

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

DEPARTMENT C14

JULIE FOLCIK,)
)
) PETITIONER,)
) VS.) NO. 30-2012
) 00553905
)
) ORANGE COUNTY REGISTRAR OF)
) VOTERS AND NEAL KELLEY, REGISTRAR)
) OF VOTERS,)
)
) RESPONDENTS.)
)
)

HONORABLE FRANZ E. MILLER, JUDGE PRESIDING

REPORTER'S TRANSCRIPT

MONDAY, MARCH 26, 2012

APPEARANCES OF COUNSEL:

FOR THE PETITIONER:

JONES DAY
BY: RICHARD J. GRABOWSKI, ESQ.
BY: JOHN A. VOGT, ESQ.

FOR THE RESPONDENT ORANGE COUNTY REGISTRAR OF VOTERS AND NEAL KELLEY:

LEON J. PAGE
DEPUTY COUNTY COUNSEL

FOR THE INTERVENORS JOHN B. STEPHENS AND KATRINA FOLEY:

STEPHENS FRIEDLAND LLP
BY: JOHN B. STEPHENS, ESQ.
BY: TODD G. FRIEDLAND, ESQ.
KATRINA ANNE FOLEY
ATTORNEY AT LAW

FOR THE INTERVENORS MARY SPADONI AND WILLIAM FOLSOM:

STRUMWASSER & WOOCHEER LLP
BY: BYRON F. KAHR, ESQ.

JANET M. TAYLOR, CSR 9463, RMR, CRR
OFFICIAL COURT REPORTER

1 **SANTA ANA, CALIFORNIA; MONDAY, MARCH 26, 2012**

2 **MORNING SESSION**

3 **(PROCEEDINGS IN OPEN COURT:)**

4 *** * ***

5 **THE COURT:** OKAY. JULIE FOLCIK VS. ORANGE COUNTY
6 REGISTRAR OF VOTERS.

7 **MR. STEPHENS:** GOOD MORNING, YOUR HONOR. JOHN
8 STEPHENS, S-T-E-P-H-E-N-S, OF STEPHENS FRIEDLAND LLP ON
9 BEHALF OF MYSELF, JOHN STEPHENS AND KATRINA FOLEY.

10 **MS. FOLEY:** GOOD MORNING, YOUR HONOR. I'M KATRINA
11 FOLEY ON BEHALF OF MYSELF AND JOHN STEPHENS.

12 **MR. FRIEDLAND:** GOOD MORNING, YOUR HONOR. TODD
13 FRIEDLAND ON BEHALF OF PROPOSED INTERVENORS JOHN
14 STEPHENS AND KATRINA FOLEY.

15 **MR. KAHR:** GOOD MORNING, YOUR HONOR. BYRON KAHR,
16 STRUMWASSER & WOOCHEER, FOR PROPOSED INTERVENORS MARY
17 SPADONI AND WILLIAM FOLSOM.

18 **MR. PAGE:** GOOD MORNING, YOUR HONOR. LEON PAGE,
19 DEPUTY COUNTY COUNSEL, ON BEHALF OF NEAL KELLEY AND THE
20 ORANGE COUNTY REGISTRAR OF VOTERS.

21 **MR. VOGT:** GOOD MORNING, YOUR HONOR. JOHN VOGT ON
22 BEHALF OF PETITIONER.

23 **MR. GRABOWSKI:** RICHARD GRABOWSKI ON BEHALF OF
24 PETITIONER.

25 **THE COURT:** I AM TOLD THAT WE HAVE IN THE AUDIENCE
26 TODAY SOME YOUNGER CITIZENS OF THE CITY OF COSTA MESA,

1 HIGH SCHOOL STUDENTS, I BELIEVE, WHO, THROUGH A
2 MENTORING PROGRAM, DESIRE TO ATTEND TODAY TO HEAR THESE
3 PROCEEDINGS.

4 AND AS A RESULT OF THAT, AND PERHAPS ALSO JUST
5 AS A JUMPING OFF POINT TO MAKE SURE THAT I DO UNDERSTAND
6 THE FACTUAL DYNAMICS OF WHAT'S GOING ON HERE TODAY, LET
7 ME RECITE FOR THEIR BENEFIT AND MY BENEFIT AND YOUR
8 BENEFIT. I JUST WANT TO MAKE SURE I WASN'T SAYING THIS
9 TO BORE YOU BECAUSE YOU ALREADY KNOW WHAT THE DYNAMICS
10 ARE, OBVIOUSLY. BUT IN THIS --

11 **(PAUSE IN PROCEEDINGS)**

12 **THE COURT:** AS I UNDERSTAND THE FACTS GENERALLY,
13 THE -- ON OR ABOUT MARCH 6 OF THIS YEAR, THE COSTA MESA
14 CITY COUNCIL PASSED A RESOLUTION OR TOOK OTHER OFFICIAL
15 ACTION TO PUT THE ISSUE OF WHETHER COSTA MESA SHOULD BE
16 A CHARTER CITY ON THE -- ON THE BALLOT FOR A VOTE BY THE
17 CITIZENS OF COSTA MESA AND THAT THEY ULTIMATELY GOT THE
18 PAPERWORK.

19 WE'LL SAVE FOR ANOTHER DAY OR ANOTHER ACTION
20 WHETHER IT WAS THE -- ALL OF THE CORRECT PAPERWORK, BUT
21 THEY GOT THE PAPERWORK TO THE REGISTRAR OF VOTERS ON
22 MARCH 12 AND THAT THE LAST DAY TO GET IT ON FILE AT
23 LEAST 88 DAYS BEFORE THE ELECTION, WHICH EVERYONE SEEMS
24 TO AGREE IS THE LEGAL REQUIREMENT UNDER THE APPLICABLE
25 CODE SECTIONS, THE LAST DAY WAS MARCH 9TH, AND THAT AS A
26 RESULT OF THAT, ON THE 12TH, THE REGISTRAR DECLINED TO

1 ACCEPT THE FILING, THEREBY PRECLUDING IT, AT LEAST FOR
2 THE TIME BEING, FROM BEING PLACED ON THE BALLOT FOR THE
3 JUNE 5 ELECTION.

4 AND THE CITY, AS A RESULT, BROUGHT A PETITION
5 FOR WRIT OF MANDATE, THE PURPOSE OF WHICH IS TO HAVE
6 THIS COURT ORDER THE REGISTRAR OF VOTERS TO PUT THE
7 ISSUE -- THE CHARTER CITY ISSUE ON THE JUNE 5TH BALLOT.

8 THE REGISTRAR ESSENTIALLY HAS TAKEN NO POSITION
9 ON THE WRIT OF MANDATE PROCEEDING. AND AT THE TIME THAT
10 THE WRIT PETITION WAS FILED IN THIS COURT -- IT MUST
11 HAVE BEEN THE 20TH. THAT WAS MY LAST DAY THAT -- LAST
12 FULL DAY ON SITE.

13 **MR. STEPHENS:** THAT'S NOT RIGHT. IT WAS -- THE
14 ACTUAL WRIT PETITION -- THIS IS JOHN STEPHENS -- TAKEN
15 WAS MARCH 14TH. WE CAME INTO COURT ON MARCH 20TH. THAT
16 WAS THE DAY THAT WE HAD ESTABLISHED THE BRIEFING
17 SCHEDULE. AND WE FILED OUR --

18 **THE COURT:** OKAY. SO PETITION COMES IN, AND IT
19 JUST GETS SET FOR AT LEAST INITIAL HEARING ON THE 20TH.
20 IS THAT IT?

21 **MR. STEPHENS:** CORRECT. IT WAS SET ON AN EX-PARTE
22 BASIS, AND THE REGISTRAR OF VOTERS WAS PROVIDED NOTICE
23 BY THE PETITIONERS PRESUMABLY ON THE 19TH BECAUSE I HAD
24 COMMUNICATION, WHICH IS PART OF THE RECORD, A WRITTEN
25 COMMUNICATION FROM THE CITY OF COSTA MESA ON THE 16TH
26 SAYING THERE WAS NO JUDGE ASSIGNED.

1 SO I PRESUMED THAT UNDER THE RULES OF COURT, BY
2 THE 19TH, BEFORE 10:00 O'CLOCK ON THE 19TH, EX-PARTE
3 NOTICE WAS MADE TO THE REGISTRAR OF VOTERS BY THE
4 PETITIONERS. WE -- WE FOUND OUT AT ABOUT 10:00 O'CLOCK
5 ON THE 19TH, A WEEK AGO, OF THIS MATTER THAT WAS GOING
6 TO BE HEARD ON THE 20TH. SO KATRINA FOLEY AND I DECIDED
7 ABOUT 11:30 A.M. ON THE 19TH WE WOULD PREPARE OUR AMICUS
8 BRIEF.

9 **THE COURT:** OKAY. AND IN ANY EVENT, IT AT LEAST
10 HITS THIS COURT'S, AS IN MY, RADAR SCREEN ON THE 20TH.
11 AND THEN THE REPRESENTATION WAS MADE AT THAT HEARING BY
12 MR. PAGE FOR THE REGISTRAR THAT ESSENTIALLY IF IT -- IF
13 THE MATERIALS WERE GOING TO BE PREPARED, BALLOT
14 STATEMENTS, WHATEVER, THEY WERE GOING TO BE PREPARED,
15 THEY HAD TO BE PREPARED BY, AT LEAST ON OR VERY CLOSE,
16 ABOUT APRIL 1ST IF THIS WAS GOING TO HAPPEN FOR THE JUNE
17 ELECTION.

18 SO FOR THAT REASON, WE PUT THIS ON A TIGHT
19 BRIEFING SCHEDULE, WHICH IS A MATTER OF RECORD. AND
20 EVEN THOUGH I WAS TECHNICALLY ON VACATION THE LAST THREE
21 DAYS OF LAST WEEK, I CAME IN ON WEDNESDAY TO START
22 COORDINATING WITH OUR STAFF ATTORNEY AND THEN KEPT IN
23 CONTACT WITH HER OVER THE WEEKEND TO TRY TO GET
24 DECISIONS ON THIS AS QUICKLY AS POSSIBLE SO THAT IF
25 RELIEF WERE APPROPRIATE, IT COULD BE DONE BEFORE IT WAS
26 MOOT, PRETENDING FOR A MOMENT THAT THERE WOULD BE NO

1 FURTHER REVIEW OF THIS MATTER.

2 AND SO WHAT I DID WAS -- IN MY VIEW, THE
3 THRESHOLD ISSUE IS THAT THE PROPOSED INTERVENORS --
4 MS. SPADONI, MR. FOLSOM, MR. STEPHENS, AND MS. FOLEY --
5 DETERMINATION SHOULD BE MADE WHETHER OR NOT THEY SHOULD
6 BE ALLOWED TO INTERVENE. AND IF THE DECISION ON THAT IS
7 YES, THEN TO HAVE ARGUMENT ON THE MERITS OF THE WRIT
8 PETITION.

9 SO WE SCHEDULED THIS MORNING FOR A
10 CONSIDERATION OF WHETHER OR NOT THE FOUR PEOPLE I JUST
11 MENTIONED SHOULD BE ALLOWED TO INTERVENE IN THE MATTER.
12 AND IF THE ANSWER IS NO, WE PROCEED WITHOUT THEM TO HEAR
13 ARGUMENT TOMORROW ON THE MERITS OF THE WRIT. IF THE
14 ANSWER IS YES, THEN THE COURT WILL CONSIDER THEIR
15 OPPOSITIONS WHICH THEY HAVE FILED IN ORDER TO KEEP
16 THINGS TIMELY. THOSE GOT FILED LAST WEEK.

17 AND SO IF THEY ARE -- TO USE A NONTECHNICAL
18 TERM, IF THEY BECOME PLAYERS IN THIS PARTICULAR WRIT
19 PROCEEDING, THEN I WILL REVIEW THEIR THOUGHTS ON THE
20 MATTER AND PROCEED ACCORDINGLY.

21 SO THE ISSUE TODAY IS THE ISSUE OF
22 INTERVENTION, IN OTHER WORDS, WHETHER OR NOT THESE FOUR
23 INDIVIDUALS, WHO ARE ALL CITIZENS OF COSTA MESA AND AT
24 LEAST SOME OF WHOM ARE, IF NOT ALL, ARE OPPONENTS OF THE
25 PROPOSED -- WHAT IS THIS CALLED? THIS --

26 **MR. GRABOWSKI:** CHARTER.

1 **THE COURT:** CITY INITIATIVE?

2 **MS. FOLEY:** CHARTER. IT'S NOT --

3 **THE COURT:** IT IS ACTUALLY REFERRED TO AS A
4 CHARTER?

5 **MS. FOLEY:** YEAH. IT WAS APPROVED BY THE CITY
6 COUNCIL. IT WASN'T A VOTER-INITIATED CHARTER.

7 **THE COURT:** CORRECT. I KNOW IT'S NOT A PUBLIC
8 INITIATIVE, WHICH IS KINDA-SORTA -- WELL, IT'S NOT --
9 IT'S DEFINITELY MATERIAL THAT -- I THINK, TO THE
10 ANALYSIS. BUT IN ANY EVENT, IT'S JUST CALLED A CHARTER,
11 TO PUT CHARTER ON THE BALLOT. OKAY. THE CHARTER ISSUE.

12 AND LIKE I SAID, MOST, IF NOT ALL, OF THESE
13 FOLKS ARE ALSO OPPONENTS OF MAKING COSTA MESA A CHARTER
14 CITY AS OPPOSED TO A GENERAL LAW CITY. AND WE'LL HAVE
15 TO LEAVE IT TO ANOTHER CIVICS LESSON AS TO WHAT THE
16 DIFFERENCES ARE BETWEEN A CHARTER CITY AND A GENERAL LAW
17 CITY, BUT I'M SURE THERE WILL BE, AT LEAST IN TERMS OF
18 PUBLIC DEBATE, AT SOME POINT A LOT OF DISCUSSION ABOUT
19 THAT.

20 BUT IT IS MY VIEW -- AND I'LL HEAR FROM YOU
21 OTHERWISE. BUT AS FAR AS I VIEW THE ISSUE RIGHT NOW,
22 OBVIOUSLY, THE MERITS OF WHETHER OR NOT COSTA MESA OUGHT
23 TO BE A CHARTER CITY OR NOT IS NOT IN PLAY IN THESE
24 PARTICULAR PROCEEDINGS, THE FACT THAT, APPARENTLY, THE
25 CITY THOUGHT ENOUGH OF -- THOUGHT STRONGLY ENOUGH THAT
26 IT SHOULD BE A CHARTER CITY THAT THEY PUT IT ON THE

1 BALLOT FOR THE VOTE AND BECAUSE CURRENTLY COSTA MESA IS
2 A GENERAL LAW CITY AND THE PROPOSED INTERVENORS FELT
3 STRONGLY ENOUGH AGAINST IT THAT THEY WERE WILLING TO
4 APPEAR IN COURT TO SEEK TO INTERVENE TO HAVE THEIR
5 VOICES HEARD ABOUT WHETHER OR NOT THIS SHOULD BE ON THE
6 JUNE 5TH BALLOT.

7 SO THAT IS OUR FACTUAL -- I'M SORRY. GIVEN THE
8 TIME LIMITATIONS, I WAS UNABLE TO POST A TENTATIVE
9 RULING ON THE INTERNET, AND SO I WILL SHARE WITH YOU NOW
10 VERBALLY MY TENTATIVE. AND MY TENTATIVE IS TO DENY FOR
11 THIS REASON.

12 AND FIRST OF ALL, THE ONLY THING FORMALLY
13 BEFORE THE COURT ON -- AT THIS TIME ON THE ISSUE OF
14 THESE FOUR FOLKS WHO WANT TO PARTICIPATE IS THE
15 INTERVENOR ISSUE. AND SO THAT'S THE ONLY DECISION I'M
16 MAKING -- WILL BE MAKING IN THAT REGARD.

17 AND IN A NUTSHELL, IT IS THIS. THE CASE OF
18 *CITY AND COUNTY VS. SAN FRANCISCO* -- THAT IS WRONG.
19 *CITY AND COUNTY OF SAN FRANCISCO VS. STATE OF CALIFORNIA*
20 ESSENTIALLY SETS FORTH OR REITERATES THE STANDARD THAT A
21 PERSON SEEKING TO INTERVENE, AMONG OTHER THINGS, IS A
22 THREE-PRONGED STANDARD. BUT I THINK THE TWO WE'RE
23 LOOKING AT HERE IS THEY MUST GAIN OR LOSE BY THE EFFECT
24 OF THE JUDGMENT, AND, NUMBER 2, THEY MUST NOT EXPAND THE
25 ISSUES -- THEIR INTERVENTION MUST NOT EXPAND THE ISSUES
26 BEYOND THOSE PRESENTED BY THE PROCEEDING.

1 OKAY. AND IT IS MY VIEW, AND I'LL TELL YOU
2 WHY -- AND AGAIN, THIS IS TENTATIVE, SO I HAVEN'T --
3 THIS IS NOT A RULING, BUT IT'S A TENTATIVE SO YOU CAN
4 SEE WHAT MY THINKING IS AND THEN ARGUE AS YOU LIKE ONE
5 WAY OR THE OTHER.

6 THE -- IT SEEMS TO ME THAT THE -- AT LEAST
7 DIRECTLY, THE PROPOSED INTERVENORS DON'T GAIN OR LOSE
8 ANYTHING BY THE EFFECT OF THE JUDGMENT. AND THAT IS
9 BECAUSE IN THE SCHEME OF THINGS, CITY COUNCIL PASSES THE
10 MOTION -- IS THAT WHAT --

11 **MR. VOGT:** IT'S A RESOLUTION, YOUR HONOR.

12 **THE COURT:** YEAH. ACTUALLY, THREE RESOLUTIONS --

13 **MR. VOGT:** THAT'S CORRECT.

14 **THE COURT:** -- THAT I RECALL. THE THREE
15 RESOLUTIONS THAT ARE THE LEGAL STEPS NECESSARY TO PUT
16 THE THING ON THE BALLOT, PASS THE RESOLUTIONS ON
17 MARCH 6TH, WHICH IS -- WHICH THEY HAVE TO DO AT LEAST 88
18 DAYS BEFORE THE ELECTION, AND THAT IS AT LEAST 88 DAYS
19 BEFORE THE ELECTION.

20 SO THAT WAS NOT SOMETHING THAT -- I GUESS TO
21 USE A EUPHEMISM, SOMETHING THAT WOULD GORE THE OX OF --
22 THE OXES OF THE OPPONENTS.

23 AND EVEN THOUGH -- AND IT SEEMS TO BE CONCEDED
24 EVEN THOUGH THEY WERE LATE ON THE 12TH AND WOULD STILL
25 BE LATE NOW, AS LONG AS THE RELIEF IS GRANTED OR -- OR
26 IF -- I SHOULD SAY THIS. EVEN IF THE RELIEF IS GRANTED,

1 IF IT'S GRANTED NOW, IT DOESN'T CHANGE ANYTHING IN TERMS
2 OF WHEN THE REGISTRAR WAS GOING TO GET ANYTHING OUT
3 THERE TO THE PUBLIC, PROPONENTS OR OPPONENTS, OF THE
4 PROPOSITION FOR THE CHARTER, IF YOU WILL. NOTHING'S
5 CHANGED BECAUSE THE STUFF GOES OUT AT THE SAME TIME IT
6 WOULD HAVE GONE OUT ANYWAY.

7 SO PUTTING ASIDE THE ISSUES THAT WE DISCUSS
8 TOMORROW AT 1:30, EITHER WITH THEM OR WITHOUT THEM,
9 THE -- IF THEY GET ON THE BALLOT, IT'S NOT GOING TO BE
10 ANY DIFFERENT -- IT MAKES NO DIFFERENCE WHETHER THEY
11 FILED ON THE 9TH OR THE 12TH. THEY DON'T -- THE
12 PROPOSED INTERVENORS DON'T LOSE ANYTHING. BECAUSE THE
13 ONLY THING I COULD FIGURE THAT THEY LOSE EVEN ARGUABLY
14 BY IT BEING ON THE BALLOT ON JUNE 5TH IS MAYBE AS MUCH
15 TIME AS THEY WOULD LIKE TO MOUNT AN OPPOSITION CAMPAIGN.

16 NOW, MAYBE I'M MISSING SOMETHING HERE, BUT
17 THAT'S, AT LEAST AS FAR AS THE THINGS I COULD THINK OF,
18 THE PRIMARY DYNAMIC. I DON'T THINK THE CONCEPT OF GAIN
19 OR LOSE EXTENDS TO, WELL, YOU KNOW, IF WE WIN ON THIS
20 TECHNICAL POINT, WE GET MORE TIME THAN WE -- THAN WE
21 WOULD HAVE GOTTEN. IN OTHER WORDS, TO THE EXTENT YOU
22 COULD ARGUE ANYTHING WAS A GAIN OR A LOSS, IT WOULD BE
23 EFFECTIVELY -- ANY GAIN WOULD BE BY WAY OF TECHNICAL
24 FORTUITY.

25 AND SO -- AND THE OTHER THING IS THERE'S --
26 THERE'S AT LEAST ONE THAT HAS BEEN POINTED OUT THE

1 PROPOSED INTERVENORS WOULD SEEK TO RAISE, AND THAT WAS
2 SOMETHING TO THE EFFECT THAT THERE'S ANOTHER DEFECT THAT
3 THE PROPOSED INTERVENORS CLAIM EXIST WITH REGARD TO THE
4 FILING BEYOND THE ONE THAT WAS RAISED IN A WRIT
5 PETITION. SO, IN MY VIEW, THAT WOULD EXPAND THE ISSUES.

6 NOW, I THINK THAT'S PROBABLY A MINOR POINT.
7 BECAUSE PROBABLY AS A CONDITION OF BEING ABLE TO PLAY AS
8 INTERVENORS IN THIS PARTICULAR ACTION -- ACTION, THEY
9 WOULD PROBABLY BE WILLING TO DUMP THAT ARGUMENT. I
10 DON'T WANT TO SAY YOU WOULD, BUT, A, IT SEEMS TO ME IT
11 WOULD EXPAND IT, BUT, B, IF YOU WITHDREW THE ISSUE AND
12 JUST CONCENTRATED ON WHETHER OR NOT THIS COURT HAS THE
13 POWER TO ORDER THE REGISTRAR TO PUT THE MATTER ON THE
14 BALLOT VIA MANDATE, THEN IT'S NOT EXPANDED. BUT THAT'S
15 ONE STEP BEYOND THE HURDLE OF WHAT DO YOU GAIN OR LOSE
16 BY THE EFFECT OF A RULING ONE WAY OR THE OTHER.

17 BECAUSE, OBVIOUSLY, IF THE COURT RULES THAT
18 MANDATE DOES NOT LIE TO -- FOR THE REGISTRAR TO PLACE
19 THE MATTER ON THE JUNE ELECTION, THEN THERE'S OBVIOUSLY
20 NO OX OF THE INTERVENORS -- PROPOSED INTERVENORS BEING
21 GORED. IF THE COURT DOES, THEY END UP WITH THE SAME --
22 THE SAME OUTCOME IN TERMS OF ABILITY TO PARTICIPATE IN
23 THE PROCEEDINGS THAT THEY WERE GOING TO HAVE ALL ALONG.

24 IT'S NOT LIKE THEY GET -- BECAUSE IT GOT TO THE
25 REGISTRAR LATE THAT THEY LOSE SOMETHING THAT THEY WOULD
26 HAVE OTHERWISE NOT LOST BECAUSE IT'S STILL ON THE SAME

1 TIME LINE AS IT WOULD HAVE BEEN. THAT'S MY THINKING
2 TENTATIVELY. I'LL HEAR FROM THE PROPOSED INTERVENORS
3 FIRST.

4 THE ONE THING, AND I PROBABLY SHOULD HAVE
5 THOUGHT OF THAT, BUT I DIDN'T. I MAYBE DIDN'T
6 APPRECIATE HOW MANY -- WELL, IF I LOOKED MORE CAREFULLY,
7 I WOULD HAVE PROBABLY SEEN. BUT SINCE -- WELL, SPADONI
8 AND FOLSOM REPRESENTED BY MR. KAHR?

9 **MR. KAHR:** KAHR. THAT'S RIGHT, YOUR HONOR.

10 **MS. FOLEY:** AND, YOUR HONOR, WE --

11 **THE COURT:** IS IT MR. FRIEDLAND?

12 **MR. FRIEDLAND:** YEAH. WE CAN CONSOLIDATE OUR
13 INTERESTS IF THAT'S WHAT YOU'RE ASKING, MS. FOLEY AND
14 MR. STEPHENS.

15 **THE COURT:** YEAH. IN PARTICULAR, SINCE I DON'T
16 WANT FRIEDLAND AND STEPHENS TO BE DOING SEPARATE
17 ARGUMENTS, I GUESS.

18 **MR. STEPHENS:** WE WON'T.

19 **MR. FRIEDLAND:** WE WON'T.

20 **MR. STEPHENS:** BUT, YOUR HONOR, IF WE COULD, AND I
21 PROMISE NOT TO REPEAT ANYTHING, I'D LIKE TO -- IF -- IF
22 WE COULD -- KATRINA FOLEY AND I COULD SPEAK TO YOU.

23 **THE COURT:** I WAS JUST GOING TO SAY I THINK BECAUSE
24 YOU'RE SEPARATE PARTIES AND MS. FOLEY IS AS A QUA LAWYER
25 REPRESENTING HERSELF, THAT'S WHAT I'LL ALLOW YOU TO DO.
26 IT SHOULDN'T BE REPETITIVE, IN ANY EVENT, BUT I'LL ALLOW

1 BOTH OF YOU TO SPEAK.

2 **MS. FOLEY:** THANK YOU, YOUR HONOR. KATRINA FOLEY.
3 ADDRESSING SPECIFICALLY YOU RAISED THE CASE OF
4 *SAN FRANCISCO -- CITY AND COUNTY OF SAN FRANCISCO VS.*
5 *CALIFORNIA* AND THE THREE-PRONGED ANALYSIS. HOWEVER, YOU
6 ONLY ADDRESSED TWO OF THE PRONGS.

7 THE THIRD PRONG RELATES TO WHETHER THERE WOULD
8 BE ADEQUATE REPRESENTATION AND WHETHER THE REASONS FOR
9 THE INTERVENTION OUTWEIGH ANY BURDEN THAT MIGHT BE
10 IMPACTED ON THE PETITIONER.

11 AND WE WOULD ARGUE THAT THERE ARE PLENTY OF
12 REASONS THAT OUTWEIGH THE REASONS TO DENY OUR
13 INTERVENTION, SPECIFICALLY AS TO THE DIRECT IMPACT AND
14 THE GAIN OR LOSS THAT YOU'RE CONCERNED ABOUT.

15 THE SAME TECHNICALITY, THE SAME TECHNICAL
16 FORTUITY THAT YOU ARE NOT WANTING TO AFFORD US WAS ONE
17 THAT WE WERE NOT AFFORDED AS SIGNATORIES. WHEN WE TRIED
18 TO FILE OUR STATEMENTS AGAINST THE BALLOT MEASURE, WE
19 HAD FILLED OUT THE FORMS, SIGNED THE FORMS, AND THE
20 CLERK WOULD NOT ACCEPT MINE, IN PARTICULAR, BECAUSE I
21 HAD NOT SIGNED ON THE SHEET THAT HAD THE WRITTEN
22 LANGUAGE OF OUR BALLOT STATEMENT AGAINST. AND SO WE
23 WERE NOT AFFORDED ANY ADDITIONAL TIME TO GET MY
24 SIGNATURE SO THAT IT COULD BE FILED IN THE BALLOT
25 STATEMENT.

26 AND SO WHY WOULD JULIE FOLCIK, WHO'S NOT EVEN A

1 RESIDENT OF THE CITY OF COSTA MESA AND IS BRINGING THIS
2 ACTION AS AN INDIVIDUAL, BE AFFORDED ADDITIONAL TIME?

3 ADDITIONALLY, AS TO WHETHER THE CHANGE WOULD
4 DIRECTLY IMPACT US, IT DIRECTLY IMPACTS US BECAUSE WE
5 WOULD NOT ENJOY THAT SAME EXCEPTION TO THE MANDATORY
6 STATUTORY DEADLINE THAT THE COURT IS CONSIDERING
7 ALLOWING MS. FOLCIK AS AN INDIVIDUAL WHO IS NOT A
8 TAXPAYER, NOT A RESIDENT, ONLY AN EMPLOYEE OF THE CITY,
9 NOT BRINGING THIS ACTION ON BEHALF OF THE CITY.

10 SO WHAT WE WOULD LOSE IS THE PROTECTIONS AND
11 THE RIGHTS THAT ARE GUARANTEED UNDER THE MANDATORY
12 STATUTORY ELECTIONS LAWS. AS VOTERS, AS RESIDENTS, AS
13 PROPERTY OWNERS, WE WOULD LOSE THOSE RIGHTS, AND THAT
14 WOULD BE THE UNFAIRNESS THAT THE *BUS STOP* CASE TALKS
15 ABOUT.

16 SO IN THE INTEREST OF FAIRNESS, THE COURT
17 SHOULD ISSUE THE MAXIMUM INVOLVEMENT BY ALL RESPONSIBLE,
18 INTERESTED, AND AFFECTED PERSONS. WE ARE ABSOLUTELY
19 RESPONSIBLE, INTERESTED, AND AFFECTED PERSONS,
20 TAXPAYERS, VOTERS, PROPERTY OWNERS.

21 I, IN PARTICULAR, HAVE PROPERTY ADJACENT TO A
22 CITY PARK. I'M A PUBLIC ELECTED OFFICER IN THE CITY AND
23 A SIGNATORY ON THE BALLOT STATEMENT AGAINST WHO WILL NOT
24 HAVE BEEN AFFORDED THE SAME EXCEPTIONS TO THE RULE IF
25 THE COURT PREVENTS US FROM INTERVENING.

26 **THE COURT:** ASSUMING THAT THEY ARE RIGHT, AND

1 "THEY" BEING THE PETITIONER, ASSUMING THE PETITIONER'S
2 RIGHT AND THIS COURT HAS THE POWER TO MANDATE THE
3 REGISTRAR TO PUT THE MATTER ON THE BALLOT ANYWAY,
4 WOULDN'T YOU HAVE HAD THAT SAME OPPORTUNITY?

5 **MS. FOLEY:** I'M SORRY. REPHRASE THAT.

6 **THE COURT:** IN OTHER WORDS, IF YOU WANTED TO NOT
7 USE -- I WON'T USE A LEGAL TERM HERE. IF YOU WANTED TO
8 BE CUT SOME SLACK BECAUSE, IN PLAIN TERMS, I THINK THE
9 PETITIONER IS BEING ASKED TO BE CUT SOME SLACK HERE,
10 IF -- IF, IN FACT, THEY'RE RIGHT, MANDATE LIES TO SAY
11 ESSENTIALLY, "HEY, REGISTRAR, SUBSTANTIAL COMPLIANCE
12 HERE IS GOOD ENOUGH, AND, THEREFORE, I'M ORDERING YOU TO
13 PUT THIS ON THE BALLOT," WOULDN'T YOU HAVE HAD THAT SAME
14 OPPORTUNITY?

15 **MS. FOLEY:** NO. ABSOLUTELY NOT. I DIDN'T GET THAT
16 SAME OPPORTUNITY. WHEN I TRIED TO HAVE MY BALLOT
17 STATEMENT AGAINST THE CHARTER BEFORE THE 5:00 O'CLOCK
18 DEADLINE ON MARCH 9TH, BECAUSE MY SIGNATURE WASN'T ON A
19 PARTICULAR PIECE OF PAPER, IT WAS ON ANOTHER PIECE OF
20 PAPER --

21 **THE COURT:** YEAH.

22 **MS. FOLEY:** -- SHE DIDN'T ACCEPT THAT. I DIDN'T
23 GET THAT SAME OPPORTUNITY. SO I HAD TO ACTUALLY WRITE
24 THE REBUTTAL.

25 AND SO -- AND, IN FACT, NO. THE MANDATORY
26 DEADLINE WAS APPLIED TO US STRICTLY AND NOT -- IF THE

1 COURT DOES NOT ALLOW US TO INTERVENE, THAT WOULD BE AN
2 UNEQUAL APPLICATION OF THE MANDATORY STATUTORY ELECTION
3 LAWS.

4 **THE COURT:** OKAY.

5 **MS. FOLEY:** THANK YOU.

6 **THE COURT:** MR. STEPHENS?

7 **MR. STEPHENS:** WELL, LET ME -- CAN I ASK A QUESTION
8 SO I CAN UNDERSTAND EXACTLY WHAT I'M TRYING TO PERSUADE
9 YOUR HONOR ABOUT?

10 **THE COURT:** SURE. SO MUCH FOR MY COGENT TENTATIVE.

11 **MR. STEPHENS:** REGARD-- -- REGARDLESS OF THE RULING
12 TODAY, WILL YOUR HONOR READ OUR PAPERS?

13 **THE COURT:** IF I DON'T LET YOU INTERVENE, I'M NOT
14 GOING TO READ THE PAPERS.

15 **MR. STEPHENS:** OKAY. SO THAT'S IMPORTANT FOR THIS
16 ARGUMENT. AND BECAUSE IN THIS CASE, I THINK IT COMES
17 DOWN --

18 **THE COURT:** LET ME INTERRUPT YOU FOR A SECOND --

19 **MR. STEPHENS:** YES.

20 **THE COURT:** -- AND PREFACE IT WITH THIS IS NOT
21 DETERMINATIVE OF THE ISSUE OF WHETHER YOU INTERVENE OR
22 NOT. THIS IS JUST FOR SOME SOLACE IF I STAY WITH MY
23 TENTATIVE IS, YOU KNOW, IN MY VIEW, THIS IS A PRETTY
24 IMPORTANT ISSUE, PARTICULARLY, APART FROM ANY MERITS OF
25 WHETHER COSTA MESA OUGHT TO BE A CHARTER CITY OR GENERAL
26 LAW CITY. IT'S IMPORTANT, IN MY VIEW, IN TERMS OF WHAT

1 EXACTLY THE POWER OF THE SUPERIOR COURT VIA MANDATE IS
2 VIS-A-VIS THE REGISTRAR.

3 SO EVEN IF I STAY WITH MY TENTATIVE, I'M GOING
4 TO LOOK AT IT VERY, VERY HARD TO SEE IF THIS IS
5 SOMETHING THAT -- IF THIS IS SLACK THAT CAN BE CUT.

6 **MR. STEPHENS:** YOUR HONOR, IF I COULD ASK ONE MORE
7 QUESTION.

8 **THE COURT:** SURE.

9 **MR. STEPHENS:** THEN I'LL ADDRESS YOUR TENTATIVE.

10 **THE COURT:** SURE.

11 **MR. STEPHENS:** HAS YOUR HONOR READ OUR PAPERS? I
12 KNOW YOU'VE BEEN ON VACATION, AND THE LAST THING YOU
13 WANTED TO DO WAS READ PAPERS. BUT HAVE YOU READ OUR
14 PAPERS IN OPPOSITION TO THE SUBSTANTIVE WRIT PETITION?

15 **THE COURT:** I HAVE NOT.

16 **MR. STEPHENS:** OKAY.

17 **THE COURT:** AND IF I DIDN'T SAY SO EXPRESSLY AT THE
18 START OF THIS, THAT'S WHAT I WAS INTENDING TO CONVEY.
19 BECAUSE IF YOU CAN'T INTERVENE, YOU DON'T GET TO OPPOSE.

20 **MR. STEPHENS:** RIGHT. THAT, I THINK, FRAMES MY
21 ARGUMENT ABOUT INTERVENTION. WHEN KATRINA FOLEY AND I
22 FOUND OUT THAT THESE PAPERS WERE GOING TO BE PRESENTED
23 TO YOU ON AN EX-PARTE BASIS LAST TUESDAY, WE JUST CAME
24 TO A CONCLUSION, AND IT'S A CONCLUSION THAT'S CONSISTENT
25 WITH THE INTERVENTION LAW, AND IT BASICALLY IS THIS, IS
26 THAT SOMEBODY HAS TO STEP UP HERE, OR THIS WHOLE THING

1 IS GOING TO GO DOWN IN SECRET, UNOPPOSED, WITHOUT THE
2 OPPORTUNITY FOR THE ARGUMENTS TO BE PLACED BEFORE THE
3 COURT AND FOR YOU TO READ THOSE ARGUMENTS THAT WE WORKED
4 SO HARD ON BASED ON YOUR BRIEFING SCHEDULE AND HAVE THE
5 BENEFIT OF THOSE ARGUMENTS WHEN MAKING THIS IMPORTANT
6 RULING ON A MATTER OF PUBLIC CONCERN, WHICH, AS YOU
7 ALLUDED TO EARLIER, IS MOST LIKELY GOING TO BE THE
8 SUBJECT OF APPELLATE REVIEW. BECAUSE, AS WE PUT IN OUR
9 PAPERS, A DENIAL -- AND I'M SURE THE COURT KNOWS THIS --
10 A DENIAL OF A MOTION FOR INTERVENTION IS, IN FACT, AN
11 APPEALABLE ORDER.

12 SO IF I WERE THE COURT, IF I MAY BE SO BOLD, I
13 WOULD WANT TO TAKE ON AS MUCH INFORMATION AS I COULD.
14 AND MY DISCRETION WOULD LEAN TOWARD GATHERING THE DATA I
15 NEEDED AND THE AUTHORITIES AND THE ARGUMENTS SO I COULD
16 MAKE THE VERY BEST DECISION UNDER THESE CIRCUMSTANCES,
17 WHICH IS A MATTER OF PUBLIC CONCERN.

18 AND I WOULD DEFINITELY NOT PUSH AWAY ANY
19 CONSIDERED BRIEFING BY INTERESTED PARTIES THAT I WAS
20 PRESENTED BY PEOPLE THAT WORKED VERY HARD ON THOSE
21 BRIEFS, LIKE MS. FOLEY AND ME, BASED ON THE -- THE
22 SCHEDULE THAT WAS SET.

23 NOW, I HAVE SOME PRECEDENT FOR ASKING YOU TO
24 CONSIDER THOSE RULINGS. AS WE TALKED ABOUT, WE TALKED
25 ABOUT THE THREE FACTORS, AND I'LL ADDRESS THEM QUICKLY,
26 IS DOES THE NONPARTY HAVE A DIRECT AND IMMEDIATE

1 INTEREST IN THE LITIGATION? THE ANSWER TO THAT IS YES,
2 AND I'LL BACK IT UP WITH A COUPLE OF POINTS.

3 THE ONES THAT MS. FOLEY MADE I WON'T REITERATE,
4 AND THEY'RE IN THE PAPERS. WE'RE CITIZENS AND WE'RE
5 VOTERS AND WE'RE VERY CONCERNED.

6 BUT THE QUESTION I HAVE FOR YOU, YOUR HONOR,
7 AND I WOULD BE MULLING THIS CERTAINLY IF I HAD THE
8 DECISION THAT YOU NEED TO MAKE, IS "IF KATRINA FOLEY AND
9 JOHN STEPHENS DON'T HAVE AN INTEREST HERE, WHO DOES?
10 WHO CAN -- WHO HAS STANDING TO PRESENT THOSE CONSIDERED
11 WRITTEN ARGUMENTS AND ORAL ARGUMENTS TO ME TO HELP ME
12 MAKE THIS IMPORTANT DECISION REGARDING A MATTER OF
13 PUBLIC CONCERN?"

14 AND I WANT TO CITE A CASE TO YOU THAT WILL HELP
15 YOU --

16 **THE COURT:** WELL, AGAIN, PLEASE UNDERSTAND MY
17 ANALYSIS IS NOT THAT AS CITIZENS OF COSTA MESA WHO ARE
18 INVOLVED CITIZENS OF COSTA MESA WHO ARE APPARENTLY AT
19 THE FOREFRONT OF THE OPPOSITION TO THIS CHARTER ISSUE,
20 YOU'RE NOT, TO USE ANOTHER NONTECHNICAL TERM, COMING OUT
21 OF LEFT FIELD. THAT'S NOT THE PROBLEM.

22 PER MY ANALYSIS, THE BIG QUESTION OR PROBLEM
23 HERE IS IF THIS THING PROCEEDS TO ELECTION, WHAT ARE YOU
24 OUT?

25 **MR. STEPHENS:** RIGHT.

26 **THE COURT:** I MEAN --

1 **MR. STEPHENS:** YOUR HONOR --

2 **THE COURT:** -- THE REGISTRAR IS MAYBE MORE UNDER
3 THE TIME-PRESSURE GUN THAN HE WOULD HAVE BEEN HAD THEY
4 FILED ON FRIDAY AS LATE AS PROBABLY, WHAT, 4:30 OR
5 5:00 O'CLOCK INSTEAD OF MONDAY -- WAS IT MONDAY MORNING?
6 I DON'T REMEMBER. BUT SOMETIME MONDAY, THE NEXT
7 BUSINESS DAY.

8 BUT -- BUT, IN ANY EVENT, AND THAT -- YOU KNOW,
9 I, OBVIOUSLY, DIDN'T HAVE TIME TO DO DEEP LEGISLATIVE
10 HISTORY RESEARCH, BUT I PRESUME YOU COULD MAKE AN
11 ARGUMENT, AT LEAST, THE REASON FOR THE 88-DAY
12 REQUIREMENT FOR THE CITY TO TAKE ACTION IS SO THAT
13 INTERESTED PARTIES WILL KNOW WHAT TO EXPECT, THAT
14 THEY'LL HAVE AT LEAST 88 DAYS TO SADDLE UP AND RIDE IN
15 OPPOSITION TO WHATEVER THE CITY DID.

16 AND IF -- AND THE 88-DAY REQUIREMENT FOR THE
17 REGISTRAR IS TO MAKE SURE THE REGISTRAR HAS ENOUGH TIME
18 TO DO THE THINGS THE REGISTRAR IS CHARGED TO DO WHEN
19 THESE THINGS ARE GOING TO BE ON THE BALLOT.

20 **MR. STEPHENS:** YOUR HONOR, HERE'S -- MY POINT IS
21 YOU'VE JUST ASKED A QUESTION. AND THE ANSWER TO THE
22 QUESTION IS ON OUR WRITTEN MATERIALS THAT YOU HAVE NOT
23 READ; RIGHT? LET ME GIVE YOU ONE ARGUMENT THAT IS IN
24 THE WRITTEN MATERIALS, BUT I WOULD ASK YOU TO PLEASE
25 CONSIDER THESE MATERIALS THAT WE PUT TOGETHER AND PLEASE
26 GIVE US THE BENEFIT OF BEING HEARD IN THIS CASE.

1 **THE COURT:** LET ME JUST MAKE IT CLEAR FOR THE
2 RECORD THAT I HAD YOU FILE THE PROVISIONAL OPPOSITIONS
3 ON THE THEORY THAT THE -- YOU KNOW, IF I GRANTED IT, I
4 WAS GOING TO BE HEARING THE MERITS THE VERY NEXT DAY.

5 **MR. STEPHENS:** RIGHT.

6 **THE COURT:** SO I NEEDED THEM IN FRONT OF ME IF I
7 WAS GOING TO LET YOU INTERVENE. BUT YOU DID HAVE THE
8 OPPORTUNITY TO WRITE WHAT YOU HAD TO WRITE ON WHY THE
9 FACTORS ON DETERMINING WHETHER OR NOT TO EXERCISE THE
10 COURT'S DISCRETION TO PERMIT INTERVENTION TO -- I
11 ALLOWED YOU TO BRIEF THOSE.

12 **MR. STEPHENS:** RIGHT. AND WE DID.

13 **THE COURT:** SO MY WORKING THEORY WAS EVERYTHING
14 THAT YOU HAD TO SAY THAT WAS PERTINENT TO WHETHER OR NOT
15 YOU SHOULD GET YOUR FOOT THROUGH THE DOOR WAS GOING TO
16 BE CONTAINED IN THE PAPERS THAT HAD TO DO WITH THAT
17 THRESHOLD ISSUE, IF YOU WILL.

18 **MR. STEPHENS:** WELL, AND WE DID BRIEF THAT. BUT
19 THE PROBLEM -- THE PROBLEM IS JUST IN TERMS OF THE
20 TIMING. YOU MAY REMEMBER THAT WE WERE HERE ON TUESDAY
21 AT 8:30 A.M. WHEN YOU GAVE THE BRIEFING ORDER. WE WERE
22 REQUIRED TO PUT IN OUR INTERVENTION PAPERS BY 10:00 A.M.
23 THE NEXT DAY, AND WE ALSO WERE -- WERE REQUIRED TO PUT
24 IN OPPOSITION TO THE WRIT PROPER -- RIGHT? -- BY FRIDAY
25 AT NOON.

26 SO IMPLICIT IN THAT IS, NUMBER 1, THERE'S A

1 VERY TIGHT TIME FRAME, AND IMPLICIT IN THAT IS THERE ARE
2 TWO SEPARATE BRIEFS. ONE ADDRESSES INTERVENTION AND THE
3 FACTORS OF CIVIL CODE SECTION 387, AND THE OTHER
4 ADDRESSES THE MERITS. SO THAT'S HOW WE BROKE IT UP.

5 AND IN TERMS OF PRAGMATISM AND TIMING, WE WOULD
6 NOT HAVE BEEN ABLE TO PUT TOGETHER, JUST THE TWO OF
7 US -- WE HAD A HARD ENOUGH TIME BRIEFING THE 387
8 FACTORS. WE -- IF YOU -- IF YOU -- IF YOU TAKE --
9 TAKE -- TAKE A MOMENT TO READ THE BRIEF THAT WE
10 SUBMITTED ON FRIDAY, THERE'S NO WAY PHYSICALLY POSSIBLE
11 KATRINA FOLEY AND I WOULD HAVE BEEN ABLE TO PUT TOGETHER
12 A BRIEF OF THAT EXTENT IN APPROXIMATELY 24 HOURS THAT
13 WAS AFFORDED TO US BY THIS COURT.

14 BUT IF I COULD JUST GET BACK TO MY --

15 **THE COURT:** YOU WERE GOING TO LET MR. KAHR DO THAT.

16 **MR. STEPHENS:** YEAH.

17 **THE COURT:** THAT WAS A JOKE, FOR THE RECORD. AND
18 PEOPLE ACTUALLY LAUGHED, FOR THE RECORD.

19 **MR. STEPHENS:** BUT IF I COULD GET BACK -- I LAUGH
20 ALL THE TIME. I HAVE HAD ALL KINDS OF JOKES READY FOR
21 YOU. BUT THEN I HEARD YOUR TENTATIVE, AND NOW I WANT TO
22 BE SERIOUS.

23 OKAY. SO --

24 **THE COURT:** THAT'S FUNNY, BY THE WAY.

25 **MR. STEPHENS:** SO, ANYWAY, GETTING BACK TO IT. I
26 SAID TO YOU IF NOT US, WHO? RIGHT? THE OTHER

1 QUESTION -- THE OTHER QUESTION I'LL HAVE IN THAT VEIN IS
2 A RHETORICAL QUESTION. WHY NOT? RIGHT? WHAT DOES THE
3 COURT LOSE? WHAT DOES JUSTICE LOSE IF WE PARTICIPATE?
4 RIGHT?

5 AND REMEMBER, 387 IS PERMISSIVE. 387 HAS
6 DISCRETION -- RIGHT? -- ATTACHED TO IT, AND -- AND A
7 RULING ON AN INTERVENTION MOTION IS ABUSE OF DISCRETION
8 STANDARD. SO YOUR HONOR HAS DISCRETION. SO WE'RE
9 TALKING ABOUT DISCRETION.

10 NOW, YOU LOOK AT THE FACTS HERE. YOU SAY "DO
11 WE HAVE A DIRECT OR IMMEDIATE INTEREST?" THERE'S SOME
12 REALLY IMPORTANT CASES THAT I JUST WANT TO BRING UP
13 BECAUSE IT'S RIGHT ON THIS POINT. NOW, THESE ARE ALL
14 CITED IN THE BRIEF, BUT I WANT TO RAISE THEM IN THIS
15 POINT.

16 IF YOU LOOK AT THE *CONTINENTAL VINYL* CASE,
17 WHICH WAS CITED IN MY OPPONENT'S BRIEF, AND IT'S AT
18 27 CAL.APP.3D 543, AND THE PINPOINT CITE IS 551, IT'S A
19 1972 CASE. IT TALKS -- THERE'S AN EXTENSIVE QUOTE I
20 COULD READ, BUT THAT'S WHERE IT IS. AND IT BASICALLY
21 TALKS ABOUT HOW THE COURT CAN RELAX THE STANDARD OF
22 DIRECT INTEREST IF -- IT SAYS HERE, IF VARIOUS
23 CIRCUMSTANCES OR SIMILAR CIRCUMSTANCES RENDER STRICT
24 DEFINITION OF DIRECT INTEREST LIKELY TO RESULT IN
25 INJUSTICE.

26 NOW, WHAT DO I MEAN "INJUSTICE"? I MEAN WHAT I

1 SAID WHEN I STARTED, THAT IF WE WOULD NOT HAVE STEPPED
2 UP, YOUR HONOR, THIS WHOLE THING WOULD HAVE GONE DOWN IN
3 SECRET WITHOUT THE BENEFIT OF THE LAW AND THE ADVOCACY
4 PROCESS, THE ADVERSARY PROCESS. JUSTICE WOULD NOT HAVE
5 BEEN DONE.

6 MY NEXT POINT IS THIS, GOING TO THE SECOND
7 FACTOR, INTERVENTION WILL NOT ENLARGE THE ISSUES. I
8 UNDERSTAND THAT THE OTHER TWO INTERVENORS BROUGHT UP
9 THIS ISSUE WITH THE BALLOT. WE DID NOT. SO WE DON'T
10 HAVE TO THROW ANYTHING AWAY. IT'S -- WE NEVER PUT IT ON
11 THE TABLE.

12 AND THEN THE ISSUE TOO IS THE REASONS FOR
13 INTERVENTION OUTWEIGH ANY OPPOSITION BY EXISTING
14 PARTIES. NOW, IF YOU LOOK AT THESE INTERVENTION CASES
15 AND YOU READ THEM, THERE'S AN IMPORTANT PRINCIPLE HERE
16 THAT GUIDES YOUR DISCRETION. AND I'M GOING TO QUOTE
17 FROM THE CASE *SAN FRANCISCO* -- THE ONE YOU RELIED ON,
18 *SAN FRANCISCO VS. STATE OF CALIFORNIA*,
19 128 CAL.APP.4TH 1030 AT 1036, AND IT SAYS AT THAT -- AT
20 THAT CITE, IT SAYS, THE PERMISSIVE INTERVENTION STATUTE
21 BALANCES THE INTERESTS OF OTHERS WHO WILL BE AFFECTED BY
22 THE JUDGMENT AGAINST THE INTERESTS OF THE ORIGINAL
23 PARTIES IN PURSUING THEIR LITIGATION UNBURDENED BY
24 OTHERS; RIGHT?

25 SO NORMALLY WHEN A JUDGE IS DECIDING WHETHER TO
26 LET SOMEBODY IN TO INTERVENE, THE COUNTER-VAILING REASON

1 TO KEEP THEM OUT IS SO THAT THEY ARE NOT MEDDLING, DOING
2 ANY TYPE -- OVERBURDENING IN ANY WAY THE ORIGINAL
3 PARTIES TO THE ACTION.

4 WELL, THAT IS NOT A FACTOR HERE, AND THAT'S
5 ANOTHER CASE YOU CITED. THAT'S NOT A FACTOR BECAUSE WE
6 KNOW THAT THE COUNTER -- COUNTY COUNCIL OVER HERE WOULD
7 NOT HAVE OPPOSED, TOOK NO POSITION. SO WE'RE NOT
8 MEDDLING. WE ARE PUTTING FORTH -- WE'RE THE ONLY PEOPLE
9 PARTICIPATING IN THE PROCESS TO PUT FORTH THESE
10 ARGUMENTS.

11 AND SO MY QUESTION IS WHAT WOULD IT HURT JULIE
12 FOLCIK -- RIGHT? -- WHO DOESN'T EVEN HAVE STANDING IN
13 HER OWN RIGHT? BY THE WAY, IF YOU READ OUR BRIEF, WE
14 ADDRESS THAT. SHE'S THE CITY CLERK. THIS LAWSUIT WAS
15 NOT IN ANY WAY APPROVED BY THE CITY COUNCIL. IT WAS NOT
16 REPORTED OUT OR VOTED ON BY THE CITY COUNCIL. THERE'S
17 NO BASIS FOR JULIE FOLCIK TO FILE THIS LAWSUIT.

18 WHAT WOULD IT HURT JULIE FOLCIK IF WE GOT
19 BROUGHT IN HERE AND BROUGHT THESE AUTHORITIES TO THE
20 COURT? IT COULD ONLY HELP. AND WHAT ARE WE TALKING
21 ABOUT? WE'RE NOT TALKING ABOUT A PROTRACTED LAWSUIT
22 WHERE WE'RE GOING TO COME IN AND TAKE A LOT OF
23 DEPOSITIONS; RIGHT? WE'RE TALKING ABOUT WANTING YOU,
24 YOUR HONOR, TO READ A NINE-PAGE BRIEF AND TO LET US TALK
25 TOMORROW AT 1:30. HOW DOES THAT IN ANY WAY ADVERSELY
26 IMPACT JULIE FOLCIK?

1 SO IF YOU LOOK AT THE FACTORS HERE -- RIGHT? --
2 I'M -- I'M TELLING YOUR HONOR IF I WERE IN YOUR SHOES,
3 THIS WOULD HAVE BEEN A VERY EASY DECISION TO GRANT, AND
4 I WOULD NOT HAVE WANTED TO TAKE ON BOARD THE ARGUMENTS
5 ON APPEAL THROUGH THE DENIAL; RIGHT? AND I'M JUST BEING
6 VERY REAL WITH YOU, AND I'M TELLING YOU THAT'S MY
7 ARGUMENT. I'M DONE.

8 **THE COURT:** MR. KAHR?

9 **MR. KAHR:** THANK YOU, YOUR HONOR. I'D LIKE TO TAKE
10 A CRACK AT ANSWERING YOUR QUESTION ABOUT WHAT'S LOST
11 HERE IF AN ORDER ISSUES FROM THIS COURT PUTTING THE
12 MATTER ON THE BALLOT.

13 IF THIS WAS PROPERLY SUBMITTED TO THE REGISTRAR
14 AND IT WAS ACCEPTED AS TIMELY, WE WOULD HAVE KNOWN, I
15 BELIEVE -- WHAT WAS IT? -- THE 9TH OF MARCH THAT IT WAS
16 GOING TO BE ON THE BALLOT, AND WE WOULD HAVE BEEN ABLE
17 TO BRING WHATEVER CHALLENGE TO IT -- TO ITS PLACEMENT ON
18 THE BALLOT THAT WE SAW FIT.

19 PROCEDURAL PROBLEMS -- WE RAISE PROCEDURAL
20 PROBLEMS WITH THE GOVERNMENT CODE. BUT WE ALSO COULD
21 HAVE RAISED THE CHALLENGE -- IF IT WAS SUBMITTED ON --
22 AS IT WAS ON MONDAY AND ACCEPTED LATE, WE COULD HAVE
23 BROUGHT A CHALLENGE. THERE'S NO QUESTION WE WOULD HAVE
24 HAD STANDING TO BRING A WRIT OF MANDATE CHALLENGE TRYING
25 TO GET THE REGISTRAR NOT TO PUT IT ON THE BALLOT.

26 SO THE CONSEQUENCE HERE, ONE CONSEQUENCE, AT

1 LEAST, IS IF WE'RE NOT ALLOWED TO INTERVENE, RAISE THESE
2 ARGUMENTS, AND BECAUSE OF THE REGISTRAR'S STATEMENT HERE
3 THAT THE BALLOT MATERIAL WOULD NEED TO BE PREPARED BY
4 BASICALLY THE END OF THE MONTH, THERE'S NO CHANCE TO
5 BRING A CHALLENGE TO RAISE THE ARGUMENTS THAT WE
6 OTHERWISE WOULD HAVE HAD SIMPLY BECAUSE OF THE
7 PROCEDURAL POSTURE OF THE CASE AND BECAUSE OF THE VERY
8 TIGHT TIME LINE FOR RESOLVING ELECTION ISSUES AND
9 GETTING THE BALLOT MATERIALS PRINTED.

10 THE SECOND POINT I'D RAISE IS RIGHT NOW THE
11 MATTER IS NOT ON THE BALLOT. SO PUTTING IT ON THE
12 BALLOT NOW BY COURT ORDER AND SAYING ESSENTIALLY THAT
13 IT -- DEEMING IT SUBMITTED TIMELY ON THE 9TH IS NOT THE
14 SAME AS GIVING THE TIME BACK THAT THE OPPONENTS OF THIS
15 PROPOSED CHARTER OTHERWISE WOULD HAVE HAD. THAT TIME IS
16 LOST.

17 IT'S NOT ON THE BALLOT NOW. THERE'S NO --
18 SHOULDN'T BE ANY PRESUMPTION THAT THE MATTER IS GOING
19 BEFORE THE VOTERS AND THAT THERE'S A CAMPAIGN IN SWING
20 OR THAT PEOPLE KNOW THAT THIS IS GOING TO BE ON THE
21 BALLOT. THE ASSUMPTION IS THAT IT'S NOT GOING TO BE ON
22 THE BALLOT BECAUSE IT WASN'T TIMELY SUBMITTED.

23 IF IT'S ORDERED ON THE BALLOT TOMORROW OR THIS
24 WEEK BY YOUR HONOR, THE TIME -- THE TWO WEEKS TO
25 CAMPAIGN, TO DO THE ADVOCACY THAT THE PROPOSED
26 INTERVENORS INTEND TO DO, THAT TIME IS LOST, AND IT

1 CAN'T BE GOTTEN BACK. SO I WOULD ARGUE THAT IS THE
2 DIRECT INTEREST THAT WOULD BENEFIT OR ADVERSELY AFFECT
3 THE PROPOSED INTERVENORS.

4 I WOULD ALSO -- JUST AS A LAST POINT, YOUR
5 HONOR, IT SEEMS LIKE YOU ALREADY HAVE YOUR MIND MADE UP
6 ABOUT REVIEWING THE OPPOSITION BRIEFS, BUT I BELIEVE IT
7 WOULD BE WITHIN YOUR HONOR'S DISCRETION TO TREAT THOSE
8 BRIEFS ON THE MERITS AS AMICUS FILINGS.

9 EVEN IF YOU'RE INCLINED TO STICK WITH YOUR
10 TENTATIVE AND DENY THE APPLICATION TO INTERVENE, I
11 BELIEVE IT WOULD BENEFIT THE COURT TO HAVE THOSE
12 ARGUMENTS. EVEN THOUGH I UNDERSTAND THE COURT INTENDS
13 TO LOOK AT THE ISSUE VERY HARD, IT NEVER HURTS TO HAVE
14 THE BENEFITS OF THE ADVERSARY PROCESS. AND THE BRIEFS
15 HAVE ALREADY BEEN PREPARED, AND I BELIEVE YOU WOULD
16 STILL BE WITHIN YOUR AUTHORITY TO REVIEW THEM AND
17 CONSIDER THE ARGUMENTS EVEN IF WE'RE NOT FORMALLY ADDED
18 AS PARTIES.

19 **THE COURT:** HERE'S WHAT'S PROBLEMATIC ABOUT THIS.
20 FIRST OF ALL, AMICUS BRIEFS, YOU KNOW, COUNT ZERO UNTIL
21 AND UNLESS A PERSON HAS BEEN GRANTED AMICUS STATUS.
22 OKAY. AND I HAVE NO FORMAL APPLICATION FOR THAT.

23 **MR. KAHR:** I'LL MAKE AN ORAL REQUEST NOW, YOUR
24 HONOR, THAT IN THE ALTERNATIVE TO OUR APPLICATION TO
25 INTERVENE, THAT THE MATERIALS BE CONSIDERED AS AMICUS.

26 **MR. STEPHENS:** I MAKE THAT SAME ORAL MOTION, YOUR

1 HONOR, TO BE CONSIDERED AMICUS IN THE EVENT YOU STICK
2 WITH YOUR TENTATIVE ON BEHALF OF MYSELF AND MRS. FOLEY.

3 **THE COURT:** OKAY. DULY NOTED, BUT I THINK A
4 SLIPPERY SLOPE IN TERMS OF THE COURT'S TRYING TO BALANCE
5 ITS INTEREST IN GETTING INFORMATION FROM EVERYBODY WITH
6 THE INTEREST OF NOT JUST HAVING EVERYBODY SHOW UP AND
7 FILE STUFF AND SAY, WELL, YOU KNOW, WHATEVER STICKS --

8 **MR. KAHR:** WE UNDERSTAND THAT, YOUR HONOR. IT'S
9 JUST --

10 **THE COURT:** BUT IT'S DULY NOTED AND PRESERVED.

11 **MR. KAHR:** THANK YOU, YOUR HONOR.

12 **MS. FOLEY:** YOUR HONOR, THE -- ALSO THE *SIMAC*
13 *DESIGN, INC. V. ALCIATI*, A 1929 CASE, 92 CAL.APP.3D 146,
14 PINPOINT 157, ACTUALLY ALLOWED THE COURT TO ACCEPT
15 INTERVENTION UPON ORAL MOTION BY AN ATTORNEY AT A
16 HEARING ON A WRIT OF MANDATE PETITION RIGHT IN THE
17 MIDDLE OF THE PROCEEDINGS. SO THERE IS PRECEDENT FOR
18 ALLOWING INTERVENTION EVEN WITHOUT PAPERS, AND THAT'S
19 THE COURT'S BROAD DISCRETION.

20 **THE COURT:** OKAY. OKAY. WE'RE GOING TO HAVE ABOUT
21 A TWO- OR THREE-MINUTE TIME-OUT BEFORE I HEAR FROM YOU.
22 BECAUSE I'VE GOT TO CHECK ON A COUPLE THINGS BEFORE I
23 HEAR FROM YOU.

24 **MR. VOGT:** SURE, YOUR HONOR. THAT'S FINE.

25 **MS. FOLEY:** THANK YOU, YOUR HONOR.

26 **(RECESS)**

1 **THE COURT:** WE'LL GO BACK ON THE RECORD IN FOLCIK
2 VS. KELLEY. ALL OF THE PARTIES AND LAWYERS ARE AGAIN
3 PRESENT.

4 I'LL HEAR FROM PETITIONER NOW.

5 **MR. VOGT:** THANK YOU, YOUR HONOR. THIS IS JOHN
6 VOGT ON BEHALF OF THE PETITIONER. I'M GOING TO ADDRESS
7 COUNSEL'S ARGUMENTS IN THE ORDER IN WHICH THEY WERE
8 GIVEN, SO I'LL START WITH THE FOLEY INTERVENORS FIRST.

9 COUNSEL STARTED HER ARGUMENT BY NOTING THAT
10 THERE'S THREE PRONGS. THE SECTION 387(A) IN ORDER TO
11 GRANT PERMISSIVE INTERVENTION, SHE JUST --

12 **THE COURT:** THERE'S ACTUALLY FOUR. THE FOURTH IS
13 WHETHER ALL THE PROCEDURAL STUFF WAS COMPLIED WITH, BUT
14 I DON'T THINK THERE'S AN ISSUE THERE.

15 **MR. VOGT:** I DON'T THINK THERE'S AN ISSUE, EITHER,
16 YOUR HONOR. THAT'S WHY WE DIDN'T ADDRESS IT IN THE
17 BRIEF.

18 SHE JUMPS THEN TO THE THIRD PRONG WITHOUT
19 ADDRESSING THE FIRST. THE FIRST PRONG IS WHETHER
20 THERE'S AN INTEREST. AND YOUR HONOR'S TENTATIVE IS
21 ABSOLUTELY CORRECT. THERE IS NO DIRECT OR IMMEDIATE
22 INTEREST THAT ANY OF THE PROPOSED INTERVENORS WOULD
23 SUFFER IF THE CHARTER PROPOSAL WAS PUT ON THE BALLOT OR
24 IF IT WAS NOT PUT ON THE BALLOT. I MEAN EITHER WAY,
25 THEY WILL STILL BE CITIZENS TOMORROW IN COSTA MESA.

26 AND I NOTE THAT 387'S NOT WRITTEN --

1 **THE COURT:** WELL, BUT THEY'RE NOT GOING TO BE VERY
2 HAPPY CITIZENS BECAUSE THEIR ARGUMENT IS THAT THEY'RE
3 NOT GOING TO HAVE A FAIR ENOUGH SHOT IN THE PUBLIC FORUM
4 TO SPEAK THEIR MIND ON THIS POLITICAL ISSUE.

5 **MR. VOGT:** EITHER WERE THE CITIZENS THAT WERE
6 AGAINST OR THAT WERE FOR PROPOSITION 22, WHICH
7 DETERMINED MARRIAGE WAS BETWEEN A MAN AND A WOMAN, AND
8 WE'RE TRYING TO HAVE THAT ENFORCED. AND THE COURT OF
9 APPEAL SAID, NO, THAT THEY DID NOT HAVE -- THEY DIDN'T
10 HAVE AN INTEREST IN THAT CASE.

11 AND THEIR INTEREST IS PROBABLY EVEN GREATER
12 THAN -- WHAT IS IT? -- THE INTEREST OF THE PROPOSED
13 INTERVENORS HERE. BUT SECTION 387 IS NOT WRITTEN IN THE
14 DISJUNCTIVE. YOU HAVE TO MEET ALL THREE PRONGS. AND IF
15 THEY DON'T MEET THE FIRST PRONG, YOU DON'T GET TO THE
16 SECOND AND THE THIRD PRONG.

17 AND THE SPADONI INTERVENOR'S PROBLEMS, AS YOU
18 NOTED IN -- YOU KNOW, WHEN YOU WERE LAYING OUT YOUR
19 TENTATIVE, IS THAT THEY INJECT BRAND-NEW ISSUES INTO
20 THIS CASE. SO BOTH PROPOSED INTERVENORS -- AND YOU'RE
21 ABSOLUTELY RIGHT -- DO NOT HAVE AN INTEREST IN THIS
22 CASE.

23 NOW, MS. FOLEY ALSO --

24 **THE COURT:** MR. KAHR, I'M JUST CURIOUS BECAUSE THEY
25 DID POINT OUT THAT IT WAS YOU WHO --

26 **MR. KAHR:** YES.

1 **THE COURT:** -- CAUSED ADDITIONAL ISSUES TO GO IN.
2 WHAT'S YOUR POSITION ON THAT?

3 **MR. KAHR:** WELL, OUR POSITION IS NOT ADDITIONAL --

4 **THE COURT:** WOULD YOU BE HAPPY TO GET IN ON THE
5 CONDITION YOU DUMP THAT ISSUE?

6 **MR. KAHR:** IF IT CAME TO THAT AND THAT WAS THE ONLY
7 ALTERNATIVE, THEN WE WOULD -- WE WOULD -- NO. ACTUALLY,
8 I WOULD HAVE TO CONSULT MY CLIENT ABOUT IT BEFORE I
9 COULD SAY THAT WE WOULD WAIVE THAT ISSUE. BECAUSE WE
10 INTEND TO PURSUE THAT ISSUE, AND WE WANT TO PRESERVE IT.
11 AND THAT'S PART OF THE REASON THAT WE FEEL WE HAVE TO
12 BRING IT HERE. THE REMEDIES POST ELECTION TO
13 CHALLENGE -- RAISE THAT KIND OF CHALLENGE ARE VERY
14 LIMITED, AND WE HAVE TO PURSUE WHATEVER OPPORTUNITY WE
15 CAN BEFORE THE ELECTION TO GET JUDICIAL REVIEW.

16 AS WE POINTED OUT, ALTHOUGH -- IF THIS WAS
17 ALREADY ON THE BALLOT, WE WOULD HAVE A RIGHT OF WRIT OF
18 MANDATE CHALLENGE TO RAISE THIS ISSUE. AS IT STANDS
19 NOW, IT'S NOT ON THE BALLOT. AND WE'LL -- IF WE'RE NOT
20 ALLOWED TO INTERVENE TO RAISE THIS ISSUE, WE'D BE LEFT
21 WITH TWO DAYS OR WHATEVER IT IS THAT THE REGISTRAR HAS
22 SAID WOULD BE LEFT TO PREPARE THE MATERIALS FOR THE
23 BALLOT.

24 **MR. VOGT:** BUT ALL THREE PRONGS OF 387(A) MUST BE
25 MET. I'LL READ FROM *SIMPSON REDWOOD*. THIS IS A CASE
26 THE PROPOSED INTERVENORS RELY UPON, WHICH NOTED, QUOTE,

1 "INTERVENTION IS PROPERLY PERMITTED ONLY IF THE
2 REQUIREMENTS OF THE STATUTE HAVE BEEN SATISFIED." YOUR
3 HONOR'S TENTATIVE IS ABSOLUTELY CORRECT. THE
4 REQUIREMENTS OF THE STATUTE, ALL THREE OF THEM, HAVE NOT
5 BEEN SATISFIED HERE.

6 I ALSO POINT THE COURT TO THE *FAIR RENT* CASE.
7 AND IN *FAIR RENT*, IT NOTED THAT THE PROPOSED INTERVENORS
8 THERE WOULD NOT SUFFER ANY INJURY OR HAVE ANY INTEREST
9 BECAUSE AN INTERVENING EVENT HAD HAPPENED. THERE HAD TO
10 BE A VOTE. AND I SUBMIT THAT THERE'S -- WE'RE ACTUALLY
11 A STEP REMOVED OF *FAIR RENT* BECAUSE FIRST WE NEED TO
12 HAVE A CHARTER PLACED ON THE BALLOT. THEN WE NEED TO
13 HAVE A VOTE. AND SO THERE'S TWO STEPS THAT NEED TO
14 HAPPEN. SO I SUBMIT THAT WE'RE ACTUALLY AN EASIER CASE
15 THAN THE *FAIR RENT* CASE.

16 MS. FOLEY RAISED THIS ISSUE ABOUT THE CLERK NOT
17 AFFORDING HER ADDITIONAL TIME. YOUR HONOR, I -- WHEN
18 SHE WAS MAKING HER ARGUMENT, I WENT BACK AND REREAD HER
19 DECLARATION. THAT'S -- THERE'S NO EVIDENCE IN THE
20 RECORD BEFORE THIS COURT ON THAT ISSUE. AND YOU CAN
21 ONLY GRANT INTERVENTION BASED UPON ADMISSIBLE EVIDENCE.

22 MS. FOLEY CITES THE COURT TO THE *SIMAC VS.*
23 *ALCIATI* CASE. IN THAT CASE, IT WAS -- IT WAS AN
24 ORGANIZATION CALLED CITIZENS FOR ORDERLY RESIDENTIAL
25 DEVELOPMENT, OR THE ACRONYM CORD. THEY ACTUALLY WERE
26 THE PROPONENTS AND THE DRAFTERS OF MEASURE E, WHICH --

1 **THE COURT:** LET ME INTERRUPT YOU FOR HALF A SECOND.
2 WHAT'S YOUR CITE ON *SIMPSON*, PLEASE?

3 **MR. VOGT:** *SIMPSON* IS 196 CAL.APP.3D 1192, PIN CITE
4 1199, DATE 1989.

5 **THE COURT:** THANKS. GO AHEAD.

6 **MR. VOGT:** SURE, YOUR HONOR. AND WHAT HAPPENED IS
7 MEASURE E PASSED, AND A DEVELOPER WANTED TO -- BROUGHT
8 ACTION TO GET 11 BUILDING PERMITS ISSUED THAT WOULD HAVE
9 VIOLATED MEASURE E. AND THE COURT ALLOWED CORE TO
10 INTERVENE BECAUSE THEY WERE THE ONES THAT BROUGHT FORTH
11 THIS INITIATIVE. THEY DRAFTED IT, THEY BROUGHT IT TO
12 THE VOTE, AND IT PASSED. SO *SIMAC* HAS NO BEARING ON --
13 FACTUALLY. IT'S JUST NOT EVEN CLOSE TO THE FACTS AT
14 HAND.

15 PLUS, THE LAST POINT MS. FOLEY RAISED WAS SHE
16 CITED THE COURT TO THE *BUS STOP* CASE. *BUS STOP* WAS --
17 CONCERNED A SITUATION WHERE THE CALIFORNIA SUPREME COURT
18 WAS -- WAS INTEGRATING OUR SCHOOLS. AND YOU HAD AN
19 ORGANIZATION THAT WAS PREDOMINANTLY MADE UP OF WHITE
20 PARENTS, AND THEY BROUGHT AN ACTION TO PREVENT THE
21 BUSING OF THEIR KIDS TO OTHER SCHOOLS. AND SO IT WAS
22 THEIR CHILDREN THAT WAS AT ISSUE. AND THAT WAS AN
23 INTEREST THAT WAS IN *BUS STOP*, AND IT HAS NO
24 RELATIONSHIP WHATSOEVER TO THE FACTS AT HAND IN THIS
25 CASE.

26 TURNING TO COUNSEL FOR THE SPADONI INTERVENORS,

1 THE FIRST POINT HE SAID WAS SOMEONE HAS TO STEP UP
2 BECAUSE THESE ARE SECRET PROCEEDINGS, SO SECRET THAT WE
3 HAVE A WHOLE GROUP OF HIGH SCHOOL KIDS HERE WATCHING
4 THESE PROCEEDINGS.

5 OUR PETITION FOR WRIT OF MANDATE WAS FILED 48
6 HOURS -- LESS THAN 48 HOURS AFTER THE REGISTRAR DID NOT
7 ACCEPT THE FILING. YOU KNOW, THE ARGUMENT PRESUMES THAT
8 COUNSEL FOR PETITIONER WOULD VIOLATE THEIR ETHICAL
9 OBLIGATIONS AND COUNTY COUNSEL WOULD SIT HERE AND LET US
10 GET AWAY WITH THAT AND THAT THE COURT WOULD DO NOTHING.
11 IT'S -- THIS IS THE ANTITHESIS OF A SECRET PROCEEDING.

12 COUNSEL ALSO REPEATEDLY SAID HOW HE WOULD
13 EXERCISE HIS DISCRETION. BUT HOW HE WOULD EXERCISE HIS
14 DISCRETION IF HE WAS A JUDGE IS IMMATERIAL TO THE CASE.
15 WE'VE GOT A STATUTE, AND THE STATUTE SETS FORTH THE
16 THREE PRONGS THAT MUST BE MET. NEITHER -- NONE OF THE
17 PRONGS ARE MET HERE.

18 COUNSEL RAISED WHO HAS STANDING TO CHALLENGE.
19 THE REGISTRAR. REGISTRAR HAS STANDING TO RAISE ANY
20 ISSUES.

21 **THE COURT:** BUT HE'S OPTED NOT TO. NOW, I ASSUME
22 WHAT PART OF THIS IS -- AND I'LL TELL YOU CANDIDLY, I
23 THINK IT'S BECAUSE SOME CASE I HAD IN THE PAST, BUT I
24 REMEMBER ZERO DETAILS ABOUT IT, BUT I BELIEVE IT
25 INVOLVED THE REGISTRAR, AND I BELIEVE THE REGISTRAR TOOK
26 A SIMILAR POSITION.

1 I KIND OF ASSUMED IT WAS, IN PART, BECAUSE HIS
2 JOB IS NOT -- OR AS HE VIEWS, ANYWAY, NOT TO TAKE
3 POSITIONS ON THINGS LIKE THIS ONE WAY OR THE OTHER HOW
4 IT OUGHT TO BE. HE MAKES HIS CALL. AND IF THE COURT
5 WANTS TO SAY IT'S OKAY, THAT'S REALLY GOOD. AND IF THE
6 COURT SAYS IT'S NOT OKAY, THEN REGISTRAR SAYS "FINE.
7 I'LL DO WHAT YOU SAY."

8 **MR. VOGT:** YEAH, EXACTLY. THE REGISTRAR IS THE
9 ONLY PARTY WITH AN INTEREST HERE. HE HAS SAID IT DOES
10 NOT IMPACT HIS ABILITY TO DO HIS JOB. I MEAN THE
11 TIME -- THE 88-DAY TIMING IS SO THE REGISTRAR HAS ENOUGH
12 TIME TO GET THE BALLOTS PRINTED. THAT'S THE REASON FOR
13 THE 88 DAYS.

14 AND THEN THE OTHER POINT ON, YOU KNOW, THE --
15 IT WAS ALL DONE IN SECRET. I MEAN --

16 **THE COURT:** WHOEVER MIGHT BE PLAYING THE CHESS
17 BOARD OUT IN THE FUTURE, HOWEVER, MIGHT PREDICT A CHANGE
18 IN POSITION AT SOME POINT BY THE REGISTRAR WHEN YOU
19 START SAYING, WELL, THIS IS GOING TO MAKE A DIFFERENCE,
20 BUT NO NEED TO PROJECT OUT THERE.

21 **MR. VOGT:** AND THEN, YOUR HONOR, ON MR. KAHR'S
22 POINT, THE ISSUE THAT THEY TRY TO INJECT IN THIS CASE
23 ABOUT WHETHER THE BALLOT MEASURE COMPLIES WITH THE
24 GOVERNMENT CODE -- THE NEWLY ENACTED GOVERNMENT CODE
25 SECTION THAT WAS ADOPTED BECAUSE OF THE ISSUE WITH THE
26 CITY OF BELL AND THE BALLOT MEASURE DESCRIPTION, WE'RE

1 NOT GOING TO HAVE A BALLOT MEASURE DESCRIPTION IF WE
2 DON'T HAVE A BALLOT MEASURE.

3 SO WE'RE ONLY GOING TO HAVE A BALLOT MEASURE IF
4 YOUR HONOR ISSUES MANDAMUS HERE. SO THE ISSUE'S NOT
5 JUSTICIABLE. IT'S NOT AT ISSUE. IT WOULD ONLY BECOME
6 JUSTICIABLE IF THE REGISTRAR IS ORDERED TO PUT IT ON THE
7 BALLOT. AND AT THAT POINT, THERE MAY NOT EVEN BE AN
8 ISSUE BECAUSE IT WILL DEPEND UPON WHAT THE BALLOT
9 MEASURE SAYS. SO AT THIS POINT, IT'S REALLY
10 SPECULATION.

11 SO WITH THAT, I THINK YOUR HONOR IS CORRECT,
12 AND WE'LL SUBMIT ON THE TENTATIVE.

13 **THE COURT:** REBUTTAL?

14 **MR. KAHR:** I'D LIKE TO MAKE SOME REAL QUICK POINTS.
15 YOUR HONOR, IN THE *CITY AND COUNTY OF SAN FRANCISCO* CASE
16 THAT THEY PLACE GREAT WEIGHT HERE IN THEIR PRESENTATION
17 AND IN THEIR PAPERS, AS WELL, THE GROUP SEEKING TO
18 INTERVENE THERE IS A POST-ELECTION CHALLENGE TO
19 PROPOSITION 22. THEY WERE SEEKING TO INTERVENE --

20 **THE COURT:** TIME-OUT. I'LL ASK YOU TO START AGAIN
21 NOW. GIVE ME THAT CITE ON SIMPSON AGAIN.

22 **MS. FOLEY:** 196 CAL.APP.3D 1192.

23 **MR. VOGT:** THAT'S CORRECT. PIN CITE IS 1199, YOUR
24 HONOR.

25 **THE COURT:** YEAH. I SEE MY TYPO. HANG ON FOR JUST
26 A SECOND. GO AHEAD.

1 **MR. KAHR:** THE *CITY AND COUNTY OF SAN FRANCISCO*
2 CASE WAS A POST-ELECTION CHALLENGE TO PROPOSITION 22.
3 THE GROUP THAT WAS SEEKING TO INTERVENE IN THAT CASE TO
4 DEFEND THE LAW HAD NOT EVEN BEEN FORMED UNTIL AFTER THE
5 ELECTION. AND THE COURT NOTED THAT EXPRESSLY IN THEIR
6 HOLDING, THAT THEY HAD NO INVOLVEMENT IN THE BALLOT AND
7 DRAFTING AND SPONSORING OR ADVOCATING ON BEHALF OF
8 THE -- ONE WAY OR ANOTHER ON BEHALF OF PROPOSITION 22.

9 **THE COURT:** LET ME INTERRUPT YOU. I'LL SAY AGAIN
10 WHAT I TRIED TO SAY TWO OR THREE TIMES. I DON'T SEE A
11 PROBLEM IN THE ABSTRACT WITH THE CONCEPT OF THOSE WHO
12 ARE ACTIVE TO THE POINT OF WRITING THE BALLOT OPPOSITION
13 MEASURES.

14 YOU KNOW, YOU CAN PROBABLY EVEN GO A COUPLE
15 STEPS DOWN AS LONG AS SOMEBODY'S WHO'S BONA FIDES A
16 CITIZEN INVOLVED -- A CITIZEN WHO WAS INVOLVED ON THE
17 ANTI SIDE, YOU KNOW, THEY HAVE ENOUGH OF AN ABSTRACT
18 INTEREST TO INTERVENE.

19 BUT AS I UNDERSTAND WHAT THESE CASES,
20 PARTICULARLY THE *SAN FRANCISCO VS. CALIFORNIA* CASE, IS
21 SAYING IS THAT YOU HAVE TO, YOU KNOW, GAIN OR LOSE BY
22 THE PROPOSED ACTION IN COURT.

23 SO MY ONLY FOCUS IN TERMS OF THE PROBLEM THAT I
24 SEE FOR THE PROPOSED INTERVENORS IS THAT THE --
25 EFFECTIVELY, IF THEY HAD THE SAME NOTICE AND OPPORTUNITY
26 TO PREPARE THAT THAT THEY WOULD HAVE HAD ANYWAY.

1 **MR. KAHR:** YES, YOUR HONOR. I WOULD JUST REITERATE
2 THAT THEY COULD HAVE BEEN PUTTING UP -- THE PROPOSED
3 INTERVENORS COULD HAVE BEEN PUTTING UP LAWN SIGNS FOR
4 THE LAST TWO WEEKS. THEY COULD HAVE BEEN ENGAGING
5 CONSULTANTS. THEY COULD HAVE BEEN ORGANIZING, HOLDING
6 MEETINGS TO CAMPAIGN AGAINST THIS PROPOSED CHARTER.

7 BUT IT'S NOT ON THE BALLOT AND IT HASN'T BEEN
8 YET AND IT WON'T BE UNLESS YOUR HONOR ORDERS IT PLACED
9 ONTO THE BALLOT. AND THAT TIME CAN'T BE GIVEN BACK, AND
10 I ALREADY MADE THAT POINT. SO I'LL LET THE OTHER
11 PROPOSED INTERVENORS HAVE THEIR REBUTTAL, AS WELL.

12 **MR. STEPHENS:** YES, YOUR HONOR. YOU PAY PARTICULAR
13 ATTENTION TO THE *SIMPSON* CASE. WE HAVE THE CITE IN THE
14 RECORD. I WANT TO READ TO YOU A QUOTE THAT I THINK IS
15 IMPORTANT OUT OF THE *SIMPSON* CASE ON PAGE 1200.

16 IT SAYS, BUT THE NATURE OF THE NECESSARY DIRECT
17 INTEREST IN THE LITIGATION IS UNDESCRIBED BY THE STATUTE
18 NOR IS THE DECISION OF LAW HELPFUL.

19 AS IT HAS BEEN SAID, THE POINT AT WHICH ONE'S
20 INTEREST IN THE SUCCESS OF ONE OF THE PARTIES TO THE
21 ACTION BECOMES DIRECT AND NOT CONSEQUENTIAL IS NOT
22 EASILY FIXED. IT HAS BEEN THE SUBJECT OF MUCH JUDICIAL
23 DISCUSSION.

24 SO, FRANKLY, THERE'S NOT A CASE THAT DEALS WITH
25 THIS SPECIFIC ISSUE. AS I SAID, I'M NOT TRYING TO
26 SUBSTITUTE MY DISCRETION FOR YOU. I'M JUST TRYING TO

1 HELP YOU EXERCISE YOUR DISCRETION; RIGHT?

2 AND I SUBMIT IN THE ARGUMENT THAT YOU SHOULD
3 EXERCISE IN YOUR DISCRETION IN FAVOR OF HEARING US,
4 READING OUR BRIEFS, SO THAT YOU HAVE THE INFORMATION YOU
5 NEED -- NEED TO RULE ON THE SUBSTANTIVE -- SUBSTANTIVE
6 MOTION.

7 NOW, TWO MORE POINTS. COUNSEL IS RIGHT. THIS
8 IS ALL ABOUT TIME. THIS WHOLE THING IS ABOUT TIME,
9 DEADLINES, TIME. NOW, AND THE -- IF -- IF THE
10 RESOLUTIONS WOULD HAVE BEEN TIMELY FILED ON THE 9TH,
11 THERE WOULD HAVE BEEN A NUMBER ATTACHED TO THE MEASURE.
12 THAT NUMBER COULD HAVE GONE ON OUR T-SHIRTS, OUR LAWN
13 SIGNS. WE COULD HAVE PUT IT ON OUR WEBSITE, AND WE DO
14 HAVE A WEBSITE. WE COULD HAVE DONE ALL KINDS OF THINGS
15 WITH THAT. TIME IS GONE. YOUR HONOR CAN'T GET IT BACK.
16 WE CAN'T GET IT BACK. AND IT BENEFITS THE OTHER SIDE
17 AND HURTS THE OPPONENTS OF THE CHARTER.

18 NOW, LET ME TURN IT AROUND A LITTLE BIT, AND I
19 WANT YOU TO THINK ABOUT THIS. AND IF YOU READ OUR
20 BRIEFS, YOU'LL SEE THIS IS A THEME WE BEAT IN OUR
21 BRIEFS.

22 WHAT DOES IT HURT IF THE CHARTER GOES TO -- TO
23 THE BALLOT IN NOVEMBER? COSTA MESA HAS BEEN A CITY
24 INCORPORATED SINCE 1953, FOR 59 YEARS. IT'S BEEN A
25 GENERAL LAW CITY. THERE IS NO GOOD, CREDIBLE ARGUMENT
26 FOR WHY THE CHARTER BALLOT CAN'T GO ON IN NOVEMBER, AND

1 THAT WOULD SOLVE THE PROBLEM.

2 **THE COURT:** THAT'S MERITS, THOUGH, ISN'T IT?

3 **MR. STEPHENS:** I KNOW, YOUR HONOR. IT IS MERITS.
4 BUT YOUR HONOR IS LOOKING AT THE MERITS WHEN TRYING TO
5 DECIDE WHETHER WE HAVE AN INTEREST. IT'S DEFINITELY
6 MERITS. AND SO THAT WOULD SOLVE THE TIME ISSUE BY
7 LETTING US INTERVENE.

8 NOW, ON THE ISSUE OF MY QUOTE -- AND I PUT THIS
9 QUOTE IN THE RECORD TWICE. SOMEBODY NEEDED TO STEP UP
10 HERE, OR THIS WHOLE THING WOULD HAVE BEEN -- GONE DOWN
11 IN SECRET.

12 YOUR HONOR, IF WE WOULDN'T HAVE STEPPED UP,
13 THERE WOULD HAVE BEEN NO ARGUMENT. AND THE KEY CASE
14 THAT WE CITED, THE *BARNES* CASE, WOULD HAVE NEVER BEEN
15 BEFORE THIS COURT BECAUSE THE DOCUMENT THAT WAS FILED,
16 WHICH WE HAVE NEVER BEEN SERVED WITH, AND -- AND YOUR
17 CLERK HELD IT IN HER HAND BEFORE MY VERY EYES, WAS
18 CHANGED, AND A CHANGED DOCUMENT WAS SERVED TO US. THAT
19 WAS THE ONLY DOCUMENT THAT DEALT WITH THE *BARNES* CASE.

20 SO WHEN I SAY IT WOULD HAVE BEEN DONE IN
21 SECRET, I'M NOT TALKING ABOUT THIS. WE ARE HERE BECAUSE
22 WE ACTED. IT'S A PUBLIC SETTING WITH STUDENTS AND PRESS
23 AND RESIDENTS BECAUSE WE ACTED. IF WE HAD NOT HAVE
24 ACTED, IF I WOULD HAVE JUST GONE ON TO MY CLIENT
25 MEETING, SHE WOULD HAVE STAYED AT STARBUCKS AND GOT
26 ANOTHER LATTE; RIGHT? THEN YOU WOULD HAVE NOT RECEIVED

1 THE KEY CASE THAT YOU NEED TO MAKE A DECISION ON THE
2 MERITS, THE *BARNES* CASE. BECAUSE IT WASN'T CITED IN THE
3 PETITION AND IT WASN'T CITED IN THE INITIAL BRIEFS, AND
4 THERE WOULD HAVE BEEN NO ARGUMENT. SO THAT'S WHAT I'M
5 SAYING.

6 **THE COURT:** *BARNES* IS DICTUM, THOUGH, ISN'T IT?

7 **MR. STEPHENS:** SOMEBODY HAD TO -- PARDON ME?

8 **THE COURT:** I'M GOING TO FALL PREY, AND I'M GOING
9 TO BITE. I WAS GOING TO SAY I WAS GOING TO STAY OUT OF
10 THE MERITS OF THIS THING, BUT I DON'T KNOW. MAYBE THEY
11 DISAGREE BECAUSE I DIDN'T SEE IT IN ANY OF THEIR
12 PAPERWORK, BUT --

13 **MR. STEPHENS:** IT'S IN THEIR PAPERWORK NOW.

14 **THE COURT:** BUT *BARNES* IS DICTUM, ISN'T IT?

15 **MR. STEPHENS:** NO, NO. IT'S RIGHT ON POINT. IT
16 SAYS THAT --

17 **THE COURT:** NO. DICTUM DOESN'T HAVE TO DO WITH
18 WHETHER SOMETHING'S ON POINT OR NOT. IN -- IN *BARNES*,
19 IF I'M READING IT CORRECTLY -- AND I'LL GIVE YOU THIS
20 MUCH TRACTION ON ARGUING THE MERITS OF THIS CASE NO
21 MATTER HOW I RULE ON THE INTERVENTION MOTION.

22 IF I READ *BARNES* CORRECTLY, THE COURT OF APPEAL
23 DENIED THE WRIT, THE PURPOSE OF WHICH WAS TO -- I NEED
24 TO GET MY NOTES BACK ON *BARNES* AGAIN. BUT WHATEVER IT
25 WAS, THEY SAID IT'S DENIED BECAUSE THE ELECTION'S BEEN
26 HELD, SO IT'S MOOT. BUT, BY THE WAY, THE THING THAT

1 YOU'RE GRIPING ABOUT IN THE WRIT IN TERMS OF, YOU KNOW,
2 THE REGISTRAR FILING SOMETHING AFTER THE TIME ELAPSED ON
3 A MANDATORY STATUTE, YEAH, YOU'RE CORRECT ON THAT.

4 **MR. STEPHENS:** RIGHT. AND THE COURT --

5 **THE COURT:** ONCE THEY DENY THE WRIT AS MOOT, ALL
6 THE OTHER STUFF IS DICTUM, PARTICULARLY THE STUFF WHERE
7 THEY SAY "BUT IF IT WEREN'T MOOT, WE WOULD HAVE GRANTED
8 IT." AM I WRONG ON THAT IN ANALYSIS OF --

9 **MR. STEPHENS:** WELL, I MEAN --

10 **MR. KAHR:** I DON'T THINK THAT'S RIGHT, YOUR HONOR.
11 WITH RESPECT, I THINK THE COURT OF APPEAL HAS DISCRETION
12 AFTER AN ELECTION'S CONCLUDED TO HEAR THE LEGAL ISSUE ON
13 THE MERITS BECAUSE IT'S A PUBLIC INTEREST EXCEPTION.
14 ESSENTIALLY, THAT'S VERY HARD TO GET PUBLISHED COURT OF
15 APPEAL DECISIONS ON ELECTION CASES BECAUSE THEY'RE
16 ALMOST ALWAYS OVER BY THE TIME IT GOES UP THERE.

17 I'VE NEVER HEARD OR SEEN ANY SUGGESTION THAT
18 THE MANY PUBLISHED CASES THAT CAME UP AFTER ELECTIONS
19 WHERE THE DISPUTE WAS CERTAINLY MOOT, THAT ANY OF THOSE
20 ARE NOT CONTROLLING LAW AS TO THE ISSUES DISPOSED OF IN
21 THE OPINION.

22 **MR. STEPHENS:** ALSO, YOUR HONOR, THE --

23 **THE COURT:** BUT ISN'T THAT -- ISN'T -- DOESN'T THAT
24 ARGUMENT ALMOST PROVE TOO MUCH AS IN ONE OF THE REASONS
25 WHY A TRIAL COURT SHOULD BE PRETTY CAREFUL BEFORE THEY
26 LET THE OPPONENTS OF SOMETHING INTERVENE IS BECAUSE THAT

1 INTERVENTION CAN GIVE THEM -- PUT THE MONKEY WRENCH INTO
2 THE ELECTION NOTWITHSTANDING THE MERITS OF THE
3 ARGUMENTS?

4 **MR. KAHR:** I THINK CERTAINLY IF THERE'S A RISK THAT
5 IT'S GOING TO PUT A MONKEY HOLD ON THE ELECTION OR THAT
6 IT WILL -- THERE'LL BE SOME PREJUDICE TO THE PETITIONER,
7 THAT THAT'S ALWAYS A REASON TO DENY INTERVENTION.

8 BUT I THINK ON THE RECORD HERE, THERE IS NO
9 PREJUDICE. IT WON'T DISRUPT -- THE COURT SET A HEARING
10 FOR TOMORROW ON THE MERITS. AND WHAT'S BEING ASKED FOR
11 IS SIMPLY AN OPPORTUNITY FOR THE OPPOSITION BRIEFS TO BE
12 FILED AND FOR ARGUMENT TO BE HEARD BEFORE THE COURT
13 RESOLVES THAT ISSUE UNDOUBTEDLY IN THE NEXT FEW DAYS.

14 **THE COURT:** WELL, AND THAT, OF COURSE, IS THE IRONY
15 INHERENT IN THIS COURT'S ATTEMPT TO TRY TO GET SOME SORT
16 OF RULING AS QUICKLY AS POSSIBLE.

17 **MR. KAHR:** I UNDERSTAND THAT, YOUR HONOR. THESE
18 CASES ARE --

19 **THE COURT:** BUT IN ANY EVENT --

20 **MR. STEPHENS:** AND, YOUR HONOR, ONE THING. I'M
21 TRYING TO FIND THE EXACT WORDING IN THE --

22 **THE COURT:** HANG ON. HANG ON.

23 **MR. STEPHENS:** I'M SORRY.

24 **THE COURT:** I THINK YOU FINISHED, AND MR. KAHR
25 WAS --

26 **MR. STEPHENS:** OH, NO. I HADN'T.

1 **MR. KAHR:** OH, YES. I'M FINISHED, YOUR HONOR.

2 **MR. STEPHENS:** I JUST HAVE ONE OTHER POINT TO
3 ADDRESS THE *BARNES* CASE.

4 I'M SORRY. I DIDN'T MEAN TO CUT YOU OFF.

5 **MR. KAHR:** SURE.

6 **MR. STEPHENS:** I COULDN'T FIND THE EXACT LANGUAGE
7 ON HERE, BUT I THINK THE PRINCIPLE -- MIGHT BE THE
8 LANGUAGE THE PRINCIPLE'S CAPABLE OF REPETITION BUT
9 EVADING REVIEW. SO I THINK IN THAT -- IN THE *BARNES*
10 CASE, APPLYING THAT PRINCIPLE, EITHER EXPLICITLY -- I
11 THINK IT'S EXPLICITLY OR IMPLICITLY, THE APPELLATE COURT
12 DECIDED THE RULING BECAUSE IT WAS CAPABLE OF REPETITION
13 BUT EVADING REVIEW.

14 SO UNDER THAT PRINCIPLE OF APPELLATE LAW, I
15 THINK THAT THE APPELLATE COURT DIDN'T DO THAT FOR THEIR
16 HEALTH. THEY DID THAT TO -- TO ADVISE THE TRIAL COURT
17 ABOUT HOW -- HOW THEY MIGHT RULE.

18 AND THE KEY -- THE KEY CITE, BY THE WAY, AND
19 THE QUOTE IS -- IT SAYS -- THIS IS ON PAGE 396 -- IS
20 "NEVERTHELESS, *BARNES* ARGUED BELOW THAT THE WRIT SHOULD
21 ISSUE BECAUSE HE HAD SUBSTANTIALLY COMPLIED WITH THE
22 DEADLINE RULES. THE DOCTRINE OF SUBSTANTIAL COMPLIANCE
23 DOES NOT APPLY. CASES SPECIFICALLY DEALING WITH
24 STATUTORY DEADLINES FOR ELECTION FILINGS THAT ARE
25 COUCHED IN LANGUAGE REQUIRING DOCUMENTS TO BE FILED,
26 QUOTE, NOT LESS, END QUOTE, OR, QUOTE, NOT LATER, END

1 QUOTE, THAN A GIVEN NUMBER OF DAYS BEFORE A DESIGNATED
2 TIME HAVE INSISTED ON STRICT COMPLIANCE WITH THE
3 DEADLINES.

4 AND SO THAT'S THE *BARNES* CASE, STRICT
5 COMPLIANCE WITH THE DEADLINES. WE'RE TALKING ABOUT
6 TIME. THERE'S NO JUDICIAL DISCRETION. AND -- AND THE
7 POINT I WAS TRYING TO MAKE, THE JUMPING OFF POINT, WHICH
8 RELATED TO MY QUOTE, IF WE WOULD NOT HAVE STEPPED UP,
9 THIS WHOLE THING WOULD HAVE GONE DOWN IN SECRET BECAUSE
10 OUR OPPONENTS -- AND, BY THE WAY, WE HAVE NOT HEARD HOW
11 JULIE FOLCIK, THE CITY CLERK, AN INDIVIDUAL WHO LIVES IN
12 LONG BEACH, HAS ANY BASIS OR STANDING TO EVEN BRING THIS
13 CASE; RIGHT?

14 BUT THE QUESTION IS -- IS IT WOULD HAVE BEEN
15 BETWEEN JULIE FOLCIK, A RESIDENT OF LONG BEACH, AND A --
16 AND THE COUNTY REGISTRAR, WHO HAS NO INTEREST IN IT,
17 ALTHOUGH THE COUNTY REGISTRAR DID PROVIDE A DECLARATION.
18 AND IN THE DECLARATION, THE COUNTY REGISTRAR SAID -- AND
19 WE DON'T NEED TO INTERVENE FOR YOU TO READ THIS. THIS
20 IS IN THE RECORD.

21 SAID HE FEELS -- AT PARAGRAPH 11, THAT HE -- "I
22 HAVE NO DISCRETION AS THE TOP ELECTIONS OFFICIAL TO
23 ACCEPT THE CITY OF COSTA MESA'S LATE FILINGS."

24 HE ALSO SAID AT PAGE -- AT PARAGRAPH 7 OF HIS
25 DECLARATION, AND HE PUT IT IN THERE THAT ON THE WEBSITE,
26 IT SAID SPECIFICALLY THAT MARCH 9TH WAS THE DEADLINE FOR

1 THE RESOLUTION.

2 HE ALSO SAID -- OR TESTIFIED, I SHOULD SAY,
3 THAT THE CITY OF -- THE CITY -- THE COUNTY REGISTRAR
4 SPECIFICALLY ADVISED PERSONNEL FROM COSTA MESA ABOUT THE
5 MARCH 9TH DEADLINE. AND HE ALSO SAID IN PARAGRAPH 8 OF
6 HIS DECLARATION THAT FIVE OTHER ORANGE COUNTY CITIES MET
7 THE DEADLINE; RIGHT?

8 NOW, SO WE'RE SITTING HERE, AND -- AND THE
9 TENTATIVE IS TO SAY "WE DON'T WANT TO HEAR FROM YOU";
10 RIGHT? BUT AS I SAID, WE HAVE A SUFFICIENT INTEREST IN
11 THIS MATTER OF PUBLIC CONCERN THAT THE COURT SHOULD
12 EXERCISE ITS DISCRETION TO HEAR FROM US BECAUSE WE CAN
13 ARGUE THE MERITS IN THE CASE, HELP THE COURT MAKE A GOOD
14 DECISION, AND IT'S ALL ABOUT TIME AND IT'S ALL ABOUT
15 YOUR HONOR MAKING A RIGHT DECISION ABOUT A MATTER OF
16 PUBLIC CONCERN. WE LOST TIME. THAT IS OUR HARM.

17 **MS. FOLEY:** IN ADDITION, WE LOST RESOURCES. IT
18 COST MONEY TO BRING THIS ACTION TO INTERVENE TO ALLOW
19 FOR AN OPPOSING VIEW TO BE CONSIDERED BY THE COURT. I'M
20 GOING TO GO BACK TO MR. STEPHENS' COMMENT ABOUT ME AT
21 THE STARBUCKS. HE WASN'T SAYING THAT TO BE DEMEANING.

22 HE SAID IT BECAUSE I HAPPENED TO BE IN BIG BEAR
23 AT THE STARBUCKS WAITING TO HEAR FROM THE ATTORNEYS
24 WHETHER OR NOT THERE HAD BEEN A JUDGE ASSIGNED, WHETHER
25 OR NOT THERE WAS GOING TO BE AN EX-PARTE HEARING.

26 AT THAT TIME --

1 **THE COURT:** WHEN WAS THAT?

2 **MS. FOLEY:** THAT WAS ON -- WE SENT OUR REQUEST ON
3 MARCH 13TH TO GET THE INFORMATION. AND ON MARCH 19TH --

4 **THE COURT:** THE DAY THE THING GOT FILED.

5 **MS. FOLEY:** NO. ON MARCH 13TH, BEFORE -- BECAUSE
6 WE HAD HEARD THAT THEY HAD NOT TIMELY COMPLIED.

7 SO ON MARCH 13TH, BOTH MYSELF, MR. STEPHENS,
8 MANY MEMBERS OF THE PUBLIC WHO ARE SITTING IN THE
9 AUDIENCE HERE TODAY, REQUESTED INFORMATION FROM BOTH THE
10 JONES DAY ATTORNEYS, FROM THE CITY ATTORNEY, FROM THE
11 CITY MANAGER, FROM THE PUBLIC INFORMATION OFFICER TO
12 GIVE US INFORMATION ABOUT WHETHER THE PETITION TO HAVE
13 THE WRIT OF MANDATE HEARD WAS FILED, A COPY OF THE
14 PETITION, PROOF OF SERVICE, IF A JUDGE HAD BEEN
15 DETERMINED, WHAT COURTROOM, AND WHETHER THEY WERE GOING
16 IN EX PARTE.

17 NOTHING. NO RESPONSE. I GOT NO RESPONSE. I
18 SENT THREE E-MAIL MESSAGES. ON MARCH 19TH, I GOT WIND
19 THAT, YES, INDEED, THE HONORABLE GLENDA SAUNDERS HAD
20 BEEN APPOINTED. AND SO I CALLED THEIR COURTROOM TO FIND
21 OUT IF THAT WERE TRUE.

22 **THE COURT:** HANG ON. THAT -- BY "APPOINT," DID YOU
23 MEAN THAT THE CASE HAD BEEN ASSIGNED TO HER?

24 **MS. FOLEY:** SORRY. YES. ASSIGNED TO MS. SAUNDERS,
25 JUDGE SAUNDERS. AND THEN I WAS INFORMED ONLY BY CALLING
26 THE CLERKS IN THE VARIOUS DIFFERENT COURTROOMS WHERE I

1 HEARD RUMORED THE CASE HAD LANDED AND, IN FACT,
2 MS. TURNER WAS SO KIND TO FINALLY INFORM ME THAT, YES,
3 INDEED, YOUR HONOR HAD THE CASE. AND AS A RESULT OF
4 THAT, I ALSO LEARNED THAT THERE HAD BEEN AN EX-PARTE
5 HEARING SET FOR THE 20TH.

6 HAD WE NOT HAD OUR CONVERSATION OVER THE
7 TELEPHONE WHILE I WAS AT THE STARBUCKS, NOBODY WOULD
8 HAVE EVEN KNOWN THAT THERE WAS A HEARING GOING ON, THAT
9 THERE WAS AN EX PARTE. AND THESE STUDENTS, THESE
10 STUDENTS ARE HERE BECAUSE ONE OF THEM IS A SENIOR HIGH
11 SCHOOL STUDENT DOING A PROJECT, THEIR SENIOR SHADOW DAY,
12 WITH ME. SO THEY WOULDN'T HAVE KNOWN, EITHER.

13 GOING TO THE POINT RAISED BY COUNSEL ABOUT IT'S
14 NOT THAT SECRET BECAUSE EVERYONE'S HERE, EVERYONE'S HERE
15 BECAUSE WE INFORMED THEM.

16 IN ADDITION, AS TO THE DIRECT IMPACT, I'M GOING
17 TO GO BACK TO WE LOST TIME. TIME IS CRITICAL IN
18 ELECTIONS. WE LOST RESOURCES. IT COSTS MONEY TO FILE
19 THE PETITION. THAT'S MONEY THAT COULD HAVE BEEN SPENT
20 ON CAMPAIGNS, THAT COULD HAVE BEEN SPENT ON
21 COMMUNICATING TO VOTERS.

22 **THE COURT:** WHAT -- WHAT DON'T YOU KNOW AS OF
23 MARCH 26TH?

24 **MS. FOLEY:** WE STILL DON'T KNOW TODAY WHAT THE
25 MEASURE NAME IS, MEASURE A, B, C, WHATEVER IT'S GOING TO
26 BE. WE DON'T KNOW THAT TODAY. THEREFORE, WE CANNOT

1 PREPARE ANY CAMPAIGN MATERIALS. WE DON'T KNOW THAT.

2 WE DON'T KNOW WHETHER THERE IS ANY CHALLENGE TO
3 ANY OTHER ASPECT OF THE BALLOT CHARTER STATEMENT BECAUSE
4 THERE'S NOTHING BEEN APPROVED FOR THE BALLOT. ONCE IT'S
5 BEEN APPROVED, THEN SOMEBODY ELSE MIGHT HAVE SOME ISSUE
6 TO CHALLENGE. WE DON'T KNOW IF THERE WILL BE AN
7 ELECTION ON THE COSTA MESA CITY CHARTER AS WE SIT HERE
8 TODAY.

9 **THE COURT:** WELL, BESIDES WHAT LETTER THEY'RE GOING
10 TO ASSIGN IT TO, WHICH I PRESUME WOULD DO YOU NO GOOD AT
11 THIS POINT BECAUSE --

12 **MS. FOLEY:** IT'S CRITICAL.

13 **THE COURT:** -- NOBODY KNOWS THAT UNTIL IT KICKS OUT
14 SOMEWHERE AROUND THE 1ST OF APRIL; RIGHT?

15 **MS. FOLEY:** NO. WE GET A LETTER AS SIGNATORIES TO
16 THE BALLOT ARGUMENT AGAINST. WE WOULD RECEIVE A LETTER
17 INFORMING US WHAT THE MEASURE IS SO THAT WE COULD
18 IMMEDIATELY BEGIN OUR CAMPAIGN, YOU KNOW, "VOTE NO ON
19 MEASURE F," WHATEVER IT IS.

20 AND SO WE DON'T HAVE THAT BENEFIT. WE LOST
21 THAT BENEFIT. AND THAT'S A RIGHT --

22 **THE COURT:** WHEN WERE YOU -- WHEN -- AFTER THIS
23 THING PASSES ON THE 6TH, WHEN ARE YOUR ARGUMENTS AGAINST
24 THE CHARTER DUE?

25 **MS. FOLEY:** ABSOLUTELY SAME DEADLINE AS THE TIME
26 THAT THE CITY --

1 **MR. STEPHENS:** THE 9TH.

2 **MS. FOLEY:** THE 9TH BY 5:00 P.M.

3 **MR. STEPHENS:** AND, YOUR HONOR --

4 **THE COURT:** AND YOU WOULD HAVE HAD YOURS TIMELY
5 FILED BUT FOR SOME PROBLEM WITH A SIGNATURE ON
6 SOMETHING?

7 **MS. FOLEY:** CORRECT. AND WE HAD TO GET SOMEBODY
8 ELSE'S SIGNATURE AS A RESULT. MY SIGNATURE DID NOT GO
9 ON THE BALLOT ARGUMENT AGAINST BECAUSE THEY WOULDN'T
10 ACCEPT MY SIGNATURE ON THE FORM THAT WAS PART OF THE
11 STAFF REPORT THAT THEY PUT ONLINE.

12 **THE COURT:** OKAY. SO YOUR --

13 **MS. FOLEY:** SO THAT -- I WAS HARMED. I DIDN'T GET
14 A PASS.

15 **THE COURT:** SO THEY DON'T. BUT YOU'RE --

16 **MS. FOLEY:** I DIDN'T GET A PASS.

17 **THE COURT:** THE HARM IS NOT THAT BALLOT OPPOSITION
18 WAS NOT SUBMITTED. IT JUST DIDN'T HAVE THE NAME OF
19 KATRINA FOLEY, WHO USED TO BE ON THE CITY COUNCIL AND IS
20 NOW SOMETHING SCHOOL BOARD OR SOMETHING LIKE THAT?

21 **MR. STEPHENS:** SHE'S A BIG DEAL IN COSTA MESA.
22 ANYBODY WHO KNOWS COSTA MESA KNOWS IF YOU HAVE -- I'M
23 NOT KIDDING YOU. I'M ONLY HALFWAY KIDDING YOU. BUT IF
24 YOU HAVE -- IF YOU HAVE KATRINA FOLEY -- SHE WOULD NEVER
25 SAY THIS HERSELF BECAUSE SHE'S TOO MODEST. BUT IF YOU
26 HAVE KATRINA FOLEY'S NAME ON SOMETHING, SHE POLLS VERY

1 WELL, I'M TOLD. AND SO IT DOES HURT US.

2 AND WHAT -- I MEAN I DON'T MEAN TO JUMP IN.
3 I'M SORRY. I -- JUST ON ONE POINT.

4 **THE COURT:** HERE'S WHAT, I GUESS, MY PROBLEM IS.
5 FIRST OF ALL, AGAIN, I POINT OUT THE REASON HER NAME
6 COULDN'T GO ON THERE, AGAIN, TO USE A NONTECHNICAL TERM,
7 IS HER BAD. AND IF THERE'S A REMEDY LIKE THESE FOLKS
8 ARE SEEKING, SHE COULD HAVE PROMPTLY SOUGHT THE REMEDY.
9 BUT IT'S NOT LIKE YOU COULDN'T DO AN OPPOSITION TO IT
10 BECAUSE THEY HADN'T FILED THE STUFF FROM THE CITY.

11 **MS. FOLEY:** WHAT'S THE DIFFERENCE? IT'S THE SAME
12 ARGUMENT, YOUR HONOR. THE REASON WHY THE RESOLUTIONS
13 DIDN'T GET TO THE REGISTRAR OF VOTERS IS BECAUSE, I'M
14 SORRY, BUT MS. FOLCIK'S BACK. I MEAN SHE DIDN'T READ
15 THE CLEAR LANGUAGE OF THE WEBSITE, OF THE ELECTION
16 MATERIALS, AND OF THE INSTRUCTIONS OF MR. KELLEY'S
17 OFFICE.

18 AND WHY SHOULD THE CITY GET A PASS ON THAT AND
19 I, AS A VOTER, A RESIDENT, A PROPERTY OWNER, A
20 SIGNATORY, AND SOMEONE WHO OPPOSES THE CHARTER DON'T GET
21 THE SAME PASS? IT'S UNEQUAL APPLICATION OF THE
22 ELECTIONS LAW WHEN THERE'S A MANDATORY STATUTORY
23 DEADLINE. ALL --

24 **MR. VOGT:** YOUR HONOR, I --

25 **MS. FOLEY:** -- CITIES DID NOT GET A PASS.

26 IN ADDITION, ON THE DIRECT IMPACT, BECAUSE --

1 CONTRARY TO OPPOSING COUNSEL, I HAVE RAISED PLENTY OF
2 WAYS THAT BOTH MR. STEPHENS AND I HAVE BEEN DIRECTLY
3 IMPACTED.

4 IN ADDITION TO -- IN ADDITION TO THE COST, THE
5 TIME LOST, YOU CAN'T SEPARATE THIS ISSUE OUT FROM HOW IS
6 MS. FOLCIK BENEFITING FROM BEING ABLE TO PARTICIPATE IN
7 THESE PROCEEDINGS DESPITE HAVING ZERO STANDING TO
8 PARTICIPATE, YET WE, AS TAXPAYERS, RESIDENTS, PROPERTY
9 OWNERS, INVOLVED CITIZENS CANNOT.

10 IF WE CANNOT PARTICIPATE, THEN NOBODY WILL EVER
11 HAVE MET THE NARROW STANDARD THAT YOU'RE SEEKING TO BE
12 ABLE TO PARTICIPATE IN AN INTERVENTION IN THIS TYPE OF
13 ACTION. AND EVERY PUBLIC EMPLOYEE WHO IS A CITY CLERK
14 FILING RESOLUTIONS WITH THE REGISTRAR OF VOTERS WILL NOW
15 HAVE PRECEDENT THAT IT'S A PASS IF YOU'RE LATE. THE
16 RULES DON'T MATTER. WE CAN'T SET THAT KIND OF
17 PRECEDENT. AND AS A TAXPAYER, I HAVE AN INTEREST IN
18 ENSURING THAT THAT DOESN'T HAPPEN.

19 **THE COURT:** I'LL --

20 **MS. FOLEY:** SECOND -- CAN I HAVE ONE OTHER MOMENT
21 ON THE *FAIR RENT* CASE? IT'S A CRITICAL CASE. IT'S BEEN
22 CITED BY OPPOSING COUNSEL IN THEIR BRIEFING, AND IT WAS
23 RAISED HERE TODAY ALSO.

24 IN THAT CASE, THE COURT ACTUALLY ALLOWED --
25 THERE'S PRECEDENT FOR YOUR HONOR TO ALLOW -- EVEN IF YOU
26 DON'T LET US INTERVENE, TO CONSIDER OUR BRIEFING, WHICH,

1 AS MR. STEPHENS HAS POINTED OUT A LOT, WE SPENT HOURS
2 ON. WE DID A LOT OF RESEARCH IN A VERY SHORT PERIOD OF
3 TIME SO THAT THERE CAN BE A BALANCE OF UNDERSTANDING OF
4 THESE ISSUES.

5 THE COURT IN THE *FAIR RENT* CASE, WHICH IS
6 107 CAL.APP.3D 97, IT'S A 1980 CASE, THEY ALLOWED
7 AMICUS. THEY ACCEPTED THE BRIEFS. THE COURT ALLOWED
8 THEM TO EVEN PARTICIPATE IN THE ORAL ARGUMENT DESPITE
9 THE FACT THAT THE COURT SAID THAT THEY -- THEY COULD NOT
10 INTERVENE.

11 AND THE DISTINGUISHING FACT TO THAT CASE VERSUS
12 OURS IS THAT THE COURT FELT THAT THEY ALREADY HAD A
13 VOICE BECAUSE THEY WERE IN LINE WITH THE PARTIES, THE
14 PETITIONERS. THEY HAD THE SAME VIEW AS THE PETITIONERS.
15 AND SO IN THAT CASE, THERE WAS ALREADY THAT VOICE. THEY
16 WEREN'T PRESENTING AN OPPOSING VOICE AS WE ARE HERE.

17 THE COURT ALSO IN THAT CASE RECOGNIZED THE *BUS*
18 *STOP* CASE. AND THE WAY THAT THAT IS PROCEDURALLY
19 SIMILAR -- YEAH, THE FACTS ARE VERY DIFFERENT. YOU
20 KNOW, WE AREN'T WHITE PARENTS INVOLVED IN THE
21 SEGREGATION OF A BUS CASE.

22 BUT THE FACTS ARE -- ARE IMPORTANT AS IT
23 RELATES TO THE PROCEDURE BECAUSE THE TRIAL COURT ALLOWED
24 THE INTERVENTION AND SAID THAT IT WOULD NOT LEAD TO THE
25 PROLIFERATION OF OTHER INTERVENORS AS IS TRUE HERE.
26 THERE WOULD BE NO DUPLICATION. IT HELPED TO PREVENT

1 REPETITION. THERE WAS A DIRECT IMPACT, AND THEY ALLOWED
2 THEM TO CONTINUE.

3 SO THERE'S PLENTY OF PRECEDENT THAT WOULD ALLOW
4 US -- WITH THE EXPLAINED DIRECT IMPACT THAT THIS MATTER
5 HAS HAD ON US THAT WOULD ALLOW US TO INTERVENE TO
6 REPRESENT THE VOICE THAT IS MISSING IN THESE PROCEEDINGS
7 THAT NO ONE WOULD HAVE EVER HEARD OR EVEN ENTERTAINED
8 BUT FOR US INTERVENING. AND SO WE WOULD RESPECTFULLY
9 REQUEST THAT YOU CHANGE YOUR TENTATIVE AND ALLOW US TO
10 INTERVENE.

11 **THE COURT:** BRIEF SUR-REBUTTAL.

12 **MR. VOGT:** VERY QUICK, YOUR HONOR. MS. FOLEY
13 MISSED A DEADLINE, AND NOW SHE ASSUMES THAT SHE WILL NOT
14 BE GIVEN A --

15 **THE COURT:** IT'S IRRELEVANT TO MY ANALYSIS.

16 **MR. VOGT:** AND I FIGURED IT WOULD BE.

17 AND THEN ON COSTS, I -- THERE IS NO EVIDENCE
18 BEFORE THE COURT. THEY HAVE COME FORWARD WITH NOT A --
19 WITH NOT A SINGLE PIECE OF EVIDENCE ABOUT TIME, LOST
20 TIME, LOST COSTS. IT IS -- IT IS ALL MADE -- ALL MADE
21 UP NOW AT ORAL ARGUMENT. THERE IS NOT A SINGLE PIECE OF
22 EVIDENCE UPON WHICH YOU CAN MAKE THAT DETERMINATION, AND
23 YOUR HONOR'S TENTATIVE'S CORRECT.

24 UNDER THE LAW, ORDERING OR NOT ORDERING THE
25 REGISTRAR OF VOTERS TO ACCEPT THE BALLOT MEASURE WILL
26 LEAVE EVERYONE HERE IN THIS COURTROOM IN THE EXACT SAME

1 POSITION THAT THEY ARE.

2 **THE COURT:** WHAT ABOUT THE ARGUMENT THAT THAT
3 LEAVES US -- YOU KNOW, IT'S NOT LIKE, I GUESS, BY WAY OF
4 ANALOGY, THAT THE SHIP HAS SAILED, AND THEY MISSED THE
5 SHIP. IT'S MORE LIKE IN THE -- PICK YOUR RACE --
6 HUNDRED-METER DASH. SOMEBODY JUMPS THE GUN, AND THEY'RE
7 OUT EVEN A FRACTION OF A SECOND AHEAD OF THE REST OF THE
8 PEOPLE WHO WAITED FOR THE GUN TO GO OFF, AND THEN MAYBE
9 THEY WIN BY THAT MUCH.

10 **MR. VOGT:** BUT THEY HAVEN'T WAITED, YOUR HONOR.
11 THE CHARTER ISSUE HAS BEEN RAISED SINCE NOVEMBER 2011.
12 THERE WAS MULTIPLE CITY COUNCIL MEETINGS. THERE WAS
13 PUBLIC HEARINGS, PUBLIC DEBATES. THEY HAVE A WEBSITE.
14 THEY ARE -- I MEAN THEY'RE IN THE SAME POSITION WE ARE,
15 AND WE DON'T HAVE A NUMBER YET.

16 WE DON'T KNOW WHETHER THIS IS EVEN GOING TO BE
17 ON THE BALLOT. I MEAN THERE'S NO FALSE START. WE'RE
18 ALL OPERATING UNDER THE SAME -- RIGHT NOW IN THE SAME
19 LIMBO, TO USE A LACK OF A BETTER WORD, UNTIL AFTER
20 TOMORROW.

21 AT THAT POINT, WE WILL ALL KNOW, I MEAN IF THE
22 PROPONENTS OF THE CHARTER ARE IN THE SAME POSITION AS
23 THE OPPONENTS. I MEAN IT'S NOT -- THERE IS NO -- THERE
24 IS NO HEAD START HERE.

25 **THE COURT:** WELL, WE'RE -- YEAH. AFTER THE
26 ARGUMENTS TOMORROW, YOU WILL ALL KNOW MY OPINION ON

1 THIS.

2 **MR. VOGT:** THAT'S CORRECT. AND --

3 **THE COURT:** ONE OF THE THINGS THAT I THOUGHT ALL
4 ALONG ON THIS, IF YOU LOOK AT THIS IS NOT JUST, YOU
5 KNOW, MILLER ON HOW THE LAW OUGHT TO BE, BUT I THINK,
6 RATHER, IT'S HOPEFULLY MILLER LOOKING AT THE PURPOSE OF
7 THE LAW. AND, YOU KNOW, ONE OF THE REASONS IS TO GET --
8 IT WOULD SEEM TO BE IN THE INTEREST OF THE CITIZENS OF
9 COSTA MESA TO GET THIS THING DECIDED ONE WAY OR THE
10 OTHER AT THE EARLIEST PRACTICABLE TIME.

11 BUT INHERENT IN THE CONCEPT OF PRACTICAL IS
12 EVERYONE HAVING A FAIR OPPORTUNITY TO BE -- EVERYBODY
13 WHO HAS A SUFFICIENT INTEREST TO BE HEARD. SO, ON THE
14 OTHER HAND, YOU'RE BALANCING PARTICIPATION WITH THE
15 POSSIBILITY THAT PARTICIPATION BRINGS WITH IT A MONKEY
16 WRENCH THAT ULTIMATELY WOULD BE UNFAIR ON THE MATTER.

17 ONE OF THE THINGS THAT THE *SIMPSON* CASE POINTS
18 OUT, BESIDES THE FACT THAT IT SAYS THAT THE FOUR-PRONGED
19 REQUIREMENT IS TO BE READ IN THE CONJUNCTIVE AS OPPOSED
20 TO THE DISJUNCTIVE, IS THAT, ESSENTIALLY, WHEN IN DOUBT,
21 IT SHOULD BE READ TO ALLOW PARTICIPATION BY INTERESTED
22 PARTIES.

23 I FIND THAT THERE IS SUFFICIENT PROSPECTS IN --
24 I THINK YOU HAVE TO -- YOU HAVE TO VIEW THESE THINGS
25 FROM THE PERSPECTIVE OF WHEN INTERVENTION TYPICALLY
26 OCCURS. SOMETIMES IT'S LATE IN THE GAME, BUT MOST OF

1 THE TIME IT'S AT THE OUTSET WHEN YOU DON'T KNOW VERY
2 MUCH ABOUT THE CASE.

3 SO IT MAY BE KIND OF SKIMPY ON THAT PRONG, BUT
4 I'M GOING TO FIND THAT THE PROPOSED INTERVENORS ARE
5 SUFFICIENTLY INTERESTED IN TERMS OF POTENTIAL FOR GAIN
6 OR LOSS BASED ON THE OUTCOME OF THIS PARTICULAR
7 PROCEEDING AND THAT THEY COMPLIED WITH ALL OF THE
8 PREREQUISITES THAT THE PUBLIC AT THAT -- AT THAT -- I'M
9 GOING TO CONDITION THIS INTERVENTION BY THE SPADONI AND
10 FOLSOM INTERVENORS CONTINUE THEIR INTERVENTION ON THE
11 ABANDONMENT OF ANY ISSUE OTHER THAN WHETHER OR NOT THIS
12 COURT HAS THE POWER TO AND, IF SO, SHOULD EXERCISE ITS
13 DISCRETION VIA MANDATE IN ORDERING THAT THE MATTER BE
14 PLACED ON THE JUNE 5TH BALLOT.

15 THE COURT FINDS THAT IT -- THAT THE
16 INTERESTS -- THEIR INTERESTS IN BEING HEARD OUTWEIGH ANY
17 DISADVANTAGE OR NEGATIVE IMPACT ON THE PETITIONER. SO I
18 THINK I SAID THAT I FOUND THAT THEY SATISFIED THE FOUR
19 PRONGS. SO I FIND THAT THEY MET ALL FOUR OF THE
20 REQUIREMENTS FOR INTERVENTION. I EXERCISE MY DISCRETION
21 TO ALLOW THE INTERVENTION. I'LL READ THE OPPOSITIONS,
22 AND WE WILL RECONVENE TOMORROW AT 1:30 P.M.

23 **MR. STEPHENS:** THANK YOU, YOUR HONOR.

24 **MS. FOLEY:** THANK YOU, YOUR HONOR.

25 **THE COURT:** FOR INTERESTED PARTIES, IT'S IMPOSSIBLE
26 THAT THIS CASE WILL COME ON FOR ACTUAL ORAL ARGUMENT

1 BEFORE 2:00 AT THE VERY EARLIEST.

2 **MS. FOLEY:** THANK YOU, YOUR HONOR.

3 **MR. VOGT:** THANK YOU, YOUR HONOR.

4 **MR. KAHR:** THANK YOU, YOUR HONOR.

5 **MR. STEPHENS:** THANK YOU, YOUR HONOR.

6 **THE COURT:** THANK YOU. WELL PRESENTED, FOLKS.

7 GOOD CIVICS LESSON.

8 **(ADJOURNMENT)**

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

REPORTER'S CERTIFICATE

I, JANET M. TAYLOR, CSR 9463, RMR, CRR,
OFFICIAL COURT REPORTER, IN AND FOR THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA, COUNTY OF ORANGE, DO HEREBY
CERTIFY THAT THE FOREGOING TRANSCRIPT, CONSISTING OF
PAGES 1 THROUGH 58, INCLUSIVE, IS A TRUE AND CORRECT
TRANSCRIPT OF MY SHORTHAND NOTES AND IS A FULL, TRUE AND
CORRECT STATEMENT OF THE PROCEEDINGS HAD IN SAID CAUSE.

DATED THIS 29TH DAY OF MARCH, 2012.

JANET M. TAYLOR, CSR 9463, RMR, CRR