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2014 OCT 17 P 4:14

KIM MORRISON
CHELAN COUNTY CLERK

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CHELAN COUNTY SUPERIOR COURT
** PREPARED ** JUDICIAL CALENDAR 3
10-09-14109:02 FRIDAY, OCTOBER 17, 2014
JUDGE T W SMALL/SB

14-2-00555-0

SMP RETAIL, LLC

BRICKEN, HILARY -P

VS

CITY OF WENATCHEE

SMITH, STEVE DOUGLAS -P
EVEN, JEFFREY TODD -P

SUMMARY JUDGMENT 10:30

SMJHRG

Mr. Even spoke to Mr. Estes who advised he did not plan to appear. Court advised of documents It reviewed and noted page 3 of House Bill 2322 of the Amicas Brief was missing. Statements of counsel. Court recessed at 11:25 p.m. until 11:54 a.m.

Karen Komoto—court reporter present for decision

Court's Decision: Court thanked counsel for briefing and their professional conduct. Court found plaintiff had standing to bring this action, but noted It was limited to determining the validity of the ordinances at issue in this case. The Court would not rule further. Court found It must determine the constitutional validity of the ordinances according to the State Constitution, Article 11, Section 11. Court found the burden of proving unconstitutionality falls on plaintiff. The legal presumption was that all ordinances passed by cities are presumed to be constitutional. The plaintiff must prove beyond a reasonable doubt that the ordinance was unconstitutional. The Court found It must follow statutes that grants municipal powers are to be liberally construed in favor of the City. With those rules in mind, Court reviewed Initiative 502.

Court found counsel agreed there was no express preemption. Court found implied preemption was not argued. Court addressed direct conflict. In reviewing 502, Court found it did not confer to adults over 21 the unfettered right to sell marijuana or possess or, or process it, or to produce it. The initiative was conservative and strict, giving detailed provisions for regulations through the State Liquor Control Board. Court reviewed the Cole memo issued by the United States Attorney General's Office, noting that due to the strict conservative nature of the initiative the fact that the federal government was not enforcing their federal laws. Court found that in fact there was much a person must proceed through to get a State license first. The Court did not find a conflict if the City exercised its authority to pass ordinances to promote the health, welfare and safety of its residence. There was no evidence the City's intent was to thwart 502. If the City chose to not receive that revenue, it can choose to. The Court declined to make such policy. The Court upheld the constitutionality of both ordinances passed by the

City of Wenatchee and granted the city's motion and denied the plaintiff's motion. Order entered.

Court recessed at 12:07 p.m.

10/17/14

2014 OCT 17 12:28

KIM MORRISON
CHELAN COUNTY CLERK

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CHELAN

SMP RETAIL, LLC,
Plaintiff,
vs.
CITY OF WENATCHEE, a Washington
municipal corporation,
Defendant,
and
ROBERT W. FERGUSON, Attorney General
of the State of Washington,
Intervenor.

NO. 14-2-00555-0
ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT
AND DENYING PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT

THIS MATTER came on for hearing in open Court on October 17, 2014. Appearances for parties and Amici were as follows:

- 1. Hilary V. Bricken and Charles P. Moure for Plaintiff, SMP Retail, LLC;
- 2. Steve D. Smith (argued) and Danielle R. Marchant for Defendant, City of Wenatchee;

7
1 3. Robert W. Ferguson, Attorney General, Noah G. Purcell, Solicitor General, and
2 Jeffrey T. Even, Deputy Solicitor General, for Intervenor Robert W. Ferguson, Attorney
3 General of the State of Washington; and

4 4. Stewart A. Estes for Amici Curie Pierce County, Lewis County, City of Yakima,
5 City of Fife, and Town of Wilbur.

6 The purpose of the hearing was to consider the Defendant City of Wenatchee's Motion
7 for Summary Judgment and the Plaintiff SMP Retail, LLC's Motion for Summary Judgment.

8 The Court considered the Motions for Summary Judgment identified above, the
9 arguments of counsel, and the following records:

- 10 1. Plaintiff's First Amended Complaint for Declaratory and Injunctive Relief;
11 2. Defendant City of Wenatchee's Answer and Affirmative Defenses to First
12 Amended Complaint for Declaratory and Injunctive Relief;
13 3. Defendant's Motion for Summary Judgment;
14 4. Defendant's Memorandum in Support of its Motion for Summary Judgment;
15 5. Declaration of Deanne McDaniel;
16 6. Declaration of Frank Kuntz;
17 7. Declaration of Danielle R. Marchant;
18 8. Amicus Curie Brief of Pierce County, Lewis County, City of Yakima, City of
19 Fife, Town of Wilbur;
20 9. Attorney General's Answer to First Amended Complaint for Declaratory and
21 Injunctive Relief;
22 10. Attorney General's Memorandum in Support of Summary Judgment;

1 11. Plaintiff's Motion for Summary Judgment;

2 12. Plaintiff's Motion for Summary Judgment and Response in Opposition to
3 Defendant's Motion for Summary Judgment and Attorney General's Motion in Support
4 Thereof; and

5 13. Attorney General's Reply Memorandum in Support of Summary Judgment; *and*
6 *14. I-502.*

7 NOW, THEREFORE, having considered the Motions, the arguments of counsel, and
8 the papers, records and files in this matter, and the Court deeming itself fully advised in the
9 premises, the Court orders as follows:

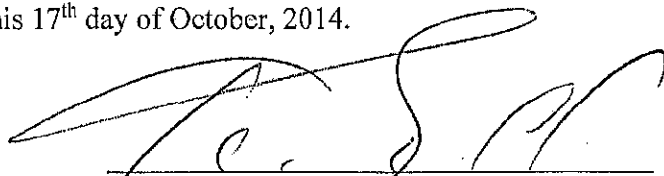
10 A. The Court finds that there is no issue of material fact;

11 B. That the Defendant City of Wenatchee's Motion for Summary Judgment is
12 granted as a matter of law;

13 C. That the Plaintiff SMP Retail, LLC's Motion for Summary Judgment is denied
14 as a matter of law; and

15 D. This case shall be and hereby is dismissed with prejudice and without an award
16 of attorney's fees or costs.

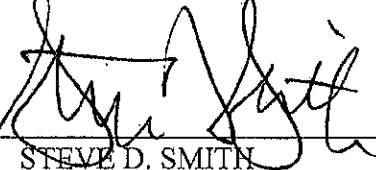
17 DONE IN OPEN COURT this 17th day of October, 2014.




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19 HONORABLE T. W. ~~SMALL~~ SMALL
Superior Court Judge

1 Presented by:

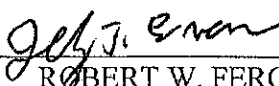
2 JOHNSON, GAUKROGER, SMITH
& MERCHANT, P.S.
3 Attorneys for Defendant City of Wenatchee

4 
5 By _____
STEVE D. SMITH
6 WSBA #16613

7 Approved as to form; notice of presentment
waived:
8 HARRIS MOURE
Attorneys for Plaintiff

9
10 
11 By _____
HILARY V. BRICKEN
12 WSBA #43000

13 Approved as to form; notice of presentment
waived:
ATTORNEY GENERAL OF WASHINGTON

14
15 By 
16 ROBERT W. FERGUSON, WSBA #
NOAH G. PURCELL, WSBA #43492
17 JEFFREY T. EVEN, WSBA #20367

18 Approved as to form; notice of presentment
waived:
19 KEATING, BUCKLIN & McCORMACK, INC., P.S.
Attorneys for Amici

20
21 By _____
22 STEWART A. ESTES
WSBA #15535

23 ORDER GRANTING SUMMARY JUDGMENT
Page 4
24 F:\00 Active Clients\8000.00 to 8999.99\8039.95 City to SMP Retail\Order SJ.doc

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