

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:)**

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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)**

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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.

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JANET M. TAYLOR, CSR 9463, RMR, CRR