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STATE OF WASHINGTON
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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 MUKILTEO CITIZENS FOR SIMPLE
GOVERNMENT'S STATEMENT OF GROUNDS FOR DIRECT
REVIEW BY THE SUPREME COURT**

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**FILED AS
ATTACHMENT TO EMAIL**

ORIGINAL

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Mukilteo Ordinance No. 12462

Mukilteo Citizens for Simple Government (“Mukilteo Citizens”) respectfully requests that the Court grant direct review of the Snohomish County Superior Court’s Order Denying Plaintiff’s Motion for Declaratory Judgment and Injunctive Relief (“Order”), entered on August 6, 2010. A copy of the Order is attached as Exhibit A. Review is warranted under RAP 4.2(a)(4) because the matter involves “a fundamental and urgent issue of broad public import which requires prompt and ultimate determination.”

I. NATURE OF THE CASE AND DECISION

Mukilteo Citizens brought a pre-election challenge to the subject matter of proposed Mukilteo Initiative No. 2 (the “Initiative”) on grounds that the Initiative exceeds the scope of the local initiative power. Mukilteo Citizens appeals from the Superior Court’s Order denying all declaratory and injunctive relief sought. The Initiative is currently scheduled for inclusion on the City of Mukilteo’s (“City”) November 2, 2010 ballot. The deadline for Snohomish County to print the ballot is September 10, 2010. An emergency motion for accelerated review of this matter has been simultaneously filed.

The Initiative involves the City’s use of automated traffic safety cameras (“Safety Cameras”). The Initiative would have the effect of

(1) repealing Mukilteo Ordinance No. 1246 authorizing the use of Safety Cameras; and (2) enacting a new ordinance that would

- (a) require an advisory vote before the City may enact an ordinance authorizing the future use of Safety Cameras,
- (b) after the ordinance in subsection (a) is enacted, require a supermajority vote of the Mukilteo City Council and a majority vote of the people before any Safety Camera may be installed or used, and
- (c) limit the fines that the City may assess for traffic violations detected through the use of Safety Cameras.

A copy of the Initiative is attached at Exhibit B.

On July 19, 2010, the Mukilteo City Council passed a resolution that calls for inclusion of the Initiative on the ballot. The resolution includes two recitals, one of which notes: “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.*” (Emphasis added.) A copy of the resolution is attached at Exhibit C.

Mukilteo Citizens filed a complaint in Snohomish County Superior Court (“Superior Court”) seeking a declaration that the Initiative is beyond the scope of the local initiative power and an injunction preventing inclusion of the Initiative on the ballot. The City, the Mukilteo City Clerk, Snohomish County, and the Snohomish County Auditor were named as

defendants. Initiative sponsors Nicholas Sherwood, Alex Rion, and Tim Eyman (“Intervenors”) were permitted to intervene by stipulation of the parties and court order.

Mukilteo Citizens is an unincorporated association of Mukilteo residents. Mukilteo Citizens takes the position that it is in the public interest to support the authority of the Mukilteo City Council to enact legislation as duly-elected representatives of Mukilteo citizens. Mukilteo Citizens views the Initiative as an invalid exercise of the initiative power, and thus an unlawful means of passing legislation reserved for the Mukilteo City Council.

Mukilteo Citizens contends that the Initiative is invalid because it exceeds the scope of the local initiative power. When the Washington State Legislature specifically authorizes local legislative bodies to act on an issue, that grant of power is exclusive and precludes local initiatives and referenda on the issue. *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.”); *see also 1000 Friends of Wash. v. McFarland*, 159 Wn.2d 165, 174, 149 P.3d 616 (2006); *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).

Here, the Legislature vested the power to enact legislation allowing for the use of Safety Cameras with the “appropriate local legislative authority.” RCW 46.63.170(1)(a). It is well settled under Washington law that an initiative “cannot interfere with the exercise of a power delegated by state law to the governing body of a city.” *Priorities First v. City of Spokane*, 93 Wn. App. 406, 411, 968 P.2d 431 (1998). Because the Legislature expressly enabled local legislative authorities (e.g., the Mukilteo City Council) with the power to enact ordinances governing the use of Safety Cameras, and because the Initiative would improperly modify and restrict that authority, the Initiative exceeds the scope of the local initiative power and should be declared invalid.

Before the Superior Court, Snohomish County took no position on the validity of the Initiative. The City and Intervenors did not dispute that, pursuant to RCW 46.63.170, the power to enact legislation regarding Safety Cameras is not subject to initiative. Instead, the City and Intervenors re-characterized the Initiative as an “advisory vote.” In effect they conceded that the electorate may not force the City to include the

Initiative on the ballot, but argued that the City may still, in its discretion, opt to include the Initiative on the ballot.

On August 6, 2010, the Superior Court entered a dispositive order denying all relief sought by Mukilteo Citizens. Mukilteo Citizens filed a timely notice of direct appeal to this Court. Mukilteo Citizens contends that the Superior Court erred in at least three significant respects:

- The Superior Court erred in concluding that review is “premature.” Under established case law, pre-election review is appropriate where, as here, the scope of review involves only the subject matter, and not the substance, of the Initiative. *See City of Port Angeles v. Our Water-Our Choice*, 145 Wn. App. 869, 188 P.3d 533 (2008), *rev. granted*, 165 Wn.2d 1053 (2009); *Snohomish Cnty. v. Anderson*, 123 Wn.2d 151, 868 P.2d 116 (1994); *Malkasian*, 157 Wn.2d 251; *Whatcom Cnty. v. Brisbane*, 125 Wn.2d 345, 884 P.2d 1326 (1994); *City of Seattle v. Yes for Seattle*, 122 Wn. App. 382, 93 P.3d 176 (2004); *McFarland*, 159 Wn.2d 165; *Philadelphia II v. Gregoire*, 128 Wn.2d 707, 716-17, 911 P.2d 389, *cert. denied*, 519 U.S. 862 (1996).
- The Superior Court erred by failing to declare the Initiative invalid. The Legislature’s clear grant of authority to local legislative bodies regarding the use of Safety Cameras (*see* RCW 46.63.170) precludes direct legislation by the electorate on the issue. *See Malkasian*, 157 Wn.2d at 261.
- The Superior Court erred by failing to enjoin the City and Snohomish County from placing the Initiative on the ballot.

Mukilteo Citizens now requests direct review pursuant to RAP 4.2(a)(4).

II. ISSUES FOR DIRECT REVIEW

1. Whether pre-election review to determine subject matter validity of the Initiative is proper under Washington law.
2. Whether the Initiative is invalid because it exceeds the scope of the local initiative power.

III. GROUNDS FOR DIRECT REVIEW

Direct review is warranted under RAP 4.2(a)(4), which permits such review if a matter involves “a fundamental and urgent issue of broad public import which requires prompt and ultimate determination.” As set forth below, these requirements are plainly satisfied here.

As an initial matter, this case raises fundamental and urgent issues of broad public import regarding whether pre-election review to determine subject matter validity of the Initiative is proper under Washington law. Contrary to the Superior Court’s ruling, this Court has consistently held that the question of whether a proposed initiative is beyond the scope of the initiative power is properly subject to pre-election review. *Coppernoll v. Reed*, 155 Wn.2d 290, 299, 119 P.3d 318 (2005); *Maleng v. King Cnty. Corrections Guild*, 150 Wn.2d 325, 330-31, 76 P.3d 727 (2003). The Court should accept review to clarify that such review is appropriate here as well.

This case likewise raises fundamental and urgent issues of broad public import regarding the authority of the Legislature to preclude certain subjects from local initiative and referendum by granting exclusive power to enact legislation on such subjects to local legislative bodies. Pursuant to the Legislature's express grant of authority to local legislative bodies under RCW 46.63.170, a city's or county's use of Safety Cameras is not subject to initiative or referendum. If the Initiative is placed on the ballot under the guise of seeking an "advisory vote" – as Intervenors here have argued – it would eviscerate the limitations set forth in RCW 46.63.170 and usurp the role of elected officials.

This Court's opinion in *McFarland* is instructive. The Court there noted: "When the people of the State require action from a local legislature or executive body, those actions are not subject to a veto via a referendum. This follows from the blueprint, from the very structure of government established by our state constitution. It would violate the constitutional blueprint to allow a subdivision of the State to frustrate the mandates of the people of the State as a whole." *McFarland*, 159 Wn.2d at 167, (citing *Henry v. Thorne*, 92 Wn.2d 878, 602 P.2d 354 (1979); *Whatcom Cnty. v. Brisbane*, 125 Wn.2d 345). Here too, it would frustrate

the Legislature's clear grant of authority to local legislative bodies under RCW 46.63.170 if the City were allowed to avoid application of the law.

Further, the broad public importance of the balance between the Legislature's grant of authority to local legislative bodies, on the one hand, and the initiative power of local electorates, on the other, is reflected in this Court's repeated holding that (1) a subject matter challenge to an initiative is properly subject to pre-election review; and (2) local initiatives and referenda are prohibited if they involve powers granted by the Legislature to local legislative bodies. These, too, are fundamental and urgent issues of broad public import that merit this Court's review.

Nor would the Court's opinion be limited to the Initiative. One of the Intervenor's recently issued public statements expressing his intent to bring local initiatives on this issue across the state. As such, it is especially important that local legislative bodies and their electorates receive confirmation on the scope of the initiative power with respect to Safety Cameras. Direct review by this Court will offer critical guidance to local governments and conserve judicial and other resources that would be expended by first presenting this issue to the Court of Appeals.

Finally, the parties agree that time is of the essence. Snohomish County's deadline for sending ballots for the November 2, 2010 general

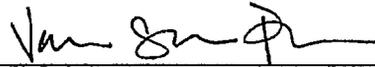
election to the printer is September 10, 2010. As such, the final requirement for direct review under RAP 4.2(a)(4) – that the issues require “prompt and ultimate determination” – is also satisfied. The urgent need for timely guidance by this Court likewise warrants direct review.

IV. CONCLUSION

For the foregoing reasons, this Court should accept direct review pursuant to RAP 4.2(a)(4).

Respectfully submitted this 12th day of August, 2010.

STOEL RIVES LLP



Vanessa S. Power, WSBA #30777
Leonard Feldman, WSBA #20961
Gloria S. Hong, WSBA #36723
Attorneys for Appellant Mukilteo
Citizens for Simple Government

CERTIFICATE OF SERVICE

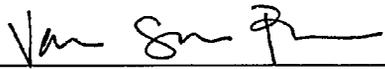
I, Vanessa Power, certify under penalty of perjury under the laws of the State of Washington that, on August 12, 2010, I caused the foregoing document to be served on the persons listed below in the manner shown:

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Dated this 12th day of August at Seattle, Washington.



Vanessa Soriano Power

EXHIBIT A

1 **FILED**

2 AUG 06 2010

3 SONYA KRASKI
4 COUNTY CLERK
5 SNOHOMISH CO. WASH.

The Honorable Michael T. Downes
(Civil Motions Calendar)
Hearing Date: August 6, 2010 at 9:30 a.m.

6
7 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**
8 **FOR SNOHOMISH COUNTY**

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

11 Plaintiffs,

12 v.

13 CITY OF MUKILTEO, a Washington municipal
14 corporation; CHRISTINE BOUGHMAN, in her
official capacity as City Clerk for the City of
15 Mukilteo; SNOHOMISH COUNTY, a political
subdivision of the State of Washington;
16 CAROLYN WEIKEL, as her official capacity as
Snohomish County Auditor,

17 Defendants,

18 NICHOLAS SHERWOOD, ALEX RION and
19 TIM EYMAN,

20 Intervenor-Defendants.

NO. 10-2-06342-9

ORDER DENYING PLAINTIFF'S MOTION
FOR DECLARATORY JUDGMENT AND
INJUNCTIVE RELIEF

21 THIS MATTER having come on regularly before the undersigned judge of the above-
22 entitled court upon Plaintiff's Motion for Declaratory Judgment and Injunctive Relief, and the
23 Court having reviewed Plaintiff's Motion; the Declaration of Vanessa S. Power in support
24 thereof; the Declaration of Christine Preston; the City of Mukilteo and Christina Boughman's
25 Response in Opposition; Snohomish County and Carolyn Weikel's Response; Declaration of
26 Carolyn Weikel; Intervenor-Defendants' Opposition; and Plaintiff's Reply in Support of Motion;

(ASB808739.DOC;100014.050133)
ORDER DENYING PLAINTIFF'S MOTION FOR
DECL. JUDGMENT AND INJUNCTIVE RELIEF - 1

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1 and the records on file herein; and the Court having heard the representations and arguments of
2 counsel and being fully advised in the premises; now, therefore, it is hereby

3 **ORDERED, ADJUDGED AND DECREED** that Plaintiff's motion for declaratory
4 judgment and injunctive relief is denied.

5 DONE IN OPEN COURT this 6 day of August, 2010.

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THE HONORABLE MICHAEL T. DOWNES

8

9 Presented by:

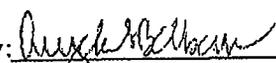
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10 OGDEN MURPHY WALLACE, P.L.L.C.

10

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By: 

Angela S. Belbeck, WSBA #24482
Attorneys for City of Mukilteo and
Christina Boughman

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EXHIBIT B

EXHIBIT C

**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.

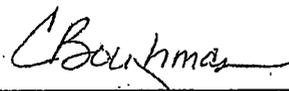
RESOLVED by the City Council and APPROVED by the Mayor this 19th day of
July, 2010.

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