

# Claim for Damages

Claimants: ABATE of Washington, Sky Valley Chapter  
P.O. Box 2111, Snohomish, WA 98291  
(A 501 C 4 non-profit organization)

Respondents: City of Snohomish, City Manager (Larry Bauman), Mayor Liz Loomis, Council member Melody Clemens, various Police Chiefs and Council members from 2000 through 2005

The City of Snohomish Special Event Permit Process (Municipal Code 5.10) is unconstitutionally vague, and the City has repeatedly applied different requirements for the Old Snohomish Antique & Classic Motorcycle Show than for similar events. The City of Snohomish has attempted to limit ABATE's right of free speech and assembly by imposing excessive fees and location restrictions, and the City has violated our 14<sup>th</sup> Amendment constitutional right to equal protection by treating our event differently than other community events.

The City of Snohomish has charged ABATE of Washington for more than 5 consecutive years for Police Services and building inspection fees that other events have not had been charged. ABATE was charged a total of **\$23,128.42** over 5 years more than the Classic Car Show for an event of similar attendance and similar nature. **Table 1** lists the financial data for the 3 special events each year that occupy a similar space and generate a similar crowd.

In addition to the financial damages incurred by ABATE of Washington, the City of Snohomish has engaged in efforts to deny the rights of motorcyclists in Snohomish to hold peaceable assembly within the City limits. The City Manager, members of Historic Downtown Snohomish (a public business improvement area licensee of the City), members of the Chamber of Commerce (member of the City-appointed Lodging Tax Advisory Committee), Mayor Liz Loomis, and Council member Melody Clemens (HDS liaison for City Council) have engaged in the following practices:

- (1) placed extra-ordinary requirements on ABATE for a Special Event permit,
- (2) attempted to limit the locations where the motorcycle show may take place by drafting a Special Event footprint limit,
- (3) imposed a footprint adopted after the 2005 Permit application was received by the City,
- (4) attempted to cancel the motorcycle show based on an alleged lack of police officers to handle the possibility of breaches of peace,
- (5) omitted references to the motorcycle show in Washington State Economic development applications, and
- (6) attempted to replace the motorcycle show with an event that financially benefits the Chamber of Commerce and Historic Downtown Snohomish.

I. For the 2005 event, City Council imposed a requirement that ABATE contract with a private security firm to augment the police officers as a condition of granting our permit (2/15/05 City Council meeting). No written guidelines were established for determining the number of police officers or private security agents needed to provide reasonable security at our event, and the Police Chief was granted sole authority to determine the terms of the security contract with the private firm. No other event was required to contract with a private security firm for manning barricades or providing parking assistance to participants.<sup>1</sup>

In addition, the City forced ABATE to sign a contract agreeing to pay for no more than 150 hours of police time as a condition of the 2005 Permit.<sup>2</sup> The Classic Car Show contract set a limit of 25 hours for police services for 2005.<sup>3</sup>

At the 2/8/05 meeting with ABATE, City Manager Larry Bauman, and Police Chief Wiborg, Mr. Bauman proposed that the 2005 Special Event contract include an agreement that ABATE not litigate with the city as a condition of our permit, a requirement well outside the powers vested in the City of Snohomish as part of Municipal Code 5.10.<sup>4</sup>

A review of public records for police department tactical and operations plans and after action reports, shows that ABATE has been billed for police officer hours for such activities as profiling our event vendors (running vendor names through NORA database), photographing individuals wearing specific clothing and insignia, SWAT team preparations, and intelligence gathering on motorcyclists. Such operations extend well beyond reasonable traffic control and general public safety for a community event.<sup>5</sup>

A review of police incident reports from all special events from 2002 through 2004 shows that the motorcycle show has had relatively few incidents requiring police response. Nothing in the public records indicates any basis for the concern that the mere presence of "outlaw motorcycle gang" members or persons wearing motorcycle regalia at our event presents a public safety risk.<sup>6</sup>

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<sup>1</sup> 2/15/05 City Council agenda; 2/15/05 City Council minutes

<sup>2</sup> 2005 Motorcycle Show Special Event Contract, signed 5/10/05, Sections 2.5.c and 2.12.

<sup>3</sup> 2005 Classic Car Show Special Event Contract, signed 5/6/05, Sections 2.5 and 2.12.

<sup>4</sup> 2/8/05 Agenda, ABATE Special Events Permit Issue, prepared by Larry Bauman

<sup>5</sup> Tactical and Operation Plans for 2000 through 2004 included by Reference and not duplicated here.

<sup>6</sup> Police incident reports for 2002 through 2004 included by Reference and not duplicated here.

The Ninth District Court of Appeals has upheld that the wearing of motorcycle “patches” and clothing in public places is a First Amendment right of free speech. The City of Snohomish received a letter from ABATE’s attorney on 2/18/03 regarding *Sammartano v. First Judicial District Court No 1 01-16685* (9<sup>th</sup> Cir. 08/26/02) regarding the issue of wearing “colors” and the excessive fees charged by the City of Snohomish.<sup>7</sup> The City of Snohomish failed to respond in writing to the letter.

ABATE’s attorney sent a second letter to the City of Snohomish on 2/3/05 regarding the excessive permit fees proposed for the 2005 event. In addition to reiterating *Sammartano v. First Judicial District Court No 1* regarding motorcycle attire as free speech, the letter referenced *Forsyth County Georgia v. National Movement*, 112 S.Ct.2395, 120 L.Ed 101, 60 U.S.L.W. 4597, which determined that a municipality may not require a permit applicant to pay for police services which reflect the cost of maintaining public order as a condition of the permit. The excessive fees charged to ABATE by the City of Snohomish have been presented in numerous emails and letters as a requirement for maintaining public safety. Requiring ABATE to provide additional private security as a condition of the permit is equally invalid under *Forsyth*.<sup>8, 9</sup>

In the *Forsyth* decision, Justice Blackmun states:

The Forsyth County ordinance requiring a permit and a fee before authorizing public speaking, parades, or assemblies in the archetype of a public forum ... is a prior restraint on speech. ... Further, any permit scheme controlling the time, place, and manner of speech must not be based on the content of the message, must be narrowly tailored to serve a significant governmental interest, and must leave open ample alternatives for communication.

Similar to the Forsyth County ordinance, the Special Event Permit process outlined in Municipal Code 5.10.040 Staff Review, allows any department head to make recommendations for the permit conditions, yet provides no guidelines or standards for basing the recommendations. Quoting *Forsyth*:

A government regulation that allows arbitrary application is “inherently inconsistent with a valid time, place, and manner regulation because such discretion has the potential for becoming a means of suppressing a particular point of view.” *Heffron v. International Society for Krishna Consciousness, Inc.*

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<sup>7</sup> 2/14/02 letter from Martin Fox to City of Snohomish (incorrectly dated 2002, actually written and mailed in 2003).

<sup>8</sup> 2/3/05 letter from Martin Fox to City of Snohomish

<sup>9</sup> *Forsyth County Georgia v. National Movement*, 112 S.Ct.2395, 120 L.Ed 101, 60 U.S.L.W. 4597

The City of Snohomish has failed to demonstrate that its application of the Special Event Permit requirements for the Old Snohomish Antique and Classic Motorcycle Show are not based on the content of the message (motorcycle lifestyle, opinions, “colors”, patches, and insignia), has failed to demonstrate a “narrow governmental” interest in limiting the size of our event, failed to provide a review of the City Manager’s decision on fees, and has offered no legitimate alternate means for communicating ABATE’s message of increasing motorcycle awareness among the general public.

Several emails and letters from the City of Snohomish state that the sole purpose of the police fees is to maintain public order due to “the strong presence of self-avowed outlaw motorcycle gang members. These members identify themselves as 1%-ers, signifying that are the 1% of the motorcycling population that does not abide by the law.” The City manager also maintains that other “events do not place the same intensity of demand for on us for police support”, and that the “Car Show requires a substantially smaller number of officers.”<sup>10</sup> Mr. Bauman maintains that “Due to the growing presence of outlaw motorcycle club or gang members at the event, the potential for violence is far higher than any other event we stage downtown. If the county is unable to assist in staffing next year’s event, I feel obligated to recommend that the Council deny ABATE’s application for 2005.”<sup>11</sup>

In a December 2004 email, Mayor Loomis stated “we need the event to comply with the footprint to mitigate impacts to the city, businesses and residents, and need an adequate amount of officers for security. without these provisions firmly in place, I am a “no” for this year.”<sup>12</sup>

In December 2004, Mrs. Barbara Bates wrote to Mr. Bauman that she had attended our motorcycle show and said “I have never had such polite treatment from a crowd.”<sup>13</sup> Mr. Bauman responded “however, unlike any of our other events, this event also draws outlaw motorcyclists who give us greater cause for concern about public safety.... These motorcyclists ... have among their membership felons who have criminal records for drugs, violence, and other crimes.... Since it is not usual for members of rival gangs to have conflicts, we believe a strong police presence is not only prudent but necessary.”<sup>14</sup>

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<sup>10</sup> 10/25/04 letter from City Manager to John McGeehan of ABATE

<sup>11</sup> 11/03/04 email from Larry Bauman to Rebecca Loveless with original message from Rebecca Loveless to Larry Bauman

<sup>12</sup> 12/02/04 email from Liz Loomis to Don Everest, owner Java Inn

<sup>13</sup> 12/15/04 letter from Barbara Bates to Larry Bauman

<sup>14</sup> 12/14/04 letter from Larry Bauman to Barbara Bates

However, the City of Snohomish cannot provide a formula or guidelines for determining the number of police officers required for a special event. One email from Acting Police Chief Macklin to the City Manager states “we estimate our needs based upon the historical perspective of our event, the specific event organizer, the size of the footprint, crowd size, duration, and in the case of the MC show the number of 1%’ers.”<sup>15</sup>

Police incident records and After Action reports reveal no reported incidents of violence, drugs, or other crimes attributable to any motorcycle club members in the ten year history of the event. As the persons that have been labeled as “outlaw motorcycle gang members” are not individually identified based on police investigations or outstanding warrants, ABATE can only conclude that such persons have been identified solely based on the attire worn when attending our event.

*Tinker v. Des Moines School District*, 393 US 503 (1969), states that “the wearing of an armband for the purpose of expressing certain views is the type of symbolic act that is within the Free Speech clause of the First Amendment:, and that “the wearing of armbands ... was entirely divorced from actually or potentially disruptive conduct by those participating in it.” Justice Fortas further states “in our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression. Any word spoken ... that deviates from the views of another person may start an argument or cause a disturbance. But our Constitution says we must take this risk.”

*Sammartano* clearly states that “public places historically associated with the free exercise of expressive activities, such as streets, sidewalks, and parks, are considered public fora.” There is no evidence in the police records for the motorcycle show history to support the argument that the mere presence of motorcycle attire (and specifically “outlaw motorcycle gang” attire) will cause public disturbances or increase the likelihood of breaches of peace.<sup>16</sup>

An email from John Hager (HDS) to Council member Melody Clemans clearly directs the council member that “Our public safety department needs to focus on a ‘re-build,’ new leadership and community safety and policing issues...not a crappy, resource sucking, expensive and potentially dangerous motorcycle rally. Council needs to say ‘no,’ not this year.”<sup>17</sup>

*Police Department of Chicago v. Mosley*, 408 US 92 (1972), states

The First Ammendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content. ...under the Equal Protection Clause, not to

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<sup>15</sup> 12/17/04 email from Chuck Macklin to Larry Bauman

<sup>16</sup> *Sammartano V. First Judicial District Court*,

<sup>17</sup> 9/27/04 email from John Hager to Melody Clemans

mention the First Amendment, itself, government may not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views. And it may not select which issues are worth discussing or debating in public facilities. Once a forum is opened to assembly or speaking by some groups, government may not prohibit others from assembling or speaking on the basis of what they intend to say. Selective exclusions from a public forum may not be based on content alone, and may not be justified by reference to content alone.

We reject the city's argument that, although it permits peaceful labor picketing, it may prohibit all nonlabor picketing, because, as a class, nonlabor picketing is more prone to produce violence than labor picketing. Predictions about imminent disruption from picketing involve judgments appropriately made on an individualized basis, not by means of broad classifications, especially those based on subject matter. Some labor picketing is peaceful, some disorderly; the same is true of picketing on other themes.

Chicago may not vindicate its interest in preventing disruption by the wholesale exclusion of picketing on all but one subject. Far from being tailored to a substantial governmental interest, the discrimination among pickets is based on the content of their expression.

Charging ABATE excessive fees for police presence at a motorcycle show, based on the presence of motorcycle attire that may or may not lead to violence, is a violation of the First and Fourteenth Amendments.

II. In contradiction to the Mayor's claims that the footprint mitigates "impacts to the city, businesses and residents"<sup>12</sup>, the net effect of the footprint is to reduce available space for free speech events and to increase traffic problems. The adopted footprint restricts all Special Events to the streets designated in the footprint map, and prohibits free assembly in streets not designated. The footprint as adopted most specifically provides direct benefit to Star Center Mall, Collector's Choice Restaurant (owned by John Hager), and Uppercase Books (which has since relocated). The businesses have the benefits of closer parking spaces and no motorcyclists assembling in front of them. It also prohibits special events from using the public street and parking lot of City Hall.

The City of Snohomish has no impelling governmental interest served by preventing all citizens from exercising their rights of free speech and assembly in front of City Hall, or limiting which businesses may be affected by street closures for peaceable public assembly. See *Schneider v. New Jersey*, 308 US 147 (1939).

The footprint as adopted creates public safety hazards with a road closure mid-block on Union Avenue and inadequate turn around space in the City Hall

parking lot. The open block of Pearl Street ends with a road closure at Glen Avenue without adequate space for cars to turn around. Vehicles are expected to use the bookstore parking lot (private property) to turn around on Pearl Street. City Council and City Staff ignored testimony about concerns of public safety.<sup>18</sup> During the September 2005 car show, vehicles were improperly using the wrong, one-way entrance to the City Hall parking lot to turn around.<sup>19</sup>

Public records indicate that the Special Event Footprint was developed in retaliation for the Motorcycle Show using Second Street during the 2004 event (which was recommended to ABATE by the Snohomish Police Department). Members of HDS and City staff provide contradictory information regarding origins of the Special Event footprint.

John Hager (HDS) emailed Larry Bauman as early as May 14, 2004, regarding developing a maximum footprint for downtown. Hager stated "We do not (at this point) want to include the Motorcycle folks for a number of reasons." Bauman approved "the Chamber and HDS" making recommendations on the footprint.<sup>20</sup> Hager promised to meet with Kila Ha Ya Committee and return a draft footprint by the end of the week. He also complained about losing money during the motorcycle show.<sup>21</sup>

In a September 17, 2004, email Mayor Loomis asked HDS and Chamber of Commerce to send their proposed drafts of the event footprint to City Staff for review. Included in this email thread is the statement:

You mentioned that you have not been able to find an event that can replace the motorcycle show, so you must be looking for an event? There does seem to be a concern among merchants that this is not an event that works, with stores boycotting it.

Chamber and HDS should work together to create an event or several that really work for the merchants and for Chamber fund raising. – Jackie Kiter, HDS<sup>22</sup>

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<sup>18</sup> 11/3/2004 letter from Tom Kelley to City Council, read at 11/3/04 Council meeting

<sup>19</sup> 9/25/05 photos taken at Union Avenue and City Hall showing improper Road Closed signage, inattentive barricade personnel, and brown car turning into exit of City Hall parking lot.

<sup>20</sup> 5/17/04 email thread Larry Bauman to John Hager with original message from John Hager to Larry Bauman dated 5/14/04

<sup>21</sup> 5/17/04 email thread John Hager to Larry Bauman

<sup>22</sup> 9/17/04 email thread Liz Loomis to Paul Turner (HDS), Colleen Hill (Chamber), Larry Bauman, with original message from Jackie Kiter (HDS) to Colleen Hill, Paul Turner, and Brad Jorgenson (Chamber); 9/18/04 email thread from Paul Turner to Loomis, Larry Bauman, and Colleen Hill in reply to Mayor's 9/17/04 email

Compare this email (replace the motorcycle show) with the December 2, 2004, email from Paul Turner:

Neither HDS nor the Chamber created the Maximum Event Footprint – City Staff did. We only gave input as requested by the City.

The HDS is not for or against the motorcycle show. We have not gotten the input from the HBD to say either, AND I talked to the City and they said our opinion would not be a deciding factor.<sup>23</sup>

The above email also contradicts the 5/14/04 email from John Hager regarding the footprint and the motorcycle show.

On September 11, 2004, John Hager (HDS) threatened the President of the Chamber of Commerce over footprint issues: “Under NO CIRCUMSTANCES should HDS or the Chamber ‘go public’ with two different versions... AND Under NO CIRCUMSTANCES should the Chamber contact ABATE to gain an ‘ally.’ This footprint thing is really a result of that group ‘going onto 2<sup>nd</sup> Street,’ and wanting more and more. The chamber would be hurt badly if such a thing occurred.”<sup>24</sup> This email was forwarded to Council member Melody Clemans.

On September 24, 2004, HDS submitted a proposed event footprint. This proposal makes no mention that City Staff suggested the footprint.<sup>25</sup>

Public testimony was taken on the event footprint at the 11/3/04 City Council meeting. In spite of serious safety concerns over the footprint, City Council approved the footprint without input from the Police Department.<sup>26</sup>

On November 7, 2004, John Hager emailed Melody Clemans and Mayor Loomis with proposed response letters from HDS to ABATE regarding public testimony on safety and procedural issues with the event footprint. Melody Clemans approved the letters.<sup>27</sup>

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<sup>23</sup> 12/02/04 email from Paul Turner to various members of HDS, including Melody Clemans

<sup>24</sup> 9/11/04 email thread John Hager to Brad Jorgenson (Chamber), forwarded to Melody Clemans and Paul Turner

<sup>25</sup> 9/24/04 letter from HDS to City of Snohomish

<sup>26</sup> 11/03/04 City Council Meeting Minutes, 11/03/04 letters from TM Kelley and Beryl Doane, read at Council meeting

<sup>27</sup> 11/07/04 email thread from John Hager to Melody Clemans and Liz Loomis

In a 12/02/04 email from Paul Turner to various members of HDS, Mr. Turner claims that the City Staff created the footprint.<sup>28</sup> The 12/14/04 email from Larry Bauman to Geoff Wall states “Yes, I have worked with John and Paul regarding the footprint issue – it was a proposal that came from them as a way to contain the impact of events on the community.”<sup>29</sup>

Note that Mr. Wall referred to John Hager as “Prime Minister Hager,” but Mr. Bauman failed to dispute the meaning in his response.

III. The City of Snohomish received the ABATE Special Event Permit application on November 2, 2004. The Special Event footprint was approved by City Council on November 3, 2004. A law cannot be retro-actively applied to a permit in process, yet City Council required ABATE to comply with the footprint as a condition of the 2005 Permit.

IV. At a 10/12/04 meeting, Chief Macklin informed ABATE of possible lack of sheriff deputies for 2005, and Mr. Bauman maintained that “the permit would be denied for the 2005 Old Snohomish Antique & Classic Motorcycle Show.” Mr. Bauman had given no consideration to the lack of deputies for other events.<sup>30</sup>

Several emails and letters already quoted detail the City Manager’s and Mayor’s characterization of the motorcycle show as a dangerous event due to the presence of outlaw motorcycle gangs. Police incident records dispute this claim, as previously noted. In spite of the October 5, 2004, letter from Sheriff Bart regarding possible lack of available sheriff deputies, several deputies did in fact work the May 15, 2005, Motorcycle Show.<sup>31</sup>

Public records indicate that the issue of public safety was used as an excuse to prevent ABATE and motorcyclist visitors from exercising their rights of free speech and public assembly.

In a May 17 email to Mayor Loomis, John Hager states: “HDS may simply say enough is enough. We are trying to fit a square peg into a round hole.” In the same email thread from John Hager to Liz Loomis, Hager also stated “I am reasonably certain he [John McGeehan] will not seriously ‘consider’ voluntarily moving it.”<sup>32</sup>

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<sup>28</sup> 12/06/04 email thread between Paul Turner and Susan Kempf, with original message from Paul Turner to various members of HDS dated 12/02/04

<sup>29</sup> 12/14/04 email thread between Geoff Wall and Larry Bauman

<sup>30</sup> 10/19/04 letter from John McGeehan summarizing the 10/12/04 meeting city City Staff and Paul Turner

<sup>31</sup> 10/5/2004 Letter from Sheriff Bart to City of Snohomish

<sup>32</sup> 5/17/04 email thread from John Hager to Liz Loomis

In another email thread dated 9/27/04 between Larry Bauman and John Hager, Mr. Bauman invites Mr. Hager to sit in on discussions with ABATE regarding the motorcycle show. John Hager states "Melody ... will vote to not have the rally this year....Once the three other members 'have the facts' we may have a fifth or sixth vote."<sup>33</sup> Refer also to earlier comments from Hager noted at 17 and 20.

The City formally notified ABATE of problems with police staffing in a 10/25/04 letter from the City Manager.<sup>10</sup> Paul Turner of HDS approved the content of this letter before Mr. Bauman sent it to ABATE, and stated that "it does not tell them that we are determined to get rid of them at any cost".<sup>34</sup>

One result of this 10/25/04 email was the resignation of John McGeehan as ABATE's Bike Show Committee chair due to a fear of exactly what "at any cost" meant.<sup>35</sup> See also 24, email threatening Chamber of Commerce.

After the 11/19/04 meeting between City Manager, Chief Macklin, Buck Kelley, Several ABATE members, and ABATE's attorney, Mr. Bauman continued to pursue canceling the motorcycle show. In an 11/29/04 email to the City Clerk Mr. Bauman wrote "I think I can turn them down based upon what I know."<sup>36</sup>

A summary of the 11/19 meeting was included in ABATE's letter of 11/24/05. Discussions at the meeting centered around locating solutions to public safety issues and the footprint. Nothing discussed at the meeting indicated that City Manager had any grounds for denying the permit, and Mr. Bauman left with an action item to research insurance requirements for hiring off-duty police officers.<sup>37</sup> In a 12/6/04 email to Don Everest, Mr. Bauman wrote that "I do not believe the footprint will be an obstacle for the motorcycle show."<sup>38</sup> If this were so, then the only issue on which Mr. Bauman believed the permit could be denied would be police presence. Mr. Bauman did not contact the City's

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<sup>33</sup> 9/27/05 email thread from John Hager to Larry Bauman

<sup>34</sup> 10/25/04 email thread from Larry Bauman to Paul Turner, with original message from Paul Turner to Larry Bauman and John Hager.

<sup>35</sup> 12/8/04 letter from John McGeehan to Larry Bauman

<sup>36</sup> 11/29/04 email thread from Larry Bauman to Torchie Corey with original message from Torchie Corey to Larry Bauman regarding ABATE's 11/24/05 letter.

<sup>37</sup> 11/24/04 letter from ABATE to Larry Bauman summarizing the meeting on 11/19 with City and ABATE. City failed to respond in writing to this letter.

<sup>38</sup> 12/06/04 email thread from Larry Bauman to Don Everest with original message dated 12/05/04 from Don Everest to Larry Bauman.

insurance agent until 12/6/04, one week after stating that he had enough information to cancel the event.<sup>39</sup>

*The Everett Herald* ran a story on 12/02/04 about the possibility of Snohomish canceling the event. *The Snohomish County Tribune* ran a story on 12/08/04.<sup>40</sup>

In a 12/02/05 email Mayor Loomis states "I do not appreciate abate's efforts to escalate this into something it is not, persecute individual members of this community, or give the perception that they are being unfairly treated because they are bikers." She also complains that she has "been barraged by a host of public information requests as if I have somehow been conspiring against all and sundry."<sup>41</sup>

On 12/07/04, ABATE member Beryl Doane telephoned Sheriff Bart to discuss hiring Sheriff Deputies, as was approved by City Staff at the 11/19/04 meeting and confirmed in ABATE's 11/24/04 letter. Sheriff Bart stated that "the City of Snohomish has told the Sheriff's office that off-duty officers are not wanted by the City."<sup>42</sup>

In a 12/10/04 email thread between Larry Bauman and Tom Mehren of SoundRider magazine ([www.soundrider.com](http://www.soundrider.com)), Mr. Bauman failed to dispute Mr. Mehren's claim that "Turner and others have long wanted to see this event disappear for several years." Mr. Bauman also raises the issue of the presence of "outlaw motorcycle gangs", the lack of police support, and states:

I am directly working with ABATE's Sky Valley Chapter to look at alternatives that may allow us to support this event. At this time, I am not sure whether those alternatives will be fruitful. If we can replace those 13 Sheriff's Office deputies with officers from another source, I will recommend that our City Council approve ABATE's application for 2005. Until then the fate of this year's event is in question.<sup>43</sup>

In a January 12, 2005, letter Mr. Bauman asked ABATE to stop advertising their event until City Council approved the permit. This request is a clear violation of ABATE's right to free speech and clearly damage's ABATE's ability to present the

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<sup>39</sup> 12/06/04 email thread between Robert Roscoe of WCIA Risk Management and Larry Bauman

<sup>40</sup> 12/8/04 *Snohomish County Tribune* article "Snohomish may cancel motorcycle show"

<sup>41</sup> 12/02/05 email from Liz Loomis to Don Everest, in response to email from Don Everest

<sup>42</sup> 12/07/04 letter from Beryl Doane to Snohomish County Sheriff Bart

<sup>43</sup> 11/10/05 email thread between Larry Bauman and Tom Mehren

event as viable while continuing to negotiate in good faith with the City over issues of public safety and free speech.<sup>44</sup>

Mr. Kelley (ABATE) wrote to Mr. Bauman on 1/16/05 requesting written response for ABATE's 12/08/04 and 12/20/04 letters, and stated that "Our discussions with the Snohomish County Deputies Guild have been hindered by your own statements to the Guild." Several other matters are noted, including lack of timely response to requests for public information and failure of the City to negotiate in good faith. Mr. Bauman failed to respond to the questions in writing.<sup>45</sup>

At no time was City Council or the City Manager presented with clear guidelines for approving the Permit Application, based on facts and narrowly defined governmental interests. If a Council is allowed to accept or reject applications for free speech assembly based on the popularity of the message, then free speech will be severely restricted.

In *Niemotko v. Maryland*, 340 US 268 (1951), the appellant's "application to a City Council for permits to use a city park for Bible talks were denied, for no apparent reason except the Council's dislike for appellants and disagreement with their views. There was no ordinance prohibiting or regulating the use of the park and there were no established standards for granting permits; but permits customarily had been granted for similar purposes, including meetings of religious and fraternal organizations." The court found that:

- (a) The right to equal protection of the laws, in the exercise of those freedoms of speech and religion protected by the First and Fourteenth Amendments, has a firmer foundation than the whims or personal opinions of a local governing body.
- (b) A contention that state and city officials should have the power to exclude religious groups, as such, from the use of public parks was no justification when permits had always been issued for the use of the park by religious organizations.
- (c) A contention that the park was designated as a sanctuary for peace and quiet was no justification when its use for patriotic celebrations by fraternal organizations was permitted.
- (d) The lack of standards in the licensing-issuing "practice" renders that "practice" a prior restraint in contravention of the Fourteenth Amendment, and the completely arbitrary and discriminatory refusal to grant the permits was a denial of equal protection.

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<sup>44</sup> 1/12/05 letter from Larry Bauman to ABATE

<sup>45</sup> 1/16/05 letter from Buck Kelley to Larry Bauman

*Hague v. Committee for Industrial Organization*, 307 US 496 (1939), states “streets and parks ... have immemorially been held in trust for the use of the public and, time out of mind, have been used for the purposes of assembly, communicating thoughts between citizens, and discussing public questions.” The ordinance in question was held to be “void upon its face” because it “enables the Director of Safety to refuse a permit on his mere opinion that such refusal will prevent ‘riots, disturbances or disorderly assemblage’.”

*Schneider v. New Jersey*, 308 US 147 (1939) held that:

Although a municipality may enact regulations in the interest of public safety, health, welfare or convenience, these may not abridge the individual liberties secured by the Constitution to those who wish to speak, write, print, or circulate information or opinion.

This court has characterized the freedom of speech and that of the press as fundamental personal rights and liberties. The phrase is not an empty one and was not lightly used. ... It stresses, as do many opinions of this court, the importance of preventing restriction of enjoyment of these liberties.

But, as we have said, the streets are natural and proper places for the dissemination of information and opinion; and one is not to have the exercise of his liberty of expression in an appropriate place abridged on the plea that it may be exercised in some other place.

...a municipality cannot, for this reason, require all who wish to disseminate ideas to present them first to police authorities for their consideration and approval, with a discretion in the police to say some ideas may, while others may not, be carried to the homes of citizens.

V. Historic Downtown Snohomish acknowledged the economic advantages of the motorcycle show to the downtown business community in the 2/11/03 email from John Schedler to the HDS Main Street email list.<sup>46</sup> Even so, HDS misrepresented community events to the State of Washington in its April 2003 Washington State Downtown Revitalization Program Start-Up Application for economic development (“Main Street” program).

On Page 4 of the application, Question 15, “What are the major attractions, festivals, and special events that bring tourists to your community?”, the HDS response blatantly omits the existence of the motorcycle show, which attracted

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<sup>46</sup> 2/11/03 email from John Schedler to SnohomishMainStreet email list, a moderated list for HDS supporters

over 10,000 visitors to Snohomish in 2002.<sup>47</sup> Several places in the HDS application make references to “diversity”, “entertainment”, “promote visitation”, “cultural issues”, “civic gathering spaces”, “locations for festivals, events, ..., and group gatherings” as key ingredients in our city’s history and future development plans. Attachment A-17, Best features of Snohomish, makes note of the “reliant, diverse, and responsive residents” in our city.

Attachment A-27, a letter of recommendation for HDS from the Mayor and City Manager, states that “City Council has continued to support our Historic Business District in the downtown area through capital improvements, maintenance programs and support of special events.”

On December 6, 2004, Paul Turner sent two emails to Susan Kempf with the State of Washington. The first explained that HDS was not involved in efforts to cancel the motorcycle show (see 28). Mr. Turner failed to notify the State in previous discussions and documents of the very existence of the motorcycle show. However, The City of Snohomish included a photograph of the 2004 motorcycle show in a police chief recruitment brochure. A copy of the brochure was sent via email from Mr. Bauman to City Council Members on 9/13/04.<sup>48</sup>

Earlier in the day on 12/6/04, Susan Kempf sent email to Mr. Turner stating that a member of ABATE had called her regarding attempts by HDS to cancel the motorcycle show. Mr. Turner forwarded the email to Larry Bauman.<sup>49</sup>

VI. A review of Public Records reveals that members of HDS and the Chamber of Commerce have researched and widely discussed replacing the motorcycle show with a different event. Mayor Loomis and Larry Bauman were aware of the discussions.

The 5/17/04 email from John Hager to Liz Loomis states:

I certainly understand council makes these decisions, not HDS, not staff, not anyone other than Council. The problem most of our neighbors continue to have is on what basis the decision is made. Discussions center on (1) image of an event relative to the “goal,” (something most councils don’t want to deal with), (2) who benefits (the “why are we doing this question”), (3) city costs and how large do we allow an event to grow, and (4) where profits go.<sup>29</sup>

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<sup>47</sup> Washington State Downtown Revitalization Program Start-Up Application, April 2003, pages 1, 4, 31, 58, 119, 120, 121, 122, 124, 134, and 145

<sup>48</sup> 9/13/04 email from Larry Bauman to City Council with pages 1-4 of the attached brochure

<sup>49</sup> 12/6/04 email thread between Larry Bauman and Paul Turner, with original message from Susan Kempf to Paul Turner.

The 9/17/04, email from Jackie Kiter (HDS) to Colleen Hill (Chamber) states:

You mentioned that you have not been able to find an event that can replace the motorcycle show, so you must be looking for an event?

Chamber and HDS should work together to create an event or several that really work for the merchants and for Chamber fund raising.<sup>22</sup>

ABATE of Washington is a non-profit state motorcycle rights organization. Our “goal” has been and remains to educate the general public and motorcyclists about motorcycle issues, legislation, safety, and lifestyle. Our goal at the Snohomish Motorcycle Show is to park motorcycles downtown for one day in celebration of the annual Motorcycle Awareness month in Washington.

To replace the motorcycle show with any other type of event would suppress ABATE’s right to free speech in a public forum.

**VII.** Several letters and agendas from ABATE to the City of Snohomish from 2000 through 2005 complain about excessive police presence, fees, costs, and ABATE’s constitutionally protected rights of free speech. The City repeatedly failed to respond.<sup>50</sup>

On May 10, 2005, ABATE requested that the City of Snohomish add the following language to Section 2.12 of their Special Event contract for 2005:

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<sup>50</sup> Historical letters included:

- 10/06/00 letter from ABATE to City of Snohomish requesting public records on events and police reports
- 10/06/00 letter from ABATE to City of Snohomish disputing amount of 2000 bill
- 12/20/00 letter restating disputed amount of 2000 bill
- 12/10/02 agenda for meeting with City Manager (Larry Bauman)
- 12/10/02 letter from ABATE to City of Snohomish protesting excessive fees, ambiguous permit process, and profiling motorcyclists
- 2002 Event comparison chart for Klā Ha Yah Days, Car Show, and motorcycle show
- 2/20/03 letter from ABATE to City of Snohomish disputing fees for building inspections
- 2/20/03 letter from ABATE to City of Snohomish correcting City’s statement that the 2002 bill was not paid in full.
- 3/17/03 agenda for meeting with City staff stating lack of justification for requirements, inconsistency requirements, and excessive police presence
- 5/10/05 letter from ABATE to City of Snohomish requesting an after-event audit of police fees, protesting excessive fees, requesting equal billing language in contract for 2005 show

Both parties will provide a detailed summary of time and services and agree on the final bill. Abate will be charged no more than other events using similar services.<sup>51</sup>

Mr. Bauman refused to add the language (the Car Show Contract for a maximum of 25 police hours had been signed on 5/06/04) and maintains that equitable billing had not been mentioned as an issue by ABATE in the past few months (see list of documents in 50). In the 5/02/05 email from Mr. Bauman to Buck Kelley, Mr. Bauman stated that the 150 hours of police time were needed to cover the expense of Snohomish Police staff for the event, and that the security team required for the ABATE permit did “not replace commissioned officers” and there was no “diminished requirement for Officer overtime.” ABATE was forced to pay for both private security and police officers.

As the event was scheduled for 5/15/05, ABATE had no choice other than to accept the City’s terms under protest.

Mr. Bauman also stated that he had not been “inciting fear” in town. However, 2/7/04 email from Don Everest reveals that Snohomish Police Officers had been telling business owners that ABATE members had harassed businesses in town. “This sounds to me like the City has waged a full scale war against the bike show and anyone who supports the show. ...the City is circling their wagons big time.”<sup>52</sup>

At a 10/11/2005 meeting to discuss the Special Event Footprint for all 2006 events, the City agenda included an item for police support and a “formula to be developed for City Police Officer staffing to be applied to all events uniformly”. Thus, the City of Snohomish has finally acknowledged that events have been billed unequally in the past, and that such a practice must be changed.<sup>53</sup>

## **Summary**

In conclusion, ABATE requests a full refund of all fees paid to the City of Snohomish in excess of the amount charged the annual Classic Car Show.

A price cannot be placed on the exhaustive work in researching the City documents, the added stresses of dealing with the media over the story of possible closure, the extra-ordinary efforts to raise the additional funds required for the 2005 show, the additional word-of-mouth advertising and discussions months after the story first leaked to the press of possible cancellation to convince people that the show was not cancelled, the stress of having a peaceful, non-violent event characterized as dangerous without basis, and the

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<sup>51</sup> 5/10/05 email thread between Larry Bauman and Beryl, with messages dating back to 4/29/05, 8 pages

<sup>52</sup> 2/07/04 email from Don Everest to Beryl Doane

<sup>53</sup> 10/11/05 Meeting Notice, Sponsors and Special Event Committee,

thought of possible loss of our rights to free assembly in our home town. No financial damage value can be placed on the loss of First Amendment rights.

ABATE requests **\$23,128.42** from the City of Snohomish for damages.

Supporting documents were obtained through Requests for Public Records.

Signed this \_\_\_\_\_ day  
in Snohomish, Washington

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TM Buck Kelley  
ABATE of Washington, Sky Valley Chapter  
Legislative Affairs  
Bike Show Committee Program Manager  
20+ year resident of Snohomish  
1513 Second Street  
Snohomish, WA 98290

53 noted Attachments, Table of Financial Data, and Summary of Police incident reports included as part of this claim.

**Table 1: Financial data for Special Events 2000 -2004**

The following table summarizes the financial records supplied by the City of Snohomish for Special Events for 2000 through 2004.

Year	Motorcycle Show	Kla Ha Ya Days (3 days)	Car Show
2000	Billed 82.5 hrs for police, total \$3712.50	Billed 35 hrs for police total, \$1575	Billed 16 hours, \$720
2001	Billed \$3240	Missing all records.	Billed 31 hours, \$1395
2002	Billed \$3600	Billed \$4140	Billed 39 hours, \$1755
2003	Billed 89.5 hrs for police total, \$4027.50, plus 2 hrs inspection for \$100.	Billed 131.25 hrs for police, total \$5906.25, plus 2hrs inspection for \$100.	No inspection fees. Billed 40 hrs for police, total \$1800.00
2004	Billed 122.0 hrs for police, total \$5490.00, plus 6.5 hrs inspection for \$325.	Missing all records.	Missing all records. Assume billed same as 2003, \$1800.
2005	Billed 150 hours, \$6750. Starplex security billed <sup>54</sup> \$5378.42	(no records requested)	Based on 5/6/2005 contract, maximum 45 hours, \$2025 billable.
Total billed for each event for 2000 – 2005			
	<b>\$32,623.42</b>		<b>\$9495</b>
<b>32,623.42</b> <b>- 9495</b> <b>\$23,128.42 Overbilled Motorcycle Show</b>			

\* Sources: Financial records, Special Event Contracts, and After Action Reports obtained from City through Public Records Requests. "Missing all records" indicates failure of City to provide records for RFI requests.

<sup>54</sup> Starplex invoice with ABATE check number and amount tendered \$5378.42

**Summary of Police incident reports for events 2002 through 2004.**

1. **2002 MC Show** No records provided.
2. **2003 MC Show** (1) 1 mini-van crashed into 4 parked motorcycles.
3. **2004 MC Show** (1) DUI at 16:40, 1700 block of First St (outside road closure area).  
(2) Warrant Arrest at 17:35, 1000 block of First.
4. **2002 Kla Ha Yah Days** (1) Driving Suspended at 18:11.  
(2) Driving Suspended at 18:52  
(3) Assault, juvenile 15:03  
(4) DUI 1:39  
(5) Reckless Driving 6:27  
(6) Driving Suspended 20:19  
(7) Disorderly Conduct (public urination) 1:00
5. **2003 Kla Ha Yah Days** (1) Warrant Arrest 5:54pm  
(2) Reckless Driving 21:45  
(3) Possession GVM 1:30  
(4) Reckless Driving 10:15 (Nanook race car, ticket dismissed at court)
6. **2004 Kla Ha Yah Days** (1) Assault
7. **2002 Classic Car Show** No records provided.
8. **2003 Classic Car Show** (1) Juvenile theft.
9. **2004 Classic Car Show** No records provided.