



CASE REPORT

AUTOMATED TRAFFIC SAFETY CAMERAS - INITIATIVE AND REFERENDUM POWERS - ANTI-SLAPP. Initiative which would prohibit City from installing or using automated traffic safety cameras unless approved by a majority of the city council and a majority of the voters exceeded the scope of the local initiative power, and Anti-SLAPP penalties would not be imposed. *American Traffic Solutions v. City of Bellingham*, No. 67553-2-I, Court of Appeals Division I (Sept. 6, 2011).

I. Facts. The Bellingham City Council enacted an ordinance establishing an automated traffic safety camera program. Consequently, the City entered into a contract with American Traffic Solutions (ATS) to install the automated traffic safety camera system. Initiative sponsors filed an initiative which would prohibit the City from installing or using an automated traffic camera system unless approved by a majority of the city council and a majority of the voters. The Whatcom County auditor certified sufficient signatures to place the initiative on the upcoming general election ballot. The Bellingham City Council voted to take no action regarding the initiative. ATS then filed an action against the City, Whatcom County, the auditor, and the initiative sponsors requesting (1) a declaration that the initiative usurped the authority granted to the city council under RCW 46.63.170 and, therefore, exceeded the scope of the local initiative power, and (2) an injunction preventing the defendants from placing the initiative on the November ballot. The trial court denied ATS's request for declaratory and injunctive relief and granted the initiative sponsors' special motion to strike ATS's claim under RCW 4.24.525, the Anti-SLAPP (Strategic Lawsuits Against Public Participation) statute. The Anti-SLAPP statute allows a defendant to make a special motion to strike any claim based on his or her "public participation and petition." This statute was enacted because of the legislature's concern about lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances. Pursuant to the Anti-SLAPP statute, the trial court awarded the initiative sponsors costs and attorney fees and imposed the statutory penalty of \$10,000 against ATS. The Court of Appeals then granted expedited review.

II. Applicable Law and Analysis. The Court of Appeals first held that the proposed Bellingham initiative exceeded the lawful scope of the local initiative power and that it is not a valid ballot measure. 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 as a corporate entity. In other words, where the legislature enacts a law that grants authority to the legislative body of a city, the exercise of that authority by the legislative body is not "subject to repeal, amendment or modification by the people through the initiative or referendum procedure." Because RCW 46.63.170, authorizing the use of automated traffic safety cameras, specifies that in order to use automatic traffic safety cameras for the issuance of traffic

infractions, the “appropriate local legislative authority” must first enact an ordinance allowing for their use, the court concluded that the exercise of the city council’s authority was not subject to initiative.

In addition, the court held that ATS’s lawsuit did not violate RCW 4.24.525, the Anti-SLAPP statute. Under this statute, a party bringing a special motion to strike a claim has the initial burden of showing that the claim is based on an action "involving public participation and petition," as defined in RCW 4.24.525(2). If the moving party meets this burden, the burden shifts to the responding party to establish by clear and convincing evidence a probability of prevailing on the claim. Because the court concluded that ATS would likely succeed on the merits of its claim, it reversed the trial court’s decision granting the Anti-SLAPP motion and the \$10,000 penalty.

However, the court refused to grant ATS’s request for an injunction enjoining the election. The court reasoned that, even if placed on the ballot and passed by a majority of the voters, the initiative would have no legal force. Consequently, ATS could not establish “actual and substantial injury” to its contractual interests justifying injunctive relief.

III. Conclusion. This decision affirms that cities may not be forced to place similarly proposed automated traffic safety camera initiatives on the ballot and that, even if a city were to place an initiative similar to that proposed in Bellingham on the ballot, the initiative would have no legal force if enacted. However, this decision does not preclude city councils from requesting an advisory vote on whether its residents favor or disfavor the use of automated traffic safety cameras. If you have additional questions regarding automated traffic safety camera systems or the scope of the local initiative power, please contact your city attorney.