

No. 84921-8

J.M. JOHNSON, J. (dissenting)—This appeal asks us to consider a pre-election challenge to city of Mukilteo Proposition 1 (Prop 1), an advisory vote opposing automated traffic safety cameras (“red-light cameras”) in that city. Prop 1 was placed on the November 2010 general election ballot and endorsed by over 70 percent of Mukilteo voters. The Mukilteo City Council then voted to repeal the red-light cameras ordinance. The parties do not dispute the status of the law in Mukilteo; red-light cameras are no longer authorized. The majority does not claim anything unlawful was done here. The people exercised their right to petition. The city council put a relevant advisory issue on the ballot. The voters expressed a strong position and the city council repealed a disfavored ordinance. As there is no justiciable controversy for us to resolve, the appeal is moot. Thus, I respectfully dissent.

A. The Appeal Is Moot

We may reach the merits of a trial court’s decision to deny declaratory relief only if there is a “justiciable controversy” for the court to resolve pursuant to chapter 7.24 RCW. *Walker v. Munro*, 124 Wn.2d 402, 411, 879 P.2d 920 (1994); *Fed. Way Sch. Dist. No. 210 v. State*, 167 Wn.2d 514, 529, 219 P.3d 941 (2009). Otherwise, the case is moot and should be dismissed.<sup>1</sup>

We have defined “justiciable controversy” as:

(1) . . . an actual, present and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement, (2) between parties having genuine and opposing interests, (3) which involves interests that must be direct and substantial, rather than potential, theoretical, abstract or academic, and (4) a judicial determination of which will be final and conclusive.

*Diversified Indus. Dev. Corp. v. Ripley*, 82 Wn.2d 811, 815, 514 P.2d 137 (1973).

Here, there is no longer an actual, present and existing dispute. Prop 1 was placed on the ballot and an election was held. Red-light cameras were opposed by voters, and the city council has repealed Ordinance 1246 (chapter

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<sup>1</sup> *Klickitat County Citizens Against Imported Waste v. Klickitat County*, 122 Wn.2d 619, 631, 860 P.2d 390, 866 P.2d 1256 (1993). “An appeal is moot where it presents purely academic issues and where it is not possible for the court to provide effective relief.” *Id.*

10.05 MMC), which had authorized the use of red-light cameras. Additionally, the actual state of the law in Mukilteo is not in dispute (Mukilteo Initiative 2 differs from Ordinance 1275).<sup>2</sup> Both parties concede Ordinance 1275, which repealed Ordinance 1246, represents the current state of the law in Mukilteo, whether that is because Prop 1 was not effective as an initiative<sup>3</sup> or because Prop 1 was an initiative outside the scope of the local initiative power.<sup>4</sup> An injunction to prevent Prop 1 from being placed on the ballot would have no effect years after the election was final.

The only issue that conceivably remains is whether the subject matter addressed by Prop 1 (the use of red-light cameras) is outside the scope of the local initiative power. We should not reach this issue because the issue placed on the ballot was avowedly an advisory vote, not an initiative. Rendering a judgment on a hypothetical issue, therefore, would be tantamount to issuing an advisory opinion. This court, however, is not authorized by the Uniform Declaratory Judgments Act (chapter 7.24 RCW) to render advisory

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<sup>2</sup> This difference may have a legal effect only on hypothetical issues not raised in this lawsuit.

<sup>3</sup> *See, e.g.*, Br. of Resp'ts City of Mukilteo and Christina Boughman at 3.

<sup>4</sup> *See, e.g.*, Appellant's Opening Br. at 8-15.

opinions or pronouncements upon abstract or speculative questions. *Munro*, 124 Wn.2d at 418 (citing *Wash. Beauty Coll., Inc. v. Huse*, 195 Wash. 160, 164, 80 P.2d 403 (1938)). Any remaining issue is academic, and it is not possible for the court to provide effective relief. Thus, such issue is also moot. *Klickitat County Citizens Against Imported Waste v. Klickitat County*, 122 Wn.2d 619, 631, 860 P.2d 390, 866 P.2d 1256 (1993).

B. Prop 1 Was an Advisory Vote

RCW 29A.32.241 requires local voters' pamphlets to include the text of each ballot measure, an explanatory statement, and the arguments for and against each measure. RCW 29A.32.241(4), (5). The purpose of this requirement is straightforward: citizens should not be bound by a measure that they did not have the opportunity to examine thoroughly prior to voting on it.

Prop 1 did not include the text of Mukilteo Initiative 2. Prop 1, therefore, could not have been effective as an initiative. This was instead an advisory vote. As explained above, this conclusion renders moot the issue of whether the subject matter addressed by Prop 1 is outside the scope of the

local initiative power.

Finally, the record does not disclose why the Mukilteo City Council voted to place Prop 1 on the ballot rather than Mukilteo Initiative 2.<sup>5</sup> However, no party sought to compel Mukilteo Initiative 2 to be placed on the ballot. Any Mukilteo residents who are concerned about such detail have available political remedies. Because the ordinance authorizing red-light cameras has been repealed per the wishes of Mukilteo voters, these issues have all been resolved politically rather than through judicial processes. Our system accommodates and relies on such resolution.

#### Conclusion

I would hold that Mukilteo Citizens for Simple Government's appeal is moot. Prop 1, an advisory vote opposing red-light cameras, was placed on the November 2010 ballot and endorsed by over 70 percent of Mukilteo voters. The city council has repealed the ordinance allowing the use of red-light cameras in Mukilteo. The matter was appropriately and constitutionally resolved through the political process. Not every issue requires judicial

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<sup>5</sup> The notable differences would have restricted adoption of red-light cameras by later councils.

resolution. There is no justiciable controversy for us to resolve, and an injunction at this point would have no effect. Thus, I would affirm the trial court and respectfully dissent.

AUTHOR:

Justice James M. Johnson

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WE CONCUR:

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Justice Charles W. Johnson

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Justice Tom Chambers

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Gerry L. Alexander, Justice Pro Tem.

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