placed on the ballot. Intervenors contend that the initiative was properly placed on the ballot despite how the measure is characterized. It might have been purely advisory or it

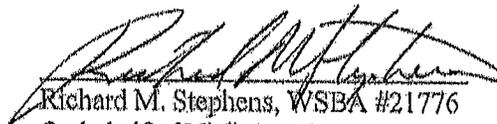
might have been an exercise of the City Council's power to enact conditional legislation. *See* Brief of Respondents/Intervenor-Defendants, at 13. The initiative may also be valid as an exercise of the legislative power of the voters despite RCW 46.63.170, providing that the local legislative body "must first enact an ordinance" before automated ticketing machines may be used. The statute does not prohibit the voters from repealing such an ordinance; the decision to use automated ticketing machines is purely optional.<sup>1</sup>

Hence, there are several reasons why this measure was properly placed on the ballot, including the First Amendment interests in public debate over issues of public policy. However, whether the measure was in fact purely advisory is not put to rest merely by the City's ordinance enacted on April 25, 2011.

RESPECTFULLY SUBMITTED this 4<sup>th</sup> day of May, 2011.

GROEN STEPHENS & KLINGE LLP

By:



Richard M. Stephens, WSBA #21776  
On behalf of Nicholas Sherwood,  
Alex Rion, and Tim Eyman

---

<sup>1</sup> The purely optional nature of the legislative decision distinguishes this case from *1000 Friends of Washington v. McFarland*, 159 Wn.2d 165, 149 P.3d 616 (2006), in which the legislature mandated that local governments enact and revise critical areas ordinances under the Growth Management Act.

**DECLARATION OF SERVICE**

I, Linda C. Hall, declare as follows pursuant to GR 13 and RCW 9A.72.085:

I am a citizen of the United States, a resident of the State of Washington, and an employee of Groen Stephens & Klinge LLP. I am over twenty-one years of age, not a party to this action, and am competent to be a witness herein.

On May 4, 2011, I caused the foregoing document to be served on the following persons via the following means:

Vanessa Soriano Power  
Gloria S. Hong  
Stoel Rives LLP  
600 University St., Ste. 3600  
Seattle, WA 98101  
[vspower@stoel.com](mailto:vspower@stoel.com)

- Hand Delivery via Legal Messenger
- First Class U.S. Mail
- Federal Express Overnight
- Electronic Mail
- Other \_\_\_\_\_

Angela S. Belbeck  
OGDEN MURPHY WALLACE  
1601 5th Ave Ste 2100  
Seattle, WA 98101-1686  
(206) 447-7000  
[abelbeck@omwlaw.com](mailto:abelbeck@omwlaw.com)

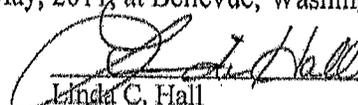
- Hand Delivery via Legal Messenger
- First Class U.S. Mail
- Federal Express Overnight
- Electronic Mail
- Other \_\_\_\_\_

Gordon W. Sivley  
Senior Civil Deputy Prosecuting Atty  
Snohomish County Prosecutor's Office  
Robert J. Drewel Bldg., 7<sup>th</sup> Flr., M/S 504  
3000 Rockefeller Ave.  
Everett, WA 98201-4046  
[gsivley@snoco.org](mailto:gsivley@snoco.org)

- Hand Delivery via Legal Messenger
- First Class U.S. Mail
- Federal Express Overnight
- Electronic Mail
- Other \_\_\_\_\_

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

Executed this 4<sup>th</sup> day of May, 2011, at Bellevue, Washington.

  
\_\_\_\_\_  
Linda C. Hall

**Schiewe, Timothy**

---

**From:** OFFICE RECEPTIONIST, CLERK  
**Sent:** Wednesday, May 04, 2011 1:30 PM  
**To:** Schiewe, Timothy  
**Subject:** FW: E-Filing: Mukilteo Citizens for Simple Government v. City of Mukilteo, Supreme Court No. 84921-8

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.

---

**From:** OFFICE RECEPTIONIST, CLERK  
**Sent:** Wednesday, May 04, 2011 1:29 PM  
**To:** 'Linda Hall'  
**Cc:** Richard Stephens  
**Subject:** RE: E-Filing: Mukilteo Citizens for Simple Government v. City of Mukilteo, Supreme Court No. 84921-8

Rec. 5-4-11

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.

---

**From:** Linda Hall [<mailto:lhall@GSKLegal.pro>]  
**Sent:** Wednesday, May 04, 2011 12:25 PM  
**To:** OFFICE RECEPTIONIST, CLERK  
**Cc:** Richard Stephens  
**Subject:** E-Filing: Mukilteo Citizens for Simple Government v. City of Mukilteo, Supreme Court No. 84921-8

To the Clerk of the Supreme Court:

In the matter of Mukilteo Citizens for Simple Government v. City of Mukilteo, Supreme Court Case No. 84921-8, attached for filing with the Court is Intervenor-Defendants' Response to City's Request for Judicial Notice. Thank you for your assistance in this matter.

Linda Hall, Legal Secretary to  
Richard M. Stephens, WSBA #21776  
Groen Stephens & Klinge LLP  
11100 NE 8th St., Ste. 750  
Bellevue, WA 98004  
(425) 453-6206