

**Superior Court of Washington
for Snohomish County**

JUDGES
LARRY E. MC KEEMAN
RONALD L. CASTLEBERRY
THOMAS J. WYNNE
ANITA L. FARRIS
LINDA C. KRESE
GEORGE N. BOWDEN
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PRESIDING JUDGE
MICHAEL T. DOWNES

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ARDEN J. BEDLE
LESTER H. STEWART
JACALYN D. BRUDVIK
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COURT ADMINISTRATOR
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January 19, 2012

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Re: *City of Monroe v. Seeds of Liberty, et al.*, No. 11-2-06796-1

Materials Reviewed:

- 08/19/11: City of Monroe's Motion for Summary Judgment
- 08/19/11: Declaration of Eadye Martinson
- 08/19/11: Declaration of Kristin Eick
- 09/12/11: Seeds of Liberty's Opposition to City's Summary Judgment & Seeds of Liberty's Special Motion to Strike
- 09/12/11: Declaration of Ty Balascio
- 09/12/11: Declaration of Mark Stephens
- 09/16/11: City of Monroe's Reply on Summary Judgment & Response to Seeds of Liberty's Special Motion to Strike
- 09/16/11: Declaration of Eadye Martinson
- 09/16/11: Declaration of Kristin Eick
- 09/20/11: Seeds of Liberty's Reply in Support of Special Motion to Strike
- 09/20/11: Declaration of Richard Stephens
- 09/28/11: Seeds of Liberty's Supplemental Briefing
- 09/28/11: Declaration of Richard Stephens
- 09/28/11: City of Monroe's Supplemental Brief
- 10/03/11: Seeds of Liberty's Response to City of Monroe's Supplemental Brief
- 10/03/11: City of Monroe's Reply to Seeds of Liberty's Supplemental Brief

Dear Counsel:

I'd like to start by thanking you both for the briefing and argument you presented at the September 21, 2011, hearing and the October 14, 2011, supplemental hearing.

After review of the record and law, I am: 1) granting the City of Monroe's motion for declaratory relief regarding Sections 1 & 2, 2) denying the City of Monroe's motion regarding Section 3, and 3) granting Seeds of Liberty's motion for costs and fees under RCW 4.24.525.

I am granting the City's motion for declaratory relief regarding Sections 1 & 2 based on the September 6, 2011, Washington Court of Appeals decision in *American Traffic Solutions, Inc. v. City of Bellingham*, 163 Wn. App. 427, 260 P.3d 245 (2011) .

I am denying the City's motion regarding Section 3 because of the following reasons: Section 3 is severable. Section 3 does not intrude upon the governing body's authority with respect to automated traffic cameras because an advisory vote is not binding on the City. The governing body remains free to disregard whatever preference may be expressed by the voters. Section 3 is presumptively valid, especially in the context of a pre-election challenge. Section 3 addresses a legislative rather than an administrative function in that, if approved by the voters, it would create an ordinance calling for advisory votes if the governing body contemplates future contracts for automated traffic cameras. Furthermore, there is no explicit constitutional or statutory prohibition upon an initiative that seeks to inform a governing body of the wishes of the voters on the subject matter of legislation that is properly vested in that governing body. And lastly, the exclusive grant of power to the City Council to inform the Auditor to place a matter on the ballot is a procedural, rather than a substantive, authorization.

I am granting Seeds of Liberty's motion for costs and fees under RCW 4.24.525 because of the following reasons: Washington's anti-SLAPP remedies are not discretionary. Having secured enough valid signatures to place Section 3 on the ballot, the City's lawsuit burdens the initiative sponsors with having to defend the right of the voters to express their opinions and weigh in on a matter that will directly affect them. As such, the initiative concerns an action involving public participation and the inherent rights of citizens to petition their government. While the City's declaratory judgment action is meritorious and the City has clearly prevailed on those provisions which would infringe upon the City's authority to provide for the use of automated traffic cameras, Washington's law provides for a mandated award to a moving party, here Seeds of Liberty, who prevails, in part or in whole. Cases interpreting California's statute are not persuasive because that statute bars relief to a moving party who only prevails in part.

I do not intend that this letter decision will substitute for a formal Order. I have enclosed a draft Order for counsel to review. The matter will need to be recalendared for determination and entry of the attorney fee award. Feel free to revise the enclosed draft order to include a judgment summary for entry at that time.

Very truly yours,


George N. Bowden

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH**

The CITY OF MONROE, a Washington
Municipal Corporation,

Plaintiff,

vs.

WASHINGTON CAMPAIGN FOR
LIBERTY, a Washington non-profit
Corporation; SEEDS OF LIBERTY, an
unknown entity;
VOTERSWANTMORECHOICES.COM,
an unknown entity; BANCAMS.COM, an
unknown entity,

Defendant.

NO. 11-2-06796-1

ORDER

THIS MATTER having come on regularly on Plaintiff's Motion for Summary Judgment, Defendant's Special Motion to Strike, and good cause having been shown, NOW THEREFORE,

IT IS HEREBY ORDERED that Plaintiff's Motion for Declaratory Relief regarding Sections 1 & 2 is hereby granted, and

IT IS FURTHER ORDERED that Plaintiff's Motion for Declaratory Relief regarding Sections 3 is hereby denied, and

IT IS FURTHER ORDERED that Defendant's Motion for Costs and Fees under RCW 4.24.525 is hereby granted.

ORDER

DONE IN OPEN COURT this _____ day of _____, 2012.

HON. GEORGE BOWDEN, JUDGE

ORDER