

**CITY OF SEATTLE SEEKS REVIEW IN U.S. SUPREME COURT REGARDING
NOMINAL DAMAGES VICTORY IN SECTION 1983 POLICE MISCONDUCT CASE
AGAINST SEATTLE POLICE DEPARTMENT**

In the case of *Andrew Rutherford v. Jason McKissack et al.*, where the Ninth Circuit Court of Appeals had affirmed the Jury Verdict and award of nominal damages and attorney's fees by U.S. District Court Judge Marsha Pechman, involving important limitations regarding when police officers may use a firearm during the course of an investigatory stop (See "Nominal Damages Victory - Section 1983 Police Misconduct Case Against Seattle Police Department Has Value in Teaching Police a Lesson About Important Limitations in Terry Stops", WSAJ Trial News, March 2013,), the City of Seattle has filed a petition for a writ of certiorari to the Ninth Circuit Court of Appeals asking that the U.S. Supreme Court accept review in this matter. In their petition, the City has requested review on two issues:

1. Whether the Ninth Circuit correctly held—in conflict with the decisions of this Court and other circuits—that the Fourth Amendment imposes a mechanistic rule that police officers are forbidden from drawing their firearm during a *Terry* stop absent certain, predetermined "special circumstances."
2. Whether the Ninth Circuit correctly held—in conflict with the decisions of this Court—that the Fourth Amendment rule at issue was "clearly established," such that it would have been clear to every reasonable officer in the situation that Officer Chin faced that his conduct was unlawful.

While our response, on behalf of Mr. Rutherford, the Plaintiff-Appellee, has not yet been drafted or filed, we will be strongly opposing the City's petition seeking review in the U.S. Supreme Court in the strongest possible terms. We believe that the Rutherford matter was properly decided by the Ninth Circuit and the Supreme Court should deny review in this matter. In essence, the City seeks to have the Supreme Court take review to overturn *Washington v. Lambert*, 98 F.3d 1181 (9th Cir. 1996), a 1996 Ninth Circuit Court of Appeals Case, which the Ninth Circuit relied upon in affirming the Jury Verdict and Judge Pechman's award of attorney's fees. We believe that *Washington v. Lambert* was a seminal case in Fourth Amendment Jurisprudence, standing for the proposition that police officers do not generally have the right to draw their firearms in regular, everyday misdemeanor traffic stops absent particular compelling circumstances, such as:

- 1) where the suspect is uncooperative or takes action at the scene that raises a reasonable possibility of danger or flight; 2) where the police have information that the suspect is currently armed, 3) where the stop closely follows a violent crime; and 4) where the police have information that a crime that may involve violence is about to occur.

See *Washington v. Lambert*, 98 F.3d at _____. To do otherwise would be to potentially elevate every regular, everyday misdemeanor traffic stop into a potential armed confrontation, something which no community should wish for, and which any rational and just society should try to avoid from happening.

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