

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

TUESDAY, MARCH 27, 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.

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; TUESDAY, MARCH 27, 2012**

2 **AFTERNOON SESSION**

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

4 *** * ***

5 **MR. STEPHENS:** JOHN STEPHENS, S-T-E-P-H-E-N-S, OF
6 STEPHENS FRIEDLAND ON BEHALF OF MYSELF, JOHN STEPHENS,
7 AND KATRINA FOLEY.

8 **MS. FOLEY:** KATRINA FOLEY ON BEHALF OF MYSELF,
9 KATRINA FOLEY, AND JOHN STEPHENS.

10 **MR. KAHR:** BYRON KAHR, K-A-H-R, ON BEHALF OF
11 INTERVENORS MARY SPADONI AND WILLIAM FOLSOM.

12 **MR. PAGE:** LEON PAGE, DEPUTY COUNTY COUNSEL, ON
13 BEHALF OF NEAL KELLEY AND ORANGE COUNTY REGISTRAR OF
14 VOTERS.

15 **MR. GRABOWSKI:** RICHARD GRABOWSKI ON BEHALF OF
16 PETITIONER.

17 **MR. VOGT:** JOHN VOGT ON BEHALF OF PETITIONER.

18 **THE COURT:** I WANT TO MAKE THE PRELIMINARY COMMENT
19 THAT I SAW IN TODAY'S REGISTER NEWSPAPER AN ARTICLE ON
20 THIS CASE, AND IT CORRECTLY IDENTIFIED A TENTATIVE
21 RULING.

22 ACTUALLY, WHEN I STARTED READING IT, I THOUGHT
23 IT WAS BASED ON SOMETHING THAT I SAID YESTERDAY, AND I
24 KEPT THINKING "DID I SAY THAT?" AND THEN I REALIZED,
25 AFTER FURTHER REVIEW OF IT, IT HAD TO BE BASED ON A
26 READING OF THE COURT'S TENTATIVE RULING ON THE COURT'S

1 PUBLIC WEBSITE.

2 AND WHAT I WANT TO MAKE CLEAR IS -- AND THE
3 ARTICLE CORRECTLY CHARACTERIZED THE TENTATIVE RULING,
4 BUT FOR THE COGNOSCENTE IN THE LEGAL FIELD, YOU KIND OF
5 HAVE YOUR TENTATIVE RULINGS, WHICH ARE SOMEWHERE BETWEEN
6 A ROAD MAP FOR ARGUMENT AND A STREAM OF CONSCIOUSNESS BY
7 THE JUDGE AND ARE TENTATIVE IN THE TRUEST SENSE OF THE
8 WORD.

9 AND THEN YOU HAVE THE TYPE OF TENTATIVE
10 DECISION THAT YOU WOULD GET AFTER A TRIAL AS A PRECURSOR
11 TO A STATEMENT OF DECISION, WHICH IS TYPICALLY A LITTLE
12 CLOSER TO A FINAL RULING.

13 I JUST WANTED TO MAKE IT CLEAR THAT MY
14 TENTATIVE WAS -- IS SUBMITTED FOR THE PURPOSE OF LETTING
15 YOU KNOW THE THINGS I'M THINKING ABOUT AND TO SET A
16 STAGE FOR THE PARTIES TO COMMENT ON WHAT THEY THINK THE
17 COGENT ISSUES ARE.

18 AND WITH THAT, I'LL HEAR FROM THE -- THE
19 TENTATIVE IS, HOWEVER, TO DENY, SO I'LL HEAR FROM THE
20 PETITIONER.

21 **MR. GRABOWSKI:** THANK YOU, YOUR HONOR.

22 BEFORE I BEGIN --

23 **THE COURT:** HANG ON. GIVE ME JUST TWO SECONDS
24 BEFORE YOU START.

25 **(PAUSE IN PROCEEDINGS)**

26 **THE COURT:** I'M SORRY, MR. GRABOWSKI. GO AHEAD.

1 **MR. GRABOWSKI:** THANK YOU, YOUR HONOR.

2 FIRST I WANT TO BEGIN BY THANKING THE COURT,
3 AND I THINK I SPEAK ON BEHALF OF EVERYONE HERE. WE KNOW
4 YOU SET THIS ON A VERY EXPEDITED BASIS AND BROUGHT A LOT
5 OF DILIGENCE AND THOROUGHNESS TO IT AND GAVE UP
6 SCHEDULED VACATION TIME IN ORDER TO ACCOMMODATE THIS
7 IMPORTANT ISSUE. SO, FIRST OF ALL, I WANT TO BEGIN BY
8 THANKING THE COURT FOR THAT.

9 SECONDLY, JUST PROCEDURALLY, YESTERDAY THIS
10 COURT GRANTED INTERVENTION CONDITIONALLY FOR ONE OF THE
11 PARTIES. WE HAVEN'T HEARD FROM THE COURT OR FROM THAT
12 PARTY YET WHETHER THEY'VE AGREED TO THE COURT'S
13 CONDITION.

14 **MR. KAHR:** YES. I'LL SPEAK TO THAT. WE AGREE NOT
15 TO RAISE THE ISSUE -- THE GOVERNMENT CODE ISSUE THAT WAS
16 SET FORTH IN THE CROSS-PETITION IN THE CONTEXT OF THIS
17 PROCEEDING. WE JUST WANT TO MAKE CLEAR THAT WE'RE NOT
18 WAIVING OUR RIGHT TO BRING A SEPARATE ACTION IF THE
19 MATTER WERE TO BE ORDERED ON THE BALLOT. BUT WE AGREE
20 THAT WE WON'T RAISE ANY ISSUE RELATED TO THAT.

21 **THE COURT:** THAT WAS MY UNDERSTANDING OF THE
22 DYNAMICS.

23 **MR. GRABOWSKI:** THANK YOU, YOUR HONOR. THEN I
24 WOULD LIKE TO JUST BEGIN WITH THE FACTS, AND I THANK YOU
25 FOR THE TENTATIVE RULING. I'M GOING TO FOLLOW THE
26 TENTATIVE RULING AS A GUIDEPOST AND ADDRESS EACH OF THE

1 COURT'S COMMENTS IN ORDER THERE.

2 I WANT TO BEGIN WITH THE UNDISPUTED FACTS. I
3 THINK THERE'S TWO KEY UNDISPUTED FACTS HERE, YOUR HONOR.
4 FIRST OF ALL, THE ELECTED REPRESENTATIVES OF THE CITY OF
5 COSTA MESA DID EVERYTHING THAT WAS REQUIRED OF THEM ON A
6 TIMELY BASIS TO PUT THE PROPOSED CHARTER ON THE BALLOT
7 FOR JUNE 5.

8 SECOND, AN UNELECTED GOVERNMENT OFFICIAL, THE
9 CITY CLERK, FAILED TO FULFILL HER MANDATE AND HER DUTY
10 WHICH SHE HAD NO DISCRETION ON TO TIMELY SUBMIT THAT.

11 AND THAT LEADS TO THIS QUESTION BEFORE THE
12 COURT TODAY, WHETHER JULIE FOLCIK SINGLE-HANDEDLY SHOULD
13 BE PERMITTED TO STRIP THE CITIZENS OF COSTA MESA OF
14 THEIR RIGHT TO VOTE ON JUNE 5 AND, SECONDLY, TO NULLIFY
15 THE ACTIONS OF THE CITY COUNCIL ACTING AS A LEGISLATIVE
16 BODY ON BEHALF OF THE CITY OF COSTA MESA.

17 NOW, THE ANSWER, WE BELIEVE, TO BOTH OF THOSE
18 QUESTIONS IS NO AS ADMITTED BY THE INTERVENORS IN THEIR
19 PETITION FILED YESTERDAY.

20 **THE COURT:** LET ME INTERRUPT YOU FOR HALF A SECOND
21 BECAUSE THIS IS SOMETHING THAT'S -- THIS CONCEPT'S KIND
22 OF EATING AT ME, SO I WOULD LIKE TO HEAR THAT ADDRESSED
23 SO I CAN HOPEFULLY NOT HAVE IT BOUNCING AROUND AS WE GO
24 FORWARD.

25 THAT IS -- THAT'S THE GIST THAT I GOT -- OR THE
26 GIST I'M GETTING FROM YOUR PETITION IS IT'S ALMOST LIKE,

1 WELL, MANDATE IS AVAILABLE TO CORRECT A -- A NONDOING OR
2 AN IMPROPER DOING OF A MANDATORY DUTY.

3 AND WHAT IT ALMOST SOUNDS LIKE IS THAT -- IT
4 SOUNDS LIKE YOU'RE CASTING THE MANDATORY DUTY THAT WAS
5 MESSED UP HERE AS MS. FOLCIK'S DUTY, EFFECTIVELY, TO GET
6 THE RESOLUTION IN TIME SO THIS COULD BE ON THE BALLOT,
7 WHICH WAS THE WILL OF THE CITY COUNCIL.

8 TWO PROBLEMS WITH THAT IN TERMS OF MANDATE. IF
9 THE MANDATE'S RELATED TO THAT DUTY, THEN SHE OUGHT TO BE
10 THE RESPONDENT, AND THE CITY SHOULD BE ASKING THE COURT
11 TO MANDATE OR ORDER HER TO EITHER ACT OR, I GUESS,
12 CORRECT HER ACT. BUT I DON'T SEE HOW THAT WORKS, A.

13 AND, B, IF THAT'S WHAT THE INTENT IS HERE
14 ULTIMATELY, LIKE I SAID, CITY SHOULD BE PETITIONER,
15 FOLCIK SHOULD BE RESPONDENT.

16 **MR. GRABOWSKI:** I UNDERSTAND, YOUR HONOR, AND WE
17 PICKED THAT UP FROM THE PETITION. BUT I THINK THE
18 ANSWER TO THAT LIES IN *WILLETT VS. JORDAN*, A CALIFORNIA
19 SUPREME COURT DECISION, WHICH IS AT 1 CAL.2D AT 461. IT
20 WAS DISCUSSED AT LENGTH IN THE FOURTH DISTRICT OPINION
21 OF *MHC FINANCIAL*.

22 **MR. KAHR:** WAS THAT CITED IN YOUR PAPERS, THAT
23 CASE?

24 **MR. STEPHENS:** WHICH CASE?

25 **MR. GRABOWSKI:** *WILLETT VS. JORDAN*. WE CITED TO
26 THE COURT *MHC FINANCIAL*. THERE'S A LONG, EXTENDED

1 DISCUSSION IN THERE OF *WILLETT VS. JORDAN* WHICH SUPPORTS
2 THE DECISION -- THE FOURTH DISTRICT'S DECISION IN
3 *MHC FINANCIAL*.

4 SO IT'S IN THERE. I'M SORRY WE DIDN'T GET
5 REPLY PAPERS, YOUR HONOR. WE SPECIFICALLY REQUESTED
6 THEM. WE WOULD HAVE CITED *WILLETT VS. JORDAN* IN THE
7 REPLY. BUT AT THE EX-PARTE HEARING, THE COURT DENIED US
8 AN OPPORTUNITY TO FILE A REPLY, SO TODAY IS MY REPLY.

9 BUT I WANT TO TAKE THE COURT THROUGH *WILLETT*.
10 SINCE NO ONE HAD THE BENEFIT OF IT, I WANT TO DESCRIBE
11 IT TO THE COURT.

12 IN *WILLETT*, PETITIONER WAS PROPOSING A
13 STATEWIDE BALLOT INITIATIVE, AND PETITIONER NEEDED TO
14 GET TO THE SECRETARY OF STATE CERTIFIED SIGNATURES OF
15 111,000 PEOPLE BY AUGUST 7TH. ON AUGUST 7TH, THE
16 SECRETARY OF STATE HAD ONLY 108,000 CERTIFIED SIGNATURES
17 ON FILE, CLEARLY SHORT BY 3,000 SIGNATURES.

18 ON THAT DATE, AUGUST 7TH, THE CALIFORNIA
19 SECRETARY OF STATE PROPERLY ANNOUNCED THAT THE
20 PETITIONER HAD FALLEN SHORT, AND THE INITIATIVE WOULD
21 NOT BE PLACED ON THE BALLOT. END OF STORY. DONE.

22 FOUR DAYS LATER, ON AUGUST 11TH, THE COUNTY
23 CLERK OF THE COUNTY OF ALAMEDA ANNOUNCES THAT HE HAD
24 MADE A MISTAKE, THAT HE HAD BEEN MISTAKEN IN CERTIFYING
25 THE NUMBER OF SIGNATURES THAT SHOULD HAVE BEEN APPROVED
26 COMING OUT OF ALAMEDA COUNTY ELECTORS WHO HAD SIGNED A

1 PETITION, AND, IN FACT, THAT THERE WERE 3,000 MORE
2 SIGNATURES.

3 AND SO THE COUNTY CLERK ON AUGUST 11TH
4 TRANSMITS TO THE SECRETARY OF STATE CERTIFICATION FOR
5 3,000 MORE SIGNATURES. THE SECRETARY OF STATE REFUSES
6 TO ACCEPT IT. THEY ARE CLEARLY LATE. THE SECRETARY OF
7 STATE HAS MADE NO ERROR. SECRETARY OF STATE'S JOB WAS
8 TO LOOK AT THE CERTIFICATIONS AS OF AUGUST 7TH,
9 DETERMINE WHETHER THERE WERE 111,000 CERTIFICATIONS ON
10 FILE. THERE WERE NOT. ADMITTEDLY BY ALL PARTIES, THERE
11 WERE ONLY 108,000. AND THE SECRETARY OF STATE REJECTED
12 THOSE ADDITIONAL FILINGS AND REFUSED TO PLACE THE
13 INITIATIVE ON THE BALLOT.

14 A WRIT OF MANDATE WAS BROUGHT AGAINST THE
15 SECRETARY OF STATE, NOT AGAINST THE CLERK OF THE COUNTY
16 OF ALAMEDA, BUT BROUGHT AGAINST THE SECRETARY OF STATE,
17 WHO ADMITTEDLY, BY ALL PARTIES' ACCOUNTS, HAD MADE NO
18 ERROR.

19 **THE COURT:** BY WHOM?

20 **MR. GRABOWSKI:** IT WAS BROUGHT BY THE PROPONENTS OF
21 THE INITIATIVE. THIS WAS AN INITIATIVE BROUGHT BY THE
22 CHIROPRACTIC ASSOCIATION. IT WAS BROUGHT -- THE
23 PETITIONER WAS THE PRESIDENT OF THE CHIROPRACTIC
24 ASSOCIATION, AND THIS INITIATIVE HAD RELATED TO
25 CHIROPRACTIC LAW IN CALIFORNIA.

26 SO THE PRESIDENT OF THE CHIROPRACTIC

1 ASSOCIATION, THE PETITIONER, HE BRINGS THE WRIT OF
2 MANDATE AGAINST THE SECRETARY OF STATE, WHO, BY ALL
3 ADMISSIONS, HAS COMMITTED NO ERROR OF ANY KIND. THE
4 CALIFORNIA SUPREME COURT, NO LESS, GRANTED THE WRIT OF
5 MANDAMUS.

6 AND SO WHAT THE SUPREME COURT'S DECISION IN
7 *WILLETT* TELLS US IS THERE DOES NOT NEED TO BE AN ERROR
8 OF THE ELECTION OFFICIAL, WHETHER THAT BE THE SECRETARY
9 OF STATE OR THE REGISTRAR OF VOTERS. EVEN IF THEY ARE
10 BLAMELESS, A WRIT OF MANDATE CAN ISSUE TO CORRECT THE
11 ERROR OF A DIFFERENT GOVERNMENTAL OFFICIAL.

12 HERE IT WAS THE ERROR OF THE CITY -- THE COUNTY
13 CLERK OF ALAMEDA COUNTY IN CERTIFYING THOSE -- THOSE
14 SIGNATURES. AND THAT, YOUR HONOR -- AND I WANT TO BRING
15 THIS TO YOU. THAT IS A KEY DISTINCTION IN EVERY CASE
16 THAT HAS BEEN CITED TO YOUR HONOR.

17 IF YOU LOOK AT THE CASES THAT WE HAVE CITED TO
18 YOU, *MHC FINANCIAL*, *THE NATIVE AMERICAN SACRED SITES*,
19 *SAVE STANISLAUS*, *REITER*, *BAROLDI*, THEY ARE MISTAKES BY
20 GOVERNMENT OFFICIALS, CITY CLERKS, ELECTION OFFICIALS.

21 IF YOUR HONOR LOOKS AT THE CASES CITED BY THE
22 INTERVENORS, *BARNES VS. WONG*, YOU HAVE A PRIVATE PARTY.
23 A COMMUNITY OUTREACH DIRECTOR MADE THE MISTAKE. HE
24 SHOWED UP FIVE HOURS TOO LATE WITH HIS BALLOT STATEMENT.
25 *SONOMA COUNTY NUCLEAR FREE ZONE*, YOU'VE GOT A PRIVATE
26 GROUP OPPOSING A NUCLEAR-FREE INITIATIVE. THEY

1 STUMBLED.

2 *STEELE VS. BARTLETT*, YOU'VE GOT SIX PRIVATE
3 CANDIDATES TRYING TO GET THEMSELVES ONTO THE BALLOT TO
4 RUN FOR CITY COUNCIL. *GRIFFIN VS. DINGLY*, THERE'S A
5 PARTY TRYING TO FILE A SLATE OF CANDIDATES ON BEHALF OF
6 THE DEMOCRATIC PARTY WITH THE CLERK. AND *DANIELS VS.*
7 *TERGESON*, THERE'S A CANDIDATE FOR COUNTY SUPERVISOR
8 TRYING TO GET ON THE BALLOT.

9 IN ALL OF THE CASES CITED BY THE INTERVENORS,
10 THERE'S NO GOVERNMENT OFFICIAL MAKING THE MISTAKE. IT
11 IS THE PRIVATE PARTY TRYING TO GET THEMSELVES ONTO THE
12 BALLOT OR TRYING TO GET A BALLOT STATEMENT ONTO THE
13 BALLOT. WHY DOES THAT MATTER, YOUR HONOR? BECAUSE
14 PRIVATE CITIZENS ARE IN A WHOLE DIFFERENT CATEGORY.

15 IF WE LOOK AT CITY CLERKS, COUNTY CLERKS,
16 SECRETARY OF STATES, AND REGISTRARS, THEY WIELD THE
17 POWER OF THE STATE. THEIR MISTAKES ARE IMPLEMENTED
18 USING THE POWER OF THE STATE. IF A PRIVATE PARTY MAKES
19 A MISTAKE, THEY'RE -- THE HARM THAT BEFALLS THEM IS HARM
20 TO THAT -- THAT PRIVATE PARTY.

21 BUT WHEN A -- AND THIS IS THE KEY DISTINCTION.
22 ALL OF THESE CASES, IF YOU LOOK AT ALL OF THEM, THERE'S
23 NO VARIANCE AMONGST ANY OF THEM, YOUR HONOR. THROUGH
24 MISTAKE, INADVERTENT CONDUCT, IF YOU HAVE PUBLIC
25 OFFICIALS ACTING IN AN OFFICIAL CAPACITY, THEY ARE NOT
26 PERMITTED TO THWART THE DEMOCRATIC PROCESS.

1 AND THAT IS WHAT HAS HAPPENED HERE, YOUR HONOR,
2 AND THAT IS THE KEY DISTINCTION AND THAT IS THE RULE
3 EMANATING OUT OF THIS BODY OF LAW. AND *WILLETT* TELLS US
4 THAT THE INTERVENORS ARE WRONG. BECAUSE IN THAT CASE,
5 THE SECRETARY OF STATE WAS BLAMELESS, YET THE COURT
6 GRANTED THE MANDAMUS AND ORDERED THE INITIATIVE ONTO THE
7 BALLOT.

8 YOU KNOW, AND WHY DO WE MAKE THIS DISTINCTION?
9 WHY DO THE COURTS MAKE THIS DISTINCTION? YOU KNOW, ONE
10 ONLY HAS TO LOOK TO OUR DEMOCRATIC PROCESS, YOUR HONOR,
11 AND TO PLACES THAT DON'T HAVE IT. THERE ARE PLENTY OF
12 PEOPLE'S DEMOCRATIC REPUBLICS OF, AND YOU FILL IN THE
13 BLANK. AND THAT MAY BE NORTH KOREA, IT MAY BE CHINA.
14 AND THEY ALL HAVE THE SAME RIGHTS WE ALL DO TO VOTE AND
15 TO RUN FOR OFFICE AND HAVE INITIATIVES. BUT WHEN IT
16 COMES TIME TO SUBMIT YOUR CANDIDACY, THE GOVERNMENT
17 OFFICIAL SAYS, NO, YOU ARE NOT ALLOWED TO DO IT.

18 AND THE REASON WHY OUR SYSTEM IS SUCCESSFUL,
19 YOUR HONOR, IS WE DO NOT LET THE COUNTY CLERK, WE DO NOT
20 LET THE REGISTRAR OF VOTERS, WE DO NOT LET SOMEBODY
21 ACTING UNDER COLOR OF LAW WITH THE POWER OF THE STATE TO
22 DENY PEOPLE GETTING ON THE BALLOT WHO HAVEN'T HAD --
23 MADE A MISTAKE HERE.

24 AND THAT'S THE KEY DISTINCTION HERE, AND THAT'S
25 WHY THIS COURT MUST ISSUE A WRIT OF MANDAMUS IN THIS
26 CASE. BECAUSE THE MISTAKE HERE IS BY A PERSON ACTING AS

1 THE CHIEF ELECTION OFFICER OF THE CITY OF COSTA MESA BY
2 LAW, WHO IS THE CITY CLERK, WHO HAD A MANDATORY DUTY TO
3 CARRY THIS PROPOSITION ONTO THE BALLOT WITH THE
4 REGISTRAR OF VOTERS, AND THROUGH NEGLECT SHE FAILED TO
5 ACCOMPLISH THAT. SHE CANNOT DISENFRANCHISE THE WILL OF
6 THE ELECTED REPRESENTATIVES OF THE PEOPLE OF COSTA MESA.

7 MOST OF THESE CASES ARE BALLOT INITIATIVES,
8 YOUR HONOR, BUT IT IS STILL A BALLOT PROPOSITION HERE.
9 AND TO GET A BALLOT INITIATIVE ON THE BALLOT, YOU NEED
10 10 PERCENT OF THE SIGNATURES. BUT THIS MEASURE WAS
11 ASKED TO BE PLACED ON THE BALLOT BY THE MAJORITY OF THE
12 CITIZENS OF COSTA MESA. WE STILL HAVE A REPRESENTATIVE
13 DEMOCRACY, AND THAT REPRESENTATIVE DEMOCRACY IS ENTITLED
14 TO EQUAL DEFERENCE AS THE DIRECT DEMOCRACY OF
15 INITIATIVE.

16 AND THESE ELECTED REPRESENTATIVES, WHO
17 REPRESENT THE MAJORITY OF THE PEOPLE, PASS THESE
18 RESOLUTIONS, YOUR HONOR. AND THAT'S WHY I WANT TO TAKE
19 THE COURT BACK TO THE FACTS HERE.

20 THE RESOLUTION ON MARCH 6TH --

21 **THE COURT:** LET ME ASK YOU. YOU BROUGHT UP ANOTHER
22 THING THAT I GOT TO RESOLVE BEFORE YOU GO ON. YOU SAID
23 EFFECTIVELY THIS WAS BROUGHT BY THE MAJORITY OF THE
24 CITIZENS OF COSTA MESA. ISN'T IT ACTUALLY CORRECT TO
25 SAY IT WAS BROUGHT BY OR PUT INTO MOTION BY A MAJORITY
26 OF THOSE REPRESENTING ALL OF THE CITIZENS OF COSTA MESA?

1 **MR. GRABOWSKI:** I'M NOT SURE OF THE DISTINCTION
2 THERE, YOUR HONOR. THIS -- THIS -- THIS MEASURE,
3 THESE --

4 **THE COURT:** OH, I DO.

5 **MR. GRABOWSKI:** -- THESE RESOLUTIONS --

6 **THE COURT:** THAT'S WHY SOMETIMES CITY COUNCIL
7 MAJORITY TURN INTO MINORITIES.

8 **MR. GRABOWSKI:** OKAY. THIS --

9 **THE COURT:** BECAUSE -- BECAUSE AS IT TURNS OUT, THE
10 CITIZENRY, WHEN THEY GET A CHANCE TO VOTE ON THEM,
11 DECIDE THAT THEY WEREN'T SO HAPPY ABOUT HOW THE
12 COUNCILMEMBERS WERE DOING THEIR --

13 **MR. GRABOWSKI:** ABSOLUTELY, YOUR HONOR.

14 **THE COURT:** BY THE WAY, I'M TALKING IN THE ABSTRACT
15 HERE BECAUSE, CANDIDLY, I MAY HAVE READ SOMETHING IN THE
16 PAPER ABOUT SOMETHING ABOUT CHARTER CITY THING. I MIGHT
17 HAVE SEEN IT IN THE PAPER WHEN THEY VOTED ON IT IF IT
18 HIT THE PAPER OR SOMETHING LIKE THAT. BUT BEYOND THAT,
19 I KNOW NOTHING ABOUT THE DYNAMICS. I KNOW ZERO ABOUT
20 THE MERITS OF THE THING, WHICH IS A PRETTY GOOD THING
21 FOR A JUDGE, I WOULD SAY, IN THIS POSITION.

22 **MR. GRABOWSKI:** MAYBE, YOUR HONOR. BUT THE
23 CITIZENS OF COSTA MESA ARE VERY WELL AWARE OF THIS. AS
24 ADMITTED IN THE INTERVENORS' PETITION, THIS PROCESS
25 BEGAN LAST YEAR, AND THE FIRST PUBLIC MEETING WAS HELD
26 ON DECEMBER 6TH OF 2011.

1 NOW, WHAT FOLLOWED WERE A SERIES OF PUBLIC
2 MEETINGS WHERE THE CHARTER WAS PROPOSED, WHERE CITIZENS
3 PUBLICLY DEBATED WHETHER THIS WAS A GOOD IDEA AND A BAD
4 IDEA, AND THERE WERE VOCAL FOLKS ON BOTH SIDES OF THE
5 AISLE.

6 IN FACT, THE PETITION FOR INTERVENTION ON
7 PAGE 2, LINE 8, THEY DESCRIBE IT AS A HOTLY DEBATED
8 TOPIC WITHIN THE CITY OF COSTA MESA. HUNDREDS OF
9 RESIDENTS PARTICIPATED IN THESE PUBLIC HEARINGS. SCORES
10 AND SCORES OF PRESS ARTICLES IN THE ORANGE COUNTY
11 REGISTER, THE DAILY PILOT, WEBSITES HAVE BEEN LAUNCHED,
12 INTERVENORS HAVE A WEBSITE UP ALREADY, PUNDITS HAVE
13 WEIGHED IN THEIR PRO AND CON ARGUMENTS ALL IN
14 ANTICIPATION OF A JUNE 5TH ELECTION.

15 THIS -- THIS PROCESS STARTED LAST YEAR BECAUSE
16 OF THE MECHANICS OF THE NUMBER OF HEARINGS THAT WOULD
17 HAVE TO TAKE PLACE SO THIS COULD GO ON THE BALLOT ON
18 JUNE 5TH OF THIS YEAR.

19 AND WHAT WAS THE CULMINATION OF THAT PROCESS?
20 IT WASN'T THE FIRST ACT. THE CULMINATION OF THAT
21 PROCESS WAS THE MARCH 6TH CITY COUNCIL MEETING, YOUR
22 HONOR. AND THE COUNCIL PASSED THREE RESOLUTIONS, AND I
23 THINK THAT THEY'RE IMPORTANT IN THEIR SEPARATENESS.

24 RESOLUTION 12-16, THE COUNCIL MADE THE
25 FOLLOWING FINDING. AND I THINK IT'S IMPORTANT THE COURT
26 HEAR THE FINDING OF THE COUNCIL.

1 AND I QUOTE: "THE CITY COUNCIL HAS DETERMINED
2 THAT THE ENACTMENT OF THE PROPOSED CHARTER WOULD BE
3 BENEFICIAL FOR THE CITY OF COSTA MESA AND ITS RESIDENTS
4 BY PROVIDING ITS RESIDENTS WITH THE ULTIMATE STATE AND
5 MUNICIPAL AFFAIRS," UNQUOTE.

6 FOLLOWING THAT RESOLUTION, THE COUNCIL PASSED
7 BY A 4-TO-1 VOTE -- ALL OF THESE WERE PASSED BY
8 4 TO 1 -- CALLING FOR A SPECIAL ELECTION OF THE CHARTER
9 ON JUNE 5TH. IN RESOLUTION 12-18, THE CITY COUNCIL
10 DIRECTED THE CLERK TO SUBMIT THE CHARTER TO THE
11 REGISTRAR OF VOTERS IN A TIMELY FASHION FOR A JUNE 5TH
12 ELECTION.

13 THERE WERE MONTHS OF PUBLIC HEARINGS, MONTHS OF
14 DEBATE ALL CULMINATING IN TWO FINDINGS BY THE
15 LEGISLATIVE BODY, THE ELECTED REPRESENTATIVE FOR THE
16 CITY OF COSTA MESA: ONE, THAT THE CHARTER IS IN THE
17 BEST INTEREST OF THE CITY AND ITS CITIZENS, AND, TWO,
18 THE ISSUE IS IMPORTANT ENOUGH THAT IT SHOULD BE ON THE
19 JUNE 5TH BALLOT.

20 I HIGHLIGHT THESE FINDINGS, YOUR HONOR, BECAUSE
21 THEY'RE IMPORTANT AND BECAUSE IT'S IMPORTANT THAT THE
22 COURT NOT SUBSTITUTE ITS JUDGMENT AS TO WHETHER OR NOT
23 THE ELECTED REPRESENTATIVES ARE CORRECT OR NOT.

24 AND PARTICULARLY --

25 **THE COURT:** ABSOLUTELY NOT. THAT'S -- THAT WAS
26 WHAT I WAS TRYING TO STRESS IS BESIDES THE FACT THAT I

1 UNDERSTAND IT'S MY DUTY NOT TO BE PUSHING THE MERITS OR
2 MAKE THE RULING BASED ON WHAT THE MERITS OF THE BALLOT
3 ISSUE IS --

4 **MR. GRABOWSKI:** THERE -- SORRY.

5 **THE COURT:** -- BUT -- AND THAT'S WHY I MADE THE
6 POINT THAT IT'S VERY, VERY EASY. IN THIS CASE, I JUST
7 KNOW THAT THE -- I CAN DISCERN THIS FROM THE PAPERWORK,
8 AND I HAVE NO MORE INFORMATION BEYOND THAT OTHER THAN,
9 LIKE I SAID, I MAY HAVE READ IT IN THE PAPER THAT THEY
10 HAD THE VOTE.

11 IT SOUNDED FAMILIAR WHEN I SAW THE PAPERWORK
12 THAT, YEAH, THERE WAS SOMETHING UP FOR CHARTER CITY.
13 AND I KNOW FROM MY TIME IN CITY GOVERNMENT, PLANNING
14 COMMISSION, NOT EVER -- I WOULD NOT WANT TO DO THE
15 ELECTED THING EVER. I DON'T KNOW WHY PEOPLE DO THAT
16 SINCE -- I LIKE TO PUT IT EVERY TWO OR FOUR YEARS YOU
17 GET TO SPEND A WHOLE BUNCH OF YOUR OWN MONEY FOR THE
18 PRIVILEGE OF BEING SLANDERED.

19 AND -- AND -- BUT IN ANY EVENT, I KNOW THERE'S
20 A CONCEPT, YOU KNOW, GENERAL LAW CITY, CHARTER CITY. I
21 KNOW THERE ARE DIFFERENCES. I'VE MAYBE EVEN STUDIED
22 SOME COGENT DIFFERENCES AT VARIOUS TIMES ON LEGAL
23 ISSUES. BUT I DON'T KNOW MUCH MORE THAN THERE IS THE
24 DISTINCTION APPARENTLY BY WAY OF A VOTE, AND
25 COUNCILMEMBERS WERE PUSHING FOR CHARTER.

26 BUT BEYOND THAT, I DON'T KNOW WHAT THE ISSUES

1 ARE WITH ALL OF THAT. I JUST KNOW COUNCIL WANTS IT ON
2 THE BALLOT IN JUNE, AND INTERVENORS DO NOT. AND
3 KELLEY'S WILLING TO TAKE DIRECTION.

4 **MR. GRABOWSKI:** CERTAINLY. BUT THERE'S AN
5 IMPORTANT SECOND FINDING WHICH I WANT TO MAKE SURE THE
6 COURT UNDERSTANDS, WHICH IS JUNE IS WHEN THE COUNCIL
7 DECIDED THIS SHOULD BE ON THE BALLOT.

8 AND I RAISE THAT BECAUSE YESTERDAY AT THE
9 INTERVENTION ARGUMENT, THE INTERVENORS INVITED THE COURT
10 TO -- AND THROUGH THEIR ARGUMENT TO SAY "WELL, YOU KNOW,
11 NOVEMBER WOULD BE SO MUCH EASIER ON EVERYONE. THERE'S
12 NOT A COMPRESSED TIME SCHEDULE. AND WHAT'S THE HURRY?"
13 AND INVITING THIS COURT TO WEIGH WHETHER OR NOT NOVEMBER
14 IS BETTER BECAUSE MAYBE IT'S A LESS COMPRESSED TIME
15 SCHEDULE. THE COURT ALSO --

16 **THE COURT:** LET ME CUT YOU OFF. I AGREE WITH YOU
17 THAT IT IS NOT WITHIN MY PROVINCE, AT LEAST AT THIS
18 STAGE AND PROBABLY EVER. I CAN'T THINK OF AN EVER TO,
19 YOU KNOW, OPINE OR EXERCISE DISCRETION BASED ON WHICH
20 DATE I THINK MAY BE A BETTER DATE FOR IT.

21 **MR. GRABOWSKI:** THANK YOU, YOUR HONOR.

22 SO ON MARCH 6TH, THE DEMOCRATIC PROCESS IN
23 COSTA MESA RESULTS IN TWO THINGS. ONE IS WE'VE GOT
24 RESOLUTIONS TO APPROVE THE CHARTER, TO PLACE IT ON THE
25 BALLOT, AND TO SET IT FOR JUNE -- JUNE 6TH.

26 AT THIS POINT, THE CLERK HAS ABSOLUTELY NO

1 DISCRETION OF ANY KIND. NO ONE ARGUES WITH THAT. THE
2 INTERVENORS DON'T DISPUTE THAT. THE CLERK WAS OBLIGATED
3 TO SUBMIT IN A TIMELY FASHION TO THE REGISTRAR OF
4 VOTERS. AND NO ONE DISPUTES THAT MARCH 6TH WAS WELL IN
5 ADVANCE OF THE DEADLINE.

6 AT THAT POINT --

7 **THE COURT:** JUST ONE MORE THING I WANT TO --

8 **MR. GRABOWSKI:** SURE.

9 **THE COURT:** -- INTERRUPT, SO YOU MAY WANT TO GET
10 OUT YOUR JUDGE MILLER VOODOO DOLL TONIGHT.

11 **MR. GRABOWSKI:** YOUR HONOR, I WANT TO ANSWER YOUR
12 QUESTIONS.

13 **THE COURT:** I ALWAYS HATED IT. BUT ONE THING I
14 WANTED TO GET OUT THERE SO EVERYBODY KNOWS BECAUSE ONE
15 OF THE THINGS THAT CAUGHT MY EYE ON YOUR REQUEST FOR
16 JUDICIAL NOTICE FOR TODAY AND, YOU KNOW, THE -- I'LL
17 HEAR IF THEY OBJECT. IF THEY DO, YOU CAN RESPOND TO IT.

18 BUT THE -- FOR THE FIRST TIME, THE CAPTION SAYS
19 JULIE FOLCIK IN HER OFFICIAL CAPACITY AS CITY CLERK. SO
20 I -- I WENT BACK AND LOOKED AT THE PETITION FOR WRIT OF
21 MANDAMUS, AND IT'S CLEAR FROM THE ALLEGATIONS IN THAT
22 THAT SHE'S BRINGING THE ACTION IN HER OFFICIAL CAPACITY
23 AS OPPOSED TO JUST AS INDIVIDUAL JULIE FOLCIK.

24 **MR. GRABOWSKI:** ABSOLUTELY, WHICH NATURALLY LEADS
25 INTO THE STANDING ARGUMENT THAT'S BEEN RAISED, AND I
26 WANT TO ADDRESS THAT.

1 IT'S CLEAR, NUMBER 1, IN OUR PETITION THAT
2 JULIE FOLCIK IS HERE AS THE CITY CLERK IN HER OFFICIAL
3 CAPACITY AND NOT HERE AS AN INDIVIDUAL CITIZEN.

4 AND IN HER OFFICIAL CAPACITY, THERE'S SOME
5 IMPORTANT THINGS FOR THE COURT TO KEEP IN MIND. SHE IS
6 DESIGNATED AS THE ELECTIONS OFFICIAL FOR THE CITY OF
7 COSTA MESA. ELECTION CODE SECTION 320 IDENTIFIES THE
8 CITY CLERK AS AN ELECTION OFFICIAL FOR THE CITY.

9 THROUGHOUT THE GOVERNMENT CODE AND THE ELECTION
10 CODE, THE CITY CLERK IS IDENTIFIED AS AN ELECTIONS
11 OFFICIAL. ANOTHER EXAMPLE WOULD BE IN ELECTIONS CODE
12 SECTION 18546. THERE ARE MANY REFERENCES TO THE CITY
13 CLERK AS THE ELECTIONS OFFICIAL.

14 SECONDLY, RESOLUTION 12-18 SPECIFICALLY CHARGED
15 HER, AS THE ELECTIONS OFFICIAL FOR THE CITY, TO
16 COMMUNICATE THE NEEDED ITEMS TO THE REGISTRAR OF VOTERS
17 IN A TIMELY FASHION FOR A JUNE 5TH BALLOT MEASURE.

18 INTERVENORS RELY ON THE GENERAL STANDING
19 STATUTE CCP 367, BUT THE MANDAMUS STATUTE, YOUR HONOR,
20 HAS ITS OWN STANDING PROVISION, WHICH IS CCP SECTION
21 1086. AND 1086 ONLY REQUIRES THAT THERE BE A, QUOTE,
22 UNQUOTE, BENEFICIAL INTEREST IN ORDER TO PROCEED ON A
23 WRIT OF MANDAMUS.

24 AND MS. FOLCIK, WHO IS THE TOP ELECTIONS
25 OFFICIAL AND WHO WAS SPECIFICALLY CHARGED BY THE CITY
26 COUNCIL IN RESOLUTION 12-18 AS THE PERSON RESPONSIBLE

1 FOR FILING THESE MATERIALS AND GETTING THE ELECTION --

2 **THE COURT:** I'M GOING TO CUT YOU OFF BECAUSE MY --
3 THE ASSUMPTION FOLLOWING MY COMMENT THAT FLOWS FROM MY
4 COMMENT ABOUT IT'S CLEAR FROM THE PETITION SHE'S
5 BRINGING IT IN HER OFFICIAL CAPACITY, IN MY VIEW, THEN,
6 EFFECTIVELY IT'S -- SHE'S -- SHE'S MARCHING ON BEHALF OF
7 THE CITY. SO I'LL HEAR FROM THEM IF THEY OPPOSE THAT
8 ANALYSIS. THEN I'LL HEAR FROM YOU.

9 **MR. GRABOWSKI:** THEN I'LL SKIP OVER THAT, YOUR
10 HONOR.

11 **THE COURT:** IT'S NOT OFTEN I GET ABOUT A FOUR- OR
12 FIVE-PAGE YELLOW PAD TURN BY SAYING SOMETHING.

13 **MR. GRABOWSKI:** YEAH. SO, YOU KNOW, JUMPING RIGHT
14 OVER HERE --

15 **THE COURT:** I'LL HAVE TO TRY THAT AGAIN SOMETIME.

16 **MR. GRABOWSKI:** YOU KNOW WHAT? THEN I THINK THAT
17 BRINGS US TO IRREPARABLE HARM, WHICH THE COURT
18 IDENTIFIED IN ITS TENTATIVE RULING AS AN ISSUE AND ONE
19 OF THE REASONS WE FILED THE REQUEST FOR JUDICIAL NOTICE.
20 BUT BEFORE WE GET TO THAT, I THINK THERE'S A LOT OF
21 DIFFERENT LEVELS OF IRREPARABLE HARM HERE.

22 FIRST OF ALL, WE HAVE A DECISION -- MULTIPLE
23 DECISIONS, IN FACT, THREE RESOLUTIONS OF A
24 DEMOCRATICALLY ELECTED CITY COUNCIL INVALIDATED BY A
25 SINGLE UNELECTED OFFICIAL WHO HAD ABSOLUTELY NO RIGHT TO
26 DO SO. IF THAT'S NOT IRREPARABLE HARM, YOUR HONOR, I'M

1 NOT SURE WHAT IS HERE.

2 MS. FOLCIK SINGLE-HANDEDLY THROUGH HER MISTAKE
3 HAS NULLIFIED MONTHS AND MONTHS OF WORK BY THE CITY
4 COUNCIL AND PUBLIC HEARINGS CULMINATING ON A MARCH 6TH
5 HEARING AND OFFICIAL RESOLUTIONS BEING PASSED AND THIS
6 MATTER BEING SET FOR A BALLOT DECISION ON JUNE 5TH.

7 THAT, IN AND OF ITSELF, SHOULD BE IRREPARABLE
8 HARM AT THAT POINT, YOUR HONOR. IT SHOULD -- YOU KNOW,
9 THE -- IF THIS COURT CANNOT GO BEHIND THE DECISION THAT
10 THIS IS IN THE BEST INTEREST OF COSTA MESA AND THIS
11 SHOULD BE ON THE JUNE 5TH BALLOT, IF THAT'S NOT THIS
12 COURT'S PROVINCE, AND WHICH WE JUST DISCUSSED EARLIER,
13 THEN THE COURT HAS TO ASSUME, I THINK RIGHTLY SO, THAT
14 THERE IS IRREPARABLE HARM HERE BY THIS NOT GOING ON THE
15 BALLOT WHEN THE CITY COUNCIL HAS MADE FINDINGS THAT THIS
16 BENEFITS THE CITIZENS AND SHOULD BE ON THE JUNE 5TH
17 BALLOT.

18 BUT IF THE COURT NEEDS FURTHER EVIDENCE OF
19 IRREPARABLE HARM, WE SUBMITTED THE REQUEST FOR JUDICIAL
20 NOTICE. AND IN THERE, THERE ARE ONLY TWO ITEMS. AS THE
21 COURT INDICATED, IT'S NOT -- UNDERSTANDS THAT THERE'S A
22 GENERAL DIFFERENCE BETWEEN A GENERAL LAW CITY AND A
23 CHARTER LAW CITY, AND THOSE CITIES -- TYPES OF CITIES
24 CAN HAVE DIFFERENT POWERS DEPENDING ON WHETHER YOU'RE A
25 CHARTER CITY OR A GENERAL LAW CITY.

26 THERE'S NO QUESTION IT'S BEEN A MATTER WELL

1 REPORTED WITHIN THE COMMUNITY THAT THERE IS AN
2 INJUNCTION IN PLACE ISSUED OUT OF THIS COURTHOUSE WITH
3 RESPECT TO THE ABILITY OF THE CITY OF COSTA MESA TO
4 CONTRACT OUT FOR CERTAIN SERVICES. THAT INJUNCTION
5 REMAINS IN PLACE. AND AS THE COURT CAN SEE FROM THE
6 COMPLAINT, IT'S ASSERTED THAT BECAUSE THE CITY IS A
7 GENERAL LAW CITY, IT IS UNABLE TO CONTRACT OUT FOR
8 SERVICES. IF IT WERE A CHARTER CITY, THERE WOULD BE A
9 DIFFERENT ANALYSIS, YOUR HONOR.

10 AND SO THE FACT THAT THIS -- THAT THE
11 INTERVENORS SEEK TO HAVE THE ELECTION MOVED FROM JUNE TO
12 NOVEMBER -- FRANKLY, THE INTERVENORS HAVE ALWAYS OPPOSED
13 THIS ELECTION. THEY'VE OPPOSED IT EVER BEING ON THE
14 BALLOT, WHETHER IT BE JUNE -- THEY'D BE HAPPY IN 2013,
15 2014, OR NEVER. THEY ARE DOING EVERYTHING THEY CAN TO
16 KEEP IT OFF THE BALLOT. THEY ARE THE FORCES OF
17 ANTIDEMOCRACY, FRANKLY, YOUR HONOR.

18 **MS. FOLEY:** WOW.

19 **MR. STEPHENS:** BOO.

20 **THE COURT:** THIS IS -- YOU KNOW YOU HATE IT WHEN
21 THE ATTENDEES OF THE CITY COUNCIL MEETINGS DO THE BOO
22 STUFF, SO DON'T DO THAT.

23 GO AHEAD.

24 **MR. GRABOWSKI:** THANK YOU, YOUR HONOR.

25 BUT IN ANY EVENT, YOUR HONOR, THERE IS --

26 **THE COURT:** YOU CAN FEEL FREE WHEN IT'S YOUR TURN

1 TO SPEAK TO TELL ME HOW OFFENDED YOU ARE BY THAT.

2 BUT GO AHEAD.

3 **MR. GRABOWSKI:** BUT IN ANY EVENT, YOUR HONOR, I
4 THINK IT'S CLEAR FROM THE JUDICIAL NOTICE HERE, YOUR
5 HONOR, THAT THE CITY REMAINING HANDCUFFED, EVEN FOR A
6 PERIOD OF ANOTHER SIX MONTHS, TO BE ABLE TO CONTRACT OUT
7 FOR SERVICE, TO EXERCISE POWERS THAT WOULD BE THEIR
8 RIGHT TO EXERCISE BETWEEN JUNE AND NOVEMBER IS
9 IRREPARABLE HARM, THAT THE DAMAGES ARE INCALCULABLE.
10 THEY'RE BOTH MONETARY, AND THEY'RE THE ABILITY OF THE
11 COUNCIL TO EXERCISE POWERS THEY WOULD BE OTHERWISE
12 ENTITLED TO. AND TO PLACE A VALUE ON THOSE IS CERTAINLY
13 INCALCULABLE. THE COUNCIL WON'T BE ABLE TO TAKE CERTAIN
14 ACTIONS UNTIL THEY BECOME A CHARTER CITY IF THAT OCCURS.

15 SO THERE IS CLEARLY IRREPARABLE HARM HERE ON A
16 NUMBER OF DIFFERENT LEVELS, SOME OF WHICH IS MONETARY.
17 THE INABILITY TO CONTRACT OUT AS IS REPORTED WELL WITHIN
18 THE PRESS AND ARGUED BY -- IN ALL THESE PUBLIC HEARINGS
19 IS SUBSTANTIAL.

20 AND AS THIS COURT KNOWS JUST FROM WHAT'S BEEN
21 GOING ON WITH CITIES UP AND DOWN CALIFORNIA AND THE HUGE
22 BURDENS OF UNFUNDED PENSIONS AND THE REPORTS OF
23 COSTA MESA ARE ENORMOUS IN TERMS OF THE UNFUNDED
24 PENSIONS AND OTHER CITIES AROUND THE STATE AND REPORTS
25 STANTON MAY BE GOING BANKRUPT.

26 THIS IS A HUGE ISSUE OF PUBLIC IMPORTANCE

1 WITHIN THE CITY OF COSTA MESA. THE LEGISLATIVE BODIES
2 DETERMINE WE NEED TO GET THIS ON THE BALLOT ON JUNE 5TH
3 BECAUSE IT IS OF GREAT IMPORTANCE TO THE CITIZENS OF
4 COSTA MESA.

5 THE *WILLETT* CASE AND THE CASES WE CITED, YOUR
6 HONOR, REALLY MANDATE THIS COURT GRANT THE RELIEF. IT'S
7 NOT DISCRETIONARY IN THIS SITUATION. THIS COURT HERE IS
8 CHARGED WITH BEING THE GUARDIAN OF THE DEMOCRATIC
9 PROCESS HERE.

10 THIS COURT -- IF YOU LOOK AT WHAT THE COURTS
11 HAVE DONE IN THE CASES WHERE THE WRIT WAS GRANTED, IT'S
12 ALWAYS GRANTED WHERE THE GOVERNMENT OFFICIAL IS THE ONE
13 BLOCKING THE STEP TO THE BALLOT BOX. YOU KNOW, ALL
14 THESE PRIVATE PLAINTIFF CASES, YOU KNOW, IT WAS THEIR
15 SCREW-UP. THEY'RE NOT ACTING UNDER COLOR OF LAW.

16 BUT IF YOU LOOK AT ALL OF THE CASES WE CITE,
17 AND THERE'S NO VARIANCE BETWEEN THE CASES, WHEN
18 SOMEONE'S ACTING UNDER THE COLOR OF LAW AND THEY'RE
19 BLOCKING THE ACCESS TO THE BALLOT BOX, THE COURT IS
20 ISSUING MANDAMUS. AND IT COULD BE SOMEBODY ACTING OUT
21 OVER HERE. THE *WILLETT* CASE STANDS FOR THAT PROPOSITION
22 THAT YOU CAN STILL ISSUE THE MANDAMUS AGAINST THE
23 SECRETARY OF STATE EVEN THOUGH THEY'RE WITHOUT FAULT.

24 SO, YOUR HONOR, I WOULD JUST IMPLORE THE COURT
25 TO TAKE A LOOK AT THE *WILLETT* CASE, TAKE A LOOK AT THE
26 FACTS OF THE CASE WE CITED. LOOK WHO THE PARTIES WERE,

1 LOOK WHERE MANDAMUS ISSUED BEFORE IT DID ISSUE, AND
2 YOU'LL SEE A CLEAR LINE.

3 YOU KNOW, IT WAS EXTREMELY APPROPRIATE, I
4 THOUGHT, YESTERDAY WHEN WE HAD THE HIGH SCHOOLERS IN
5 HERE. THIS REALLY IS A CIVICS LESSON. YOU'VE GOT AN
6 INTERSECTION OF THE LEGISLATIVE BODY, THE COURTS, AND
7 THE EXECUTIVES.

8 THE LEGISLATOR ACTED. THE CLERK REALLY STOOD
9 IN THE POSITION OF THE EXECUTIVE. THEIR JOB WAS TO
10 CARRY OUT THE ACTS OF THE LEGISLATIVE BODY. AND THEY --
11 THAT -- THE CLERK FAILED MISERABLY IN THAT REGARD.

12 AND SO IT IS UP TO THIS COURT TO GET THAT BACK
13 ON TRACK TO ERR ON THE SIDE OF THE DEMOCRATIC PROCESS
14 AND NOT ERR ON THE SIDE OF THOSE WHO WOULD PREVENT THE
15 DEMOCRATIC PROCESS, FOR THOSE WHO WOULD NEVER WANT THIS
16 BALLOT MEASURE TO SEE THE LIGHT OF DAY.

17 THE CITY COUNCIL HAS MADE ITS FINDING. IT'S
18 MADE ITS DETERMINATION. WE CAN'T LOOK BEHIND THAT. THE
19 REGISTRAR IS IN NONOPPOSITION. THERE IS NO HARM. THE
20 BALLOTS CAN ALL BE PRINTED IN A TIMELY FASHION. THE
21 PEOPLE GET TO VOTE. THEY GET TO SAY WHAT THEY SAY ABOUT
22 IT. INTERVENORS CAN CHALLENGE THAT, AND UNDOUBTEDLY
23 THEY WILL, YOUR HONOR, AFTER THE ELECTION. THEY WILL DO
24 ANYTHING TO PREVENT THIS FROM BECOMING LAW.

25 BUT THIS COURT'S ROLE IN THIS SITUATION IS TO
26 SEE TO IT THAT THE DEMOCRATIC PROCESS IS NOT NULLIFIED

1 BY A GOVERNMENT EMPLOYEE. THAT'S WHAT HAPPENS HERE.

2 AND WE SUBMIT ON THAT, YOUR HONOR.

3 **THE COURT:** IS YOUR POSITION THAT MR. KELLEY HAD A
4 MANDATORY DUTY TO ACCEPT THE UNTIMELY CHARTER
5 RESOLUTION?

6 **MR. GRABOWSKI:** TO THE SAME EXTENT THE SECRETARY OF
7 STATE HAD IN THE *WILLETT* CASE, YOUR HONOR. IT WAS
8 UNDISPUTED THAT -- IN THE *WILLETT* CASE, SECRETARY OF
9 STATE ONLY NEEDED TO HAVE CERTIFIED SIGNATURES ON A
10 CERTAIN DATE, AND IT'S UNDISPUTED THE PROPONENTS OF THE
11 INITIATIVE DIDN'T HAVE THEM THERE.

12 HOW CAN ONE SAY ON THAT DAY ON AUGUST 7TH THE
13 SECRETARY OF STATE HAD A MANDATORY DUTY TO ACCEPT
14 SOMETHING THAT HADN'T EVEN ARRIVED ON HIS DESK? HE
15 DIDN'T EVEN KNOW. HE HAD NO WAY OF KNOWING THAT THE
16 CLERK IN ALAMEDA COUNTY HAD FAILED TO CERTIFY THE
17 SIGNATURES.

18 AND A COURT ON THAT DAY AND TIME WITHOUT
19 KNOWING THE FUTURE WOULD HAVE NOT SAID THE SECRETARY OF
20 STATE HAS ANY KIND OF MANDATORY DUTY. BUT ON
21 AUGUST 11TH, WHEN THE ERROR WAS DISCOVERED AND WHEN
22 THOSE SIGNATURES WERE CONVEYED TO THE SECRETARY OF
23 STATE, THE SUPREME COURT SAID "WE'RE GOING TO GO FORWARD
24 AND PUT THIS ON THE BALLOT" BECAUSE EVERYTHING -- I WANT
25 TO QUOTE THAT CASE, YOUR HONOR, BECAUSE I THINK THERE'S
26 A REALLY IMPORTANT QUOTE OUT OF THE *WILLETT* CASE, YOUR

1 HONOR, THE COURT SHOULD CONSIDER.

2 **MR. KAHR:** DO YOU HAVE ANOTHER COPY OF THE CASE?

3 **MR. GRABOWSKI:** I'M SORRY. I DON'T.

4 SO THIS IS AT 1 CAL.2D AT 464. "IT, THEREFORE,
5 APPEARS THAT PETITIONER AND THOSE INTERESTED WITH HIM IN
6 THE PRESENTATION OF THE PROPOSED MEASURE HAVE DONE
7 EVERYTHING REQUIRED OF THEM TO BE DONE AND WITHIN THE
8 TIME PROVIDED BY LAW IN ORDER TO PLACE SAID MEASURE
9 BEFORE THE ELECTORS OF THE STATE AT THE GENERAL ELECTION
10 NEXT NOVEMBER.

11 "THE RESPONDENT DOES NOT CONTEND, IN FACT, HE
12 CONCEDES THAT IF HE IS REQUIRED TO ACT IN ACCORDANCE
13 WITH THE AMENDED CERTIFICATES, THERE WILL BE AMPLE TIME
14 TO MAKE THE NECESSARY ARRANGEMENTS FOR PLACING THE
15 MEASURE ON THE BALLOT AT SAID ELECTION.

16 "NO PREJUDICE TO ANYONE WILL ENSUE IF THAT IS
17 REQUIRED TO BE DONE, WHICH WOULD HAVE BEEN DONE BUT FOR
18 THE MISTAKE AND INADVERTENCE OF THE COUNTY CLERK."

19 I THINK THAT'S RIGHT ON POINT HERE, YOUR HONOR,
20 AND THAT'S WHAT'S HAPPENED HERE. WE HAD A CITY CLERK
21 MADE A MISTAKE. I CERTAINLY -- YOU KNOW, THE REGISTRAR
22 ON THE DAY OF FILING DIDN'T KNOW THAT THERE HAD BEEN A
23 MISTAKE.

24 BUT UNDER THE AUTHORITY OF THE *WILLETT* CASE,
25 YOUR HONOR, WE WOULD SUBMIT THAT -- AND IF YOU'LL LOOK
26 AT THE OTHER CASES, THE REAL DISTINCTION HERE IS IS IT

1 SOMEBODY ACTING UNDER THE COLOR OF LAW THAT'S KEEPING
2 MATTERS OFF THE BALLOT, OR IS IT SOME PRIVATE PARTY WHO
3 HAS STUMBLERD ON THE WAY?

4 ONE OF THOSE IMPLICATES THE PROCESS AS A WHOLE,
5 AND ONE OF THEM DOESN'T. AND WE CAN'T HAVE GOVERNMENT
6 OFFICIALS NULLIFYING ELECTIONS, AND THAT IS THE DRIVING
7 PRINCIPLE OF THESE CASES.

8 **THE COURT:** WHAT'S THE CITE OF *WILLETT* AGAIN?
9 1 CAL.4TH WHAT?

10 **MR. GRABOWSKI:** IT IS 1 CAL.2D 461.

11 **THE COURT:** OH, 1 CAL.2D 461. AND GIVE ME THE CITE
12 ON *MHC* SO I DON'T HAVE TO --

13 **MR. GRABOWSKI:** YES. THERE'S A VERY EXTENSIVE
14 DISCUSSION BY THE FOURTH DISTRICT IN THERE OF *WILLETT*.

15 *MHC* IS 125 CAL.APP.4TH 1372.

16 **THE COURT:** HANG ON FOR JUST A SECOND, AND THEN
17 WE'LL GO TO MR. KAHR. JUST STAY RIGHT THERE.

18 **(RECESS)**

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

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

21 FIRST, WE AGREE WITH YOUR HONOR'S TENTATIVE.
22 WE THINK IT'S RIGHT, AND WE'RE READY TO STAND ON IT.
23 BUT I WANT TO RESPOND TO A FEW OF THE POINTS HERE THAT
24 HAVE BEEN RAISED.

25 PRELIMINARILY, THE REQUEST FOR JUDICIAL NOTICE,
26 WE OBJECT TO ITS CONSIDERATION OR ADMISSION INTO

1 EVIDENCE. IT'S NOT TIMELY. THERE'S NO REASON ANY OF
2 THESE MATERIALS COULDN'T HAVE BEEN SUBMITTED IN THE
3 FIRST PLACE WITH THEIR PETITION. THERE'S NO EXPLANATION
4 OF THE RELEVANCE OF THE MATERIALS SUBMITTED IN THEIR
5 REQUEST FOR JUDICIAL NOTICE, WHICH WE JUST RECEIVED
6 TODAY, AND IT'S ALSO COMPLETELY IRRELEVANT. SO ON ALL
7 THOSE GROUNDS, WE OBJECT TO THE RJN COMING IN.

8 I CAN'T ADDRESS THE *WILLETT* CASE FULLY BECAUSE
9 I HAVEN'T READ IT. IT WASN'T CITED IN THEIR PAPERS, AND
10 WE WEREN'T SERVED WITH A COPY OF IT IN ACCORDANCE WITH
11 THE RULE ON YOUR HONOR'S WEBSITE WHERE THE TENTATIVE
12 ORDERS ARE ADDRESSED AND SAYS IF YOU'RE GOING TO RAISE A
13 NEW AUTHORITY, YOU SHOULD -- YOU HAVE TO AT LEAST
14 PROVIDE NOTICE TO COUNSEL OF WHAT'S GOING TO BE RELIED
15 ON.

16 **THE COURT:** I'LL MAKE THIS COMMENT NOW, ALTHOUGH
17 WE'RE LATE IN THE DAY, SO I DON'T WANT TO DWELL ON THIS.
18 TWO THINGS.

19 NUMBER 1, I THINK IT IS NOTABLE THIS THING IS
20 ON SUCH A FAST TRACK THAT --

21 **MR. KAHR:** I UNDERSTAND.

22 **THE COURT:** -- THAT I DECLINED TO GIVE THEM A
23 REPLY.

24 THAT BEING SAID, AS LONG AS I'VE PRACTICED LAW,
25 IT WAS DE RIGUEUR IF YOU WERE GOING TO CITE SOMETHING
26 THAT WASN'T IN THE PAPERWORK THAT YOU BROUGHT AN EXTRA

1 COPY AND GAVE IT TO THE OTHER SIDE AT LEAST BEFORE THE
2 ARGUMENT STARTED. TYPICALLY YOU WERE SUPPOSED TO DO IT
3 BEFORE YOU -- YOU -- THE SECOND EVERYBODY WAS THERE
4 BEFORE COURT STARTED.

5 I DO KNOW THIS. I SAW ANY NUMBER OF OCCASIONS
6 OVER AT THE COURT OF APPEAL WHERE THEY LAMBASTED LAWYERS
7 FOR THAT. SO I ENCOURAGE, AT LEAST FOR THE BALANCE OF
8 THIS CASE, EVERYBODY WILL BE MAKING SURE THAT ANYTHING
9 THAT YOU FEEL YOU NEED TO BRING UP THAT'S NOT IN THE
10 PAPERWORK AT LEAST GETS NOTED TO THE OTHER PARTIES.

11 **MR. KAHR:** UNDERSTOOD, YOUR HONOR. LUCKILY --

12 **THE COURT:** GO AHEAD. WE'VE GOT -- I KNOW YOU HAVE
13 NOT STUDIED THAT CASE.

14 **MR. KAHR:** OKAY. AND LUCKILY, COUNSEL HERE HAS AN
15 IPAD AND WAS ABLE TO READ THE CASE, SO PERHAPS THEY WILL
16 HAVE A BETTER EXPLANATION THAN I COULD GIVE OF IT.

17 FIRST OF ALL, THE NOTION THAT THE CITY HAS BEEN
18 THWARTED HERE BY SOME GOVERNMENT ENTITY THAT IS TRYING
19 TO INTERRUPT THE POLITICAL PROCESS IS RIDICULOUS. THE
20 CLERK IS THE CITY. THE CLERK IS THE CITY'S AGENT. THE
21 CITY IS THE ONE THAT MADE THE MISTAKE HERE AND FAILED TO
22 HEED A MANDATORY FILING DEADLINE. IT'S NO DEFENSE TO
23 SAY WE THWARTED OURSELVES, AND SO WE SHOULD BE EXCUSED
24 FROM COMPLIANCE.

25 THEY DON'T HAVE ANY CASE WHERE A GOVERNMENT
26 ENTITY CAN BLAME ITS OWN AGENT FOR FAILURE TO COMPLY

1 WITH SOME ELECTION CODE. THERE IS NO SUCH CASE I WOULD
2 SUBMIT, YOUR HONOR.

3 NEXT, THE EMANATING PRINCIPLE BEHIND THE CASES
4 THEY DO CITE FOR THE IDEA THAT DEADLINES CAN BE SET
5 ASIDE, FIRST OF ALL, NONE OF THEM ARE DEADLINE CASES.

6 SECOND OF ALL, THEY'RE ALL VOTER-SPONSORED
7 INITIATIVE CASES WHERE THERE'S CLEAR AUTHORITY THAT THE
8 RIGHTS OF THE VOTERS TO PROPOSE LEGISLATION BY
9 INITIATIVE IS TO BE JEALOUSLY GUARDED BY THE COURTS
10 TRYING TO STATE CONSTITUTION AND WHERE AN OFFICIAL
11 REFUSES TO PROMPTLY FILE A VOTER-SPONSORED INITIATIVE
12 AND ACT IN ACCORDANCE AND CALL AN ELECTION. FOR
13 EXAMPLE, IF THEY'RE UNDER SPECIFIC MANDATORY DUTY TO
14 CALL, MANDAMUS WILL LIE TO COMPEL THAT ACTOR, THAT STATE
15 ACTOR, TO COMPLY WITH THEIR MANDATORY DUTY.

16 HERE, THE REGISTRAR HAS NO MANDATORY DUTY.
17 THEY STILL HAVEN'T IDENTIFIED WHAT THIS MANDATORY DUE IS
18 THAT THE REGISTRAR SUPPOSEDLY HAS TO ACCEPT AN UNTIMELY
19 FILING. I WOULD ALSO POINT OUT, YOUR HONOR, THE IDEA
20 ABOUT BEING THWARTED BY YOUR OWN AGENT OR BEING THWARTED
21 BY YOURSELF, IT DOESN'T MAKE ANY SENSE.

22 THE ELECTION CODE REQUIREMENT HERE IS A FILING
23 REQUIREMENT THAT APPLIES WHEN CITIES, WHEN
24 MUNICIPALITIES SEEK TO CONSOLIDATE THEIR ELECTIONS WITH
25 A STATEWIDE ELECTION, AND SO IT GOES ON STATEWIDE
26 ELECTION BALLOT.

1 IT'S ALWAYS GOING TO -- IT REQUIRES THAT THE
2 MATERIALS AND THE RESOLUTION BE TIMELY FILED WITH
3 ELECTION OFFICIALS. IT'S ALWAYS GOING TO BE THE CASE
4 THAT THEY'RE GOING TO HAVE TO ACTUALLY FILE THE PAPERS
5 THROUGH AN AGENT, THROUGH A CLERK, THROUGH SOMEBODY. IF
6 YOU COULD ALWAYS BLAME YOUR OWN AGENT FOR FAILURE TO
7 COMPLY --

8 **THE COURT:** LET ME SAY THIS. THIS IS THE REASON I
9 WAS ASKING THE QUESTIONS OF MR. GRABOWSKI IS THAT, YEAH,
10 I CAN'T GET MY MIND WRAPPED AROUND THE CONCEPT THAT
11 SOMEHOW THE CITY, THROUGH ITS COUNSEL, SHOULD GET RELIEF
12 BECAUSE ITS CLERK FAILED TO PERFORM A MANDATORY DUTY IN
13 A TIMELY FASHION. SO I AGREE THAT THE FOCUS FOR MANDATE
14 HAS TO BE ON MR. KELLEY IN TERMS OF WHAT HIS DUTY IS
15 AND/OR THE BALANCE OF HIS --

16 **MR. KAHR:** I AGREE COMPLETELY, YOUR HONOR. AND IF
17 I PERSUADED YOU WITH THAT POINT, THEN I WON'T SAY
18 ANYTHING MORE ABOUT IT. I WILL JUST SAY THE CASES THAT
19 THEY'RE RELYING ON HERE, *NATIVE AMERICAN SACRED SITES*,
20 *MHC*, MY UNDERSTANDING, THE *WILLETT V. JORDAN* CASE, THESE
21 ARE VOTER-SPONSORED INITIATIVES. THE COURT HAS A
22 SPECIAL DUTY TO PROTECT THE VOTERS' RIGHTS TO PROPOSED
23 LEGISLATION. THAT'S NOT IMPLICATED AT ALL HERE.

24 AND THOSE ARE CASES WHERE A GOVERNMENT ENTITY
25 STANDS IN THE WAY OF A VOTER'S RIGHT TO HAVE A MATTER
26 THAT'S DULY PROPOSED LEGISLATION PUT ON THE BALLOT.

1 THAT'S NOT IMPLICATED HERE. THERE'S NO MANDATORY DUTY
2 ON THE PART OF THE ELECTION OFFICIALS TO ACCEPT AN
3 UNTIMELY PETITION IN THE CONSOLIDATION REQUEST. SO
4 I'LL -- IN THE INTEREST OF MOVING THINGS ALONG, I'LL
5 TURN IT OVER TO COUNSEL HERE.

6 **MR. STEPHENS:** YEAH. I JUST WANT TO APOLOGIZE FOR
7 BOOING. I'VE NEVER DONE THAT IN A COURT OF LAW BEFORE.
8 I FEEL REAL BAD ABOUT IT. BUT I'VE NEVER HAD ANYBODY
9 ACCUSE ME OF THAT IN A COURT OF LAW BEFORE, THAT OR
10 ANYTHING LIKE THAT.

11 I MEAN I'M A FATHER OF FOUR. I'VE BEEN IN THE
12 CITY FOR 23 YEARS. TO BE ACCUSED OF SOMETHING LIKE THAT
13 IS REPUGNANT TO ME. I'VE BEEN A LITTLE LEAGUE BASEBALL
14 COACH, ON THE BOARD. HE DOESN'T KNOW WHAT HE'S TALKING
15 ABOUT. NOW TO THE FACTS.

16 THEY SHOULDN'T BE ABLE TO FILE THIS JUDICIAL --
17 REQUEST FOR JUDICIAL NOTICE FOR TEN REASONS. FIRST, IT
18 WAS FILED OVER A WEEK LATE, AFTER YOUR DEADLINES, YOUR
19 HONOR. IT WAS SUPPOSED TO BE FILED ON NOON ON
20 MARCH 20TH. IT WAS FILED TODAY, A WEEK LATE. JUST LIKE
21 THE CITY, THESE GUYS CAN'T MAKE THEIR DEADLINES.

22 IT WAS FILED AFTER THE TENTATIVE RULING ON THE
23 DAY OF THE HEARING. I'VE NEVER HAD THAT HAPPEN BEFORE
24 WITH NEW EVIDENCE.

25 NUMBER 8 -- SORRY. I'M GOING -- I'M GOING --
26 THIS IS A TOP TEN LIST. I'M STARTING AT TEN AND GOING

1 DOWN THROUGH IT. IT WAS FILED WITHOUT REQUESTING ANY
2 STIPULATION FROM US OR WITHOUT ANY LEAVE OF COURT.

3 NUMBER 7, THEY KNEW ABOUT OUR LACK OF PREJUDICE
4 ARGUMENT ON MONDAY, MARCH 19TH, AT 9:30 P.M., BECAUSE
5 THE AMICUS BRIEF THAT WE -- THAT WE PUT INTO THIS
6 COURT'S RECORD ON THE 20TH WE E-MAILED TO THEM AT
7 9:30 P.M., TWO MINUTES AFTER WE SIGNED IT.

8 NUMBER 6, THE PETITIONER KNEW ABOUT THIS
9 COSTA MESA EMPLOYEE LAWSUIT. AND IF THAT WAS THE REASON
10 WHY THEY NEED A JUNE ELECTION, THEY CERTAINLY COULD HAVE
11 RAISED THAT IN THE PETITION.

12 NUMBER 5, APPARENTLY NOW THEY THINK THIS IS A
13 RELATED CASE, AND THAT'S WHY THEY BROUGHT IT TO THE
14 COURT'S ATTENTION. WELL, ON MARCH 19TH AT 2:06, I SENT
15 MR. GRABOWSKI AN E-MAIL, AND I ASKED HIM IF HE WAS GOING
16 TO RELATE THE CASE TO THE LAWSUIT. I GOT NO RESPONSE,
17 VERBAL OR IN WRITING, ABOUT THAT. AND NOW THEY
18 APPARENTLY THINK IT'S A RELATED CASE. WELL, MAYBE THEY
19 SHOULD HAVE THOUGHT ABOUT THAT BEFORE.

20 NUMBER 4, THE CONTENTION OF MS. FOLCIK IS NOT A
21 PARTY TO THAT LAWSUIT IS IN THE JUDICIAL -- IN THE
22 JUDICIAL NOTICE REQUEST.

23 NUMBER 3, THERE'S NO OPPORTUNITY FOR US TO EVEN
24 UNDERSTAND WHY IT'S PART OF THE RECORD AND RESPOND IN
25 ANY WAY.

26 NUMBER 2, THEY'RE UNFAIRLY PACKING THE

1 APPELLATE RECORD. THERE'S ALWAYS THINGS THAT AFTER THE
2 FACT, AFTER DEADLINES, PARTIES WANT TO GET IN. THEY
3 SHOULD NOT BE ABLE TO PACK THE APPELLATE RECORD. THAT
4 SHOULD BE REJECTED AND GIVEN BACK TO THEM AND NOT PUT IN
5 THE COURT FILE.

6 AND NUMBER 1, THE TOP REASON WHY YOU SHOULD
7 GIVE THAT BACK TO THEM AND NOT PUT IT IN THE RECORD IS
8 PREJUDICE IS NOT A FACTOR IN A CASE INVOLVING A BLOWN
9 MANDATORY FILING DEADLINE BECAUSE STRICT CONSTRUCTION IS
10 REQUIRED.

11 NOW, FOR THEIR ARGUMENT, JUST TO ECHO A COUPLE
12 OF THINGS MR. KAHR SAID, EVIDENCE CODE SECTION 10403
13 DOES NOT SAY ANYTHING ABOUT A CLERK. IT SAYS, THE
14 DISTRICT, CITY, OR POLITICAL SUBDIVISION SHALL -- SHALL,
15 MANDATORY, AT LEAST 88 DAYS BEFORE THE DATE OF ELECTION
16 FILE -- FILE WITH THE BOARD OF SUPERVISORS A COPY OF THE
17 ELECTION, ITS RESOLUTIONS GOVERNING -- OF ITS GOVERNING
18 BOARD REQUESTING THE CONSOLIDATION, AND SETTING FORTH
19 THE EXACT QUESTION, PROPOSITION, OR OFFICE TO BE VOTED
20 ON -- UPON BEFORE THE ELECTION AS IT APPEARS ON THE
21 BALLOT. THAT IS WHAT WAS NOT DONE.

22 THE CITY -- RIGHT? THE CITY IS NOW THROWING
23 THE CITY CLERK UNDER THE BUS IN ONE OF THE MOST COWARDLY
24 MOVES I'VE EVER SEEN BY A LITIGANT OR ANY BODY OR
25 ANYBODY I'VE EVER SEEN IN THIS CASE.

26 THIS CASE BEFORE YOU, YOUR HONOR, IS NOT A

1 CLOSE CALL. IT'S A ROUTE. THEY CITED 15 CASES, NOW 16
2 CASES. BUT EVEN THOUGH WE SAT HERE FOR THREE HOURS, AS
3 THE COURT POINTED OUT, THEY DIDN'T BOTHER TO GIVE US A
4 COPY OF THE PAPERS SO WE COULD READ THEM, THE *WILLETT*
5 CASE, SO WE COULD READ IT AND ANALYZE IT.

6 BUT I'VE DONE SOME STATISTICAL ANALYSIS, YOUR
7 HONOR. THEY CITED 15 CASES. I READ EVERY SINGLE ONE OF
8 THEM AT MY DINING ROOM TABLE TODAY. IN ZERO OF THOSE
9 CASES IS A CITY CLERK A PETITIONER. THERE'S ABSOLUTELY
10 NO STANDING HERE; RIGHT? IT'S A POLITICAL MOVE SO THAT
11 THE CITY COUNCIL, IN PARTICULAR THE MAYOR PRO TEM,
12 DOESN'T GET BLAMED FOR THIS MISTAKE.

13 HOWEVER, I CAN TELL YOU WITH MY OWN EYES AND I
14 SWEAR UNDER OATH THAT ON MARCH 9TH, I WAS IN THE CITY
15 COUNCIL CHAMBERS -- NOT THE CHAMBERS, BUT IN THE CITY
16 COUNCIL ANTEROOM, AND I SAW THE MAYOR PRO TEM THERE
17 DOING WHAT I WAS DOING, SIGNING THE BALLOT ARGUMENT. SO
18 HOW HE CAN BLAME JULIE FOLCIK FOR THIS OR HOW ANYBODY AT
19 THE CITY CAN BLAME IT IS DESPICABLE.

20 OKAY. SO 15 CASES CITED --

21 **THE COURT:** DID YOU MEAN ON THE 9TH AFTER THE CLERK
22 HAD CLOSED OR --

23 **MR. STEPHENS:** NO. NO. I WAS THERE BECAUSE --
24 BECAUSE, REMEMBER, I WAS THERE AT THE CITY -- AT THE
25 CITY COUNCIL -- NOT THE CHAMBERS BUT THE ANTEROOM
26 BECAUSE I WAS ONE OF THE ONES THAT SIGNED THE

1 OPPOSITION.

2 AND THE MAYOR PRO TEM WAS THERE TOO. HE WAS
3 GETTING HIS SIGNATURES, AS WELL. SO HE WAS THERE
4 MONITORING THE SITUATION. AND I SAW HIM WITH MY OWN TWO
5 EYES. AND SO FOR THEM -- FOR HIM TO BLAME IT ON JULIE
6 FOLCIK AND THEN THROW HER UNDER THE BUS IN A LAWSUIT
7 WITH HIS LAWYERS HERE IS ABSOLUTELY DESPICABLE, NOT TO
8 MENTION WHAT THEY JUST SAID ABOUT ME, WHICH IS GETTING
9 ME A LITTLE AGITATED, AND THAT'S WHY I KEEP GOING.

10 OKAY. SO ALSO ZERO -- ZERO CASES OUT OF 15;
11 RIGHT?

12 **THE COURT:** HANG ON FOR JUST A SECOND.

13 **(DISCUSSION WITH THE COURTROOM ATTENDANT)**

14 **THE COURT:** GO AHEAD.

15 **MR. STEPHENS:** ZERO CASES OUT OF 15 THAT THEY CITED
16 WHERE A -- WHERE A REGISTRAR OF VOTERS WAS -- WAS
17 REQUIRED BY WRIT OF MANDATE TO ACCEPT A LATE-FILED
18 DOCUMENT. ZERO OUT OF 15.

19 NOW, BY CONTRAST, WE'RE FIVE FOR FIVE. WE
20 CITED FIVE CASES THAT GO ALL THE WAY BACK TO THE 1800S
21 THAT SAY -- THE FIRST ONE IS THE *GRIFFIN* CASE. IT GOES
22 ALL THE WAY BACK TO THE 1800S. AND ALL I HAVE TO READ
23 IS ONE SENTENCE OUT OF IT.

24 IT SAYS -- THIS IS THE LAST SENTENCE. "TO HOLD
25 THAT IT COULD BE FILED 28 DAYS BEFORE THE DAY OF THE
26 ELECTION WOULD BE IN MANIFEST DISREGARD FOR THE

1 PROVISIONS OF THE STATUTE." THIS IS THE FILING --
2 MANDATORY FILING STATUTE.

3 **THE COURT:** OKAY. THAT'S -- 28'S MANIFEST. HERE
4 WE'RE TALKING ABOUT --

5 **MR. STEPHENS:** NO, NO.

6 **THE COURT:** -- THREE CALENDAR DAYS.

7 **MR. STEPHENS:** BUT IT WAS -- BUT YOU GOT TO READ
8 THE CASE. IT WAS A 30 DAY -- IT HAD TO BE DONE AT LEAST
9 30 DAYS --

10 **THE COURT:** YEAH. THIRTY DAYS MEANS THEY'RE TWO
11 DAYS LATE.

12 **MR. STEPHENS:** THEY WERE TWO DAYS LATE. AND IN --
13 IN -- YOU'LL REMEMBER IN *BARNES*, THEY WERE FIVE -- FIVE
14 HOURS LATE; RIGHT? SO WE'RE TALKING ABOUT HOURS IN THAT
15 CASE.

16 SO THERE'S -- THERE -- IT -- ON THE LAW OF THIS
17 CASE IS A ROUTE. ON THE LAW OF THIS CASE IS A ROUTE.
18 YOUR HONOR SHOULDN'T ACCEPT THEIR LATE-FILED DOCUMENT,
19 PACK THE RECORD. AND I AM REALLY MAD AND OFFENDED. I
20 HAD A LOT OF JOKES FOR YOU TODAY UNTIL I HEARD THAT
21 CRACK. I'M REALLY MAD ABOUT IT.

22 **THE COURT:** MS. FOLEY?

23 **MS. FOLEY:** THANK YOU, YOUR HONOR. AND HE HASN'T
24 BEEN AN ELECTED OFFICIAL YET, SO HE HASN'T BEEN CALLED
25 BAD NAMES LIKE I HAVE. SO WHILE I TOO AM OFFENDED, I
26 WILL RESERVE MY PASSION FOR ANOTHER DAY.

1 AND ALL I'LL SAY ON THE POINT OF BEING A FORCE
2 OF ANTIDEMOCRACY, I WOULD SAY IT'S QUITE THE OPPOSITE.
3 BECAUSE MR. STEPHENS AND I, WE ARE ENSURING DEMOCRACY.
4 WE ARE ENSURING THERE IS NO SECRET PROCEEDING THAT
5 OCCURS, THAT THEY DON'T EVEN HAVE AUTHORITY TO REPRESENT
6 MS. FOLCIK UNDER THE LAW --

7 **THE COURT:** I HAVE TO INTERRUPT YOU FOR HALF A
8 SECOND. I'M GOING TO TRY TO SEE WHAT WE CAN DO ON THE
9 RUN HERE. JUST TWO SECONDS.

10 **(PAUSE IN PROCEEDINGS)**

11 **THE COURT:** SORRY FOR THE INTERRUPTION. WHENEVER
12 YOU'RE READY, MS. FOLEY, GO AHEAD.

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

14 FIRST, I'D LIKE TO DIRECT THE COURT TO THE
15 *NATIVE AMERICAN SACRED VS. CITY OF SAN JUAN CAPISTRANO*
16 CASE, 120 CAL.APP.4TH 961, AND THE PINPOINT IS 968. AND
17 IN THAT CASE, IT DOES DISTINGUISH BETWEEN A
18 VOTER-INITIATED MISTAKE, IF YOU WILL, AND THAT OF A
19 GOVERNMENT AGENCY.

20 AND IN THAT CASE, THE COURT SAYS,
21 "VOTER-SPONSORED INITIATIVES ARE NOT SUBJECT TO THE
22 PROCEDURAL REQUIREMENTS THAT MIGHT BE IMPUTED ON
23 STATUTES OR ORDINANCES PROPOSED AND ADOPTED BY A
24 LEGISLATIVE BODY, LEGISLATURE, OR TO THE SUBSTANTIVE
25 LAW."

26 SO THERE IS A VERY CLEAR DISTINCTION IN THE LAW

1 BETWEEN ALLOWING, AS MR. KAHR INDICATED, JEALOUS
2 PROTECTION FOR VOTER-INITIATED MEASURES AS OPPOSED TO
3 THE TYPE OF SITUATION WE HAVE IN THIS CASE WHERE THERE
4 IS A MANDATORY STATUTORY DEADLINE, AND THE REGISTRAR OF
5 VOTERS DOES NOT HAVE DISCRETION. AND I WANT TO JUST
6 BRING US BACK TO WHAT THE ISSUES ARE HERE TODAY.

7 THE ISSUES BEFORE THE COURT ARE WHETHER OR NOT
8 A PETITION FOR WRIT OF MANDATE IS ALLOWABLE. THE
9 EVIDENCE IN THIS CASE -- THE EVIDENCE, NOT THE ARGUMENT.
10 THE EVIDENCE IN THIS CASE IS CLEAR AND UNDISPUTED THAT
11 MR. KELLEY IN HIS DECLARATION AT PARAGRAPH 11 DOES NOT
12 HAVE ANY DISCRETION TO ACCEPT A LATE FILING. DOESN'T
13 MATTER IF IT'S FROM THE CLERK OR ANYONE ELSE. HE HAS NO
14 DISCRETION TO ACCEPT A LATE FILING. NO DISCRETION, NO
15 MANDAMUS.

16 THE ONLY ALLOWABLE WRIT OF MANDAMUS IS WHERE
17 THERE'S AN ABUSE OF DISCRETION. HERE THERE'S BEEN NO
18 ABUSE OF DISCRETION BECAUSE HE HAD NO DISCRETION, AND,
19 THEREFORE, THE LATE FILING WAS UNTIMELY. HE REJECTED
20 IT. AND THE COURT CANNOT SUBSTITUTE THE STATUTORY
21 MANDATES -- YOU -- THE COURT CANNOT ISSUE A MANDATE TO
22 CAUSE THE REGISTRAR OF VOTERS TO ACTUALLY ACCEPT AN
23 UNTIMELY MANDATE -- UNTIMELY FILING IN VIOLATION OF THE
24 LAW.

25 THE *BARNES* CASE IS DIRECTLY ON POINT. THE
26 *BARNES* CASE IS A 1995 CASE, 33 CAL.APP.4TH 390.

1 **THE COURT:** *BARNES VS. WONG?*

2 **MS. FOLEY:** YES.

3 **THE COURT:** YEAH.

4 **MS. FOLEY:** IN THAT CASE, THE COURT NOTED HARD AND
5 FAST ENFORCEMENT OF FILING DEADLINES AVOID UNEVEN AND
6 INCONSISTENT ADMINISTRATION OF PREELECTION PROCEDURES
7 AND IS THE MOST RELIABLE WAY TO ENSURE THAT EVERYONE IS
8 TREATED FAIRLY AND EQUALLY.

9 THE *BARNES* CASE IS THE CASE THAT IS ON POINT.
10 IN THAT CASE, THE LATE FILING WAS FIVE HOURS. THERE WAS
11 NO DISCRETION TO ACCEPT THE LATE FILING, AND THE COURT
12 AGREED.

13 **THE COURT:** ISN'T *BARNES* DISTINGUISHABLE ON AT
14 LEAST -- AT LEAST ON THE GROUND THAT THIS WAS A BALLOT
15 ARGUMENT AS OPPOSED TO ACTUALLY PUTTING THE MATTER ON
16 FOR ELECTION?

17 **MS. FOLEY:** EVERY CASE THAT WE'VE BEEN TALKING
18 ABOUT TODAY IS DISTINGUISHABLE ON THAT FACT, YES, YOUR
19 HONOR. AND --

20 **THE COURT:** ALSO, DO YOU WANT TO MAKE THE ARGUMENT
21 TO TRY TO CONVINC ME THAT THE DISCUSSION IN *BARNES* IS
22 NOT DICTUM?

23 **MS. FOLEY:** IT IS NOT DICTUM, YOUR HONOR. IT IS
24 THE LAW. THE ONLY -- THE -- THE HOLDINGS THAT CAME OUT
25 OF *BARNES* ARE THE LAW OF THE LAND. THE HOLDINGS RELATE
26 TO THE ACTS AND DUTIES UNDER MANDAMUS AND WHAT IS

1 ENFORCEABLE. IT SETS FORTH THE TWO REQUIREMENTS FOR
2 MANDAMUS.

3 IT ALSO SETS FORTH -- SETS FORTH THE -- THE
4 HOLDING THAT THAT PRE- -- AS IT RELATES TO PREELECTION
5 FILINGS, WHEN THERE IS A STATUTE THAT IS MANDATORY,
6 THERE IS NO RIGHT OF MANDAMUS TO ENFORCE A
7 NONDISCRETIONARY ACT TO BE PERFORMED BY A PUBLIC
8 OFFICIAL. AND THAT IS WHAT THE *BARNES* CASE STANDS FOR.

9 THE COURT EVEN SAYS, WE DECIDE THE MERITS OF
10 THE APPEAL BECAUSE THE PUBLIC INTEREST IN THE PROPER
11 ADMINISTRATION OF PREELECTION PROCEDURES IS SUBSTANTIAL
12 AS IS THE PROBABILITY THAT THE ISSUE WILL SURFACE AGAIN.

13 WE DECIDE THE MERITS. THAT, TO ME, IS
14 INDICATING THAT THIS IS A RULING, NOT DICTA.

15 FINALLY, AS TO THIS *WILLETT* CASE --

16 **THE COURT:** WELL, I DON'T SEE HOW -- IT'S ONE THING
17 TO SAY, WELL, THE CHANCE FOR THE ELECTION -- IT TO BE ON
18 THE BALLOT FOR THIS ELECTION IS LONG PAST, SO THAT ISSUE
19 IS MOOT, BUT WE OUGHT, FOR PUBLIC INTEREST REASONS, TO
20 DECIDE THE ISSUE ANYWAY.

21 BUT IF THEY HAD ACTUALLY DECIDED THE ISSUE,
22 UNDER THEIR REASONING THAT NO LATE FILING OF PAPERS --
23 OKAY. I'M SORRY. I DON'T KNOW WHAT I SAID, BUT THEY
24 AFFIRMED THE TRIAL COURT BECAUSE THE ELECTION WAS MOOT.

25 **MS. FOLEY:** YES.

26 **THE COURT:** HANG ON FOR JUST A SECOND.

1 **MS. FOLEY:** THEY STATE THE DIS- --

2 **THE COURT:** HANG ON FOR JUST A SECOND.

3 **MS. FOLEY:** OKAY.

4 **THE COURT:** YEAH. THE TRIAL COURT ISSUED MANDATE
5 TO COMPEL THE FILING. OKAY. THE COURT OF APPEAL
6 AFFIRMED BECAUSE -- SIMPLY BECAUSE IT WAS MOOT. IT WAS
7 TOO LATE TO DO ANYTHING ABOUT IT. BUT THEN THEY GO ON
8 TO SAY THAT THE TRIAL COURT -- WELL, GO AHEAD. GO
9 AHEAD.

10 **MS. FOLEY:** WHAT THEY SAY IS UNDER THE TITLE
11 DISPOSITION, THERE WAS NO BASIS FOR ISSUING THE
12 PEREMPTORY WRIT. NONETHELESS, BECAUSE THE ELECTION HAS
13 LONG PASSED, IT WOULD NOW BE ACADEMIC TO REVERSE THE
14 JUDGMENT AND ORDER THE TRIAL COURT TO ENTER JUDGMENT
15 DENYING THE PETITION. FOR THIS REASON ONLY, WE AFFIRM
16 THE JUDGMENT.

17 BUT PRIOR TO THAT DISPOSITION, WHICH IS THE
18 VERY LAST PARAGRAPH OF THE OPINION, THEY SET FORTH
19 SEVERAL FACTORS THAT RELATE TO THE RULINGS AND THE
20 HOLDINGS IN THE CASE, AND ONE OF THEM IS THAT THE
21 DOCTRINE OF SUBSTANTIAL COMPLIANCE DOES NOT APPLY.

22 CASES SPECIFICALLY DEALING WITH STATUTORY
23 DEADLINES FOR ELECTION FILINGS THAT ARE COUCHED IN
24 LANGUAGE REQUIRING DOCUMENTS TO BE FILED NOT LESS THAN
25 OR NOT LATER THAN A GIVEN NUMBER OF DAYS BEFORE A
26 DESIGNATED TIME HAS INSISTED ON STRICT COMPLIANCE WITH

1 THE DEADLINES, AND THEY CITE TO SEVERAL CASES, *STEELE V.*
2 *BARTLETT, GRIFFIN V. DINGLY*, D-I-N-G-L-Y.

3 AND SO I DON'T INTERPRET THIS AS DICTUM. THIS
4 TO ME IS A HOLDING, A RULING BY THE COURT, AND A
5 RESTATEMENT OF WHAT HAD ALREADY BEEN HELD AS THE LAW
6 THAT IT'S A STRICT COMPLIANCE RULE. IT IS NOT A
7 SUBSTANTIAL COMPLIANCE RULE.

8 THEY FURTHER STATE THE PROVISION IS MANDATORY
9 AND ALLOWS FOR NO DISCRETION, AND THE COUNTY CLERK HAS A
10 MINISTERIAL DUTY TO ENFORCE IT. A COURT HAS NO POWER TO
11 ORDER A PUBLIC OFFICIAL TO COMMIT AN ACT IN VIOLATION OF
12 A VALID STATUTE.

13 THAT IS DIRECTLY ON POINT HERE, YOUR HONOR.
14 THIS COURT HAS NO POWER TO ORDER THE PUBLIC OFFICIAL,
15 THE REGISTRAR OF VOTERS, MR. KELLEY, TO COMMIT AN ACT IN
16 VIOLATION OF A VALID STATUTE. TO ORDER HIM TO ACCEPT AN
17 UNTIMELY FILING AND MAKE AN EXCEPTION ONLY AVAILABLE TO
18 THE CITY OF COSTA MESA WOULD BE IN VIOLATION OF A VALID
19 STATUTE. AND IT WOULD CERTAINLY OPEN THE FLOODGATES TO
20 ALLOWING EVERY CITY CLERK OR OTHER ELECTIONS OFFICIAL IN
21 ANY GOVERNMENT AGENCY A PASS IF THEY FILED UNTIMELY.

22 AND I WANT TO DISTINGUISH THE *WILLETT* CASE
23 BEFORE I FORGET. THE DIFFERENCE BETWEEN THIS SITUATION
24 AND THE *WILLETT* CASE IS IN THE *WILLETT* CASE, THEY FILED
25 ON TIME. THEY WERE ON TIME. THE MISTAKE WAS IN THE
26 COUNTING OF THE NUMBER OF SIGNATURES. AND SO THEY WERE

1 ALLOWED TO RELATE BACK BECAUSE THEY ACTUALLY DID FILE ON
2 TIME.

3 IT WOULD BE THE SAME AS IF THE CITY OF COSTA
4 MESA HAD FILED ON TIME, BUT MAYBE THEY FORGOT TO INCLUDE
5 A FORM THAT WAS REQUIRED FOR THE CLERK TO SIGN THAT
6 WASN'T THE RESOLUTION OR THE ACTUAL INFORMATION THAT WAS
7 TO BE PUT ON THE BALLOT.

8 THEY FILED ON TIME IN *WILLETT*. THEY DID NOT
9 FILE ON TIME HERE IN THE CITY OF COSTA MESA. THAT CASE
10 IS DISTINGUISHABLE. AND THE *BARNES* CASE IS ACTUALLY
11 MORE APPLICABLE TO THE SITUATION AT HAND.

12 THERE'S -- THE MANDAMUS REQUIREMENTS HAVE NOT
13 BEEN MET. FIRST, THERE'S NO DUTY BY THE REGISTRAR TO
14 ACCEPT THE LATE PAPERS. IN FACT, IT'S THE OPPOSITE.
15 THERE'S NO CLEAR PRESENT OR BENEFICIAL INTEREST IN
16 PETITIONER TO FORCE THE REGISTRAR TO ACCEPT THE LATE
17 PAPERS.

18 WE WOULD SUBMIT THAT THERE IS NO STANDING
19 BECAUSE THERE IS NO AUTHORITY, NO RECORD OF ANY KIND
20 THAT MS. FOLCIK HAD AUTHORITY TO FILE THE PETITION, NO
21 ACTION BY THE CITY COUNCIL, NO AUTHORITY AT ALL. AND A
22 LOT OF DISCUSSION HAS GONE ON HERE TODAY ABOUT
23 IRREPARABLE HARM. THAT'S NOT ACTUALLY THE STANDARD.
24 THE STANDARD IS ADEQUATE REMEDY AT LAW. THERE IS AN
25 ADEQUATE REMEDY AT LAW --

26 **THE COURT:** IT'S ACTUALLY -- I'M SORRY -- TWO

1 DIFFERENT PRONGS.

2 **MS. FOLEY:** RIGHT. BUT MORE IMPORTANTLY, THE
3 ADEQUATE REMEDY AT LAW IS THEY HAVE NOVEMBER. PUT IT ON
4 THE BALLOT IN NOVEMBER. FILE THE RESOLUTIONS TIMELY.
5 THERE'S BEEN NO EXCUSE TO MISS THE DEADLINE. THEY COULD
6 HAVE FILED IT ON MARCH 7TH. THERE WAS NO REASON NOT TO.

7 MANDAMUS REQUIREMENTS HAVE NOT BEEN MET. IT'S
8 A STRICT COMPLIANCE STATUTORY MANDATORY DEADLINE THAT
9 WAS MISSED. THE COURT HAS NO AUTHORITY TO OVERRIDE THE
10 REGISTRAR OF VOTERS' OBLIGATIONS UNDER THE STATUTES TO
11 DECLINE UNTIMELY FILINGS. AND, THEREFORE, WE
12 RESPECTFULLY REQUEST THAT THE COURT DENY THE PETITION.

13 **THE COURT:** OKAY. FIRST OF ALL -- BRIEF REBUTTAL.

14 FIRST OF ALL, IT IS MY VIEW THAT EVEN THOUGH
15 COURTS HAVE THE DISCRETION TO DECIDE MATTERS THAT MAY BE
16 MOOTED OUT, THAT UNDER THE CONCEPT THAT IF IT IS NOT
17 NECESSARY TO THE RATIO DECIDENDI -- IS THAT IT? -- OF
18 THE DECISION, IT IS -- IT IS DICTUM.

19 AND I THINK ONCE THEY -- ONCE THEY AFFIRM OR --
20 OR DECLINE -- WELL, ONCE THEY AFFIRM EFFECTIVELY ON
21 MOOTNESS GROUNDS, THE REST OF IT BECOMES DICTUM.
22 PERSUASIVE, YES; BINDING, NO.

23 WOULD YOU CARE TO COMMENT ON IT? BECAUSE IT
24 IS, AT THE VERY LEAST, PERSUASIVE. WELL, NOT AT THE
25 VERY LEAST. I MEAN IT'S NO MORE, NO LESS THAN
26 PERSUASIVE. AND, IN MY VIEW, IT'S NOT AN ADEQUATE

1 REMEDY ISSUE. IT'S AN IRREPARABLE HARM ISSUE.

2 DO YOU WANT TO ADDRESS ARGUMENTS AGAINST THE
3 TAKING JUDICIAL NOTICE, YOU CAN GO AHEAD AND DO THAT, AS
4 WELL.

5 **MR. GRABOWSKI:** YES, YOUR HONOR.

6 AS THE COURT NOTED, THIS IS AN EXPEDITED
7 PROCEDURE, AND WE'VE DONE WHAT WE CAN TO GET THINGS IN
8 FRONT OF THE COURT AS FAST AS POSSIBLE. BUT -- AND I
9 APOLOGIZE. I'D LOVE TO HAVE GOTTEN TO IT SOONER, BUT WE
10 ARE NOT, AS MR. STEPHENS SAYS, ARGUING THIS AS A RELATED
11 CASE. IT'S NOT. IT'S DIFFERENT PARTIES.

12 THE ONLY REASON WE REQUESTED JUDICIAL NOTICE IS
13 SO THE COURT CAN SEE THAT THERE IS AN INJUNCTION
14 PENDING, AND IT HAS TO DO WITH THE FACT THAT COSTA MESA
15 IS A GENERAL LAW CITY. AND SO IF THE COURT'S -- BECAUSE
16 WE DON'T REST OUR IRREPARABLE HARM ARGUMENT ON THIS
17 OTHER CASE OR THIS INJUNCTION, YOUR HONOR.

18 THE FACT THAT THE CITY HAS ACTED THROUGH ITS
19 LEGISLATIVE BODY, HAS PASSED RESOLUTIONS, PLACE --
20 MAKING FINDINGS, PLACING SOMETHING ON THE BALLOT, THAT'S
21 IRREPARABLE HARM RIGHT THERE. THAT DOESN'T GO ONTO THE
22 BALLOT, YOUR HONOR. THAT CAN'T BE FIXED.

23 AND, ONCE AGAIN, INTERVENORS INVITE YOU TO
24 WEIGH NOVEMBER VERSUS JUNE. THAT'S WHOLLY
25 INAPPROPRIATE. THIS IS JUST, AS A MATTER OF LAW,
26 IRREPARABLE HARM, AND THE CITY COUNCIL HAS MADE A

1 FINDING THAT THIS IS IN THE INTEREST OF THE CITIZENS,
2 AND IT NEEDS TO BE PLACED ON THE JUNE BALLOT.

3 WE CANNOT PEEK UNDER THAT HOOD, YOUR HONOR, AND
4 SAY "WELL, MAYBE NOVEMBER WOULD BE BETTER." THAT
5 FINDING'S THERE. IT IS IRREPARABLE HARM.

6 INTERVENORS CONFLATE THE CLERK WITH THE CITY
7 COUNCIL. THIS IS REALLY IMPORTANT HERE, YOUR HONOR,
8 BECAUSE THEY'RE TALKING ABOUT AGENCY AND HOW THE ACT
9 OF --

10 **THE COURT:** LET ME JUST JUMP IN HERE. MY VIEW IS,
11 FOR BETTER OR FOR WORSE, THE CLERK BRINGS THE ACTION IN
12 HER OFFICIAL CAPACITY. FOR BETTER OR FOR WORSE, THAT'S
13 THE CITY.

14 **MR. GRABOWSKI:** I THINK THAT'S WRONG --

15 **THE COURT:** I DON'T SEE A STANDING PROBLEM.

16 **MR. GRABOWSKI:** I'M NOT TALKING ABOUT STANDING
17 HERE, YOUR HONOR. I'M TALKING ABOUT THE ANALYSIS OF
18 THE -- ON THE WRIT OF MANDATE, YOUR HONOR. THERE'S NOT
19 A STANDING ISSUE HERE. SHE'S COMING IN IN HER OFFICIAL
20 CAPACITY. BUT THEY'RE ARGUING THAT HER MISTAKE SHOULD
21 BE IMPUTED TO THE CITY COUNCIL UNDER THE LAW OF AGENCY.

22 **THE COURT:** WELL, THAT WOULD ALMOST BE AN ESTOPPEL
23 SORT OF ARGUMENT, AND I DON'T SEE AN ESTOPPEL SORT OF --

24 **MR. GRABOWSKI:** YOU CAN'T HAVE IT HERE.

25 **THE COURT:** -- ARGUMENT IN TERMS OF, WELL, IT WAS
26 THEIR CLERK WHO DID IT, SO THEY CAN'T MAKE ANY ARGUMENTS

1 TO THE CONTRARY. I THINK IT BEGS THE QUESTION HERE, AND
2 THE QUESTION HERE IS WHETHER OR NOT THE -- EITHER, A,
3 THE REGISTRAR, MR. KELLEY, HAD A MANDATORY DUTY TO FILE
4 THE PAPERWORK OR ACCEPT THE PAPERWORK LATE OR, TWO, THAT
5 IF HE HAD DISCRETION TO DO SO, THAT HE COULD ONLY
6 RATIONALLY DO SO, EXERCISE HIS DISCRETION, BY ACCEPTING
7 THE LATE FILING.

8 **MR. GRABOWSKI:** YOUR HONOR, I THINK THE SUPREME
9 COURT HAS ANSWERED THAT FOR US IN *WILLETT*. I ASK YOUR
10 HONOR TO TAKE A LOOK AT THAT CASE.

11 **THE COURT:** RIGHT.

12 **MR. GRABOWSKI:** I RELY ON THAT.

13 **THE COURT:** I HAVE SOMEBODY HOT ON IT. THAT'S WHY
14 I TOOK THE BREAK THERE.

15 **MR. GRABOWSKI:** YOUR HONOR WILL SEE IT WAS BROUGHT
16 UP THAT THIS WAS -- THEY HAD FILED TIMELY. THAT WASN'T
17 THE ISSUE IN *WILLETT*. IN *WILLETT*, THE ISSUE IS DOES THE
18 SECRETARY OF STATE HAVE THE RIGHT NUMBER OF CERTIFIED
19 SIGNATURES ON THE DAY THEY'VE GOT TO BE HERE.

20 THE LAST DAY WAS AUGUST 7TH. THERE'S NO
21 DISPUTE THERE WERE 107,000 CERTIFIED SIGNATURES IN THE
22 SECRETARY OF STATE'S HANDS. THERE'S -- THERE WAS NO
23 ERROR ON THE PART OF THE SECRETARY OF STATE, AND SHE HAD
24 NO MANDATORY DUTY ON THAT DAY TO CERTIFY AN INITIATIVE
25 FOR THE BALLOT. IT WAS ONLY FOUR DAYS LATER, WELL AFTER
26 THE DEADLINE HAD PASSED, THAT THE CLERK IN ALAMEDA

1 COUNTY, AS THE SUPREME COURT DESCRIBES IT, REALIZED THE
2 CLERK'S MISTAKE. AND THE SUPREME COURT THERE ISSUED THE
3 WRIT OF MANDAMUS.

4 NOW, THEY DID SO, AS THE COURT WILL SEE WHEN IT
5 READS THE CASE, UTILIZING THE DOCTRINE OF RELATION BACK.
6 THERE'S NO DISPUTE ABOUT THAT. THEY SAID THERE WAS THIS
7 EARLIER FILING THAT WAS INSUFFICIENT. THAT SHOWED ONLY
8 108,000 SIGNATURES WHEN TOTALED UP, BUT WE'RE GOING TO
9 LET YOU RELATE THAT BACK.

10 AND THE SUPREME COURT ACKNOWLEDGES -- IT'S A
11 VERY SHORT CASE. IT'S THREE PAGES -- ACKNOWLEDGES THAT
12 THAT'S A LEGAL FICTION. AND -- BUT I ASK YOUR HONOR
13 ASSUME -- AND THEN, HYPOTHETICALLY, THE CLERK OF
14 ALAMEDA --

15 **THE COURT:** LET ME ASK YOU THIS. IN WHAT MANNER
16 AND FOR WHAT PURPOSE DOES *MHC* DISCUSS *WILLETT*,
17 APPARENTLY AT SOME LENGTH?

18 **MR. GRABOWSKI:** AT SOME LENGTH. IN FACT, IF
19 MR. STEPHENS HAD, IN FACT, READ ALL THESE CASES, IT GOES
20 ON FOR THREE PAGES ABOUT *WILLETT* AND QUOTES EXTENSIVELY
21 FROM *WILLETT* AS A MEANS OF JUSTIFYING ISSUING THE WRIT
22 OF MANDATE.

23 **THE COURT:** TO DO WHAT?

24 **MR. GRABOWSKI:** THIS DEALT WITH THE RENT CONTROL
25 ORDINANCE, YOUR HONOR. IT HAD TO DO WITH THE
26 ENFORCEMENT OF THE RENT CONTROL ORDER IT SAYS HERE. LET

1 ME SEE WHAT THE -- I DON'T RECALL WHAT THE FINAL
2 DISPOSITION WAS.

3 **THE COURT:** IS THAT LIKE SANTA MONICA?

4 **MR. STEPHENS:** YOUR HONOR, I CAN ANSWER THE
5 QUESTION. IT'S AT HEADNOTE 4. DISCUSSION OF *WILLETT*
6 RELATES TO THE RELATION-BACK DOCTRINE.

7 **THE COURT:** LET ME ASK YOU TO ADDRESS THIS, AS
8 WELL. I'M GOING -- I DON'T WANT TO TAKE THE TIME NOW TO
9 HAVE YOU RASSLE WITH THIS BECAUSE I REALLY DO -- YOU
10 KNOW, TALKING ABOUT GOVERNMENTS STRUGGLING WITH COSTS,
11 WE'RE SUPPOSED TO BE OUT OF HERE AT 4:30 BECAUSE OUR
12 COSTS START TO SKYROCKET, AND SO WE'RE TRYING TO BALANCE
13 THAT WITH JUSTICE.

14 SO LET ME JUST ASK YOU THIS. TO MAKE YOUR
15 RESPONSES AS TO THEIR POINTS ON THE PROPRIETY OF MY
16 TAKING JUDICIAL NOTICE AS REQUESTED AND ASSUMING I DO,
17 WHAT IS -- WHAT IS THE IMPACT OF APPARENTLY NOTICING
18 THAT THIS PRELIMINARY INJUNCTION, WHICH IS A PRELIMINARY
19 INJUNCTION -- I DON'T KNOW WHETHER THAT MAKES A
20 DIFFERENCE OR NOT OR WHAT THE STATUS OF THAT CASE IS
21 CURRENTLY. BUT BACK IN -- IT WAS ISSUED IN JULY OF
22 2011.

23 **MR. GRABOWSKI:** THAT'S CORRECT.

24 **THE COURT:** SO TO THE EXTENT THAT WAS CREATING A
25 PROBLEM FOR THE CITY OF COSTA MESA AS A GENERAL LAW
26 CITY, AT THAT TIME --

1 **MR. GRABOWSKI:** AND, HENCE, IN THE FALL OF 2011,
2 THE PROCESS BEGAN TO BECOME A CHARTER CITY, YOUR HONOR.
3 AND IN DECEMBER, WE HELD THE FIRST PUBLIC HEARING TO
4 BECOME A CHARTER CITY. AND THE PUBLIC HEARINGS FOLLOWED
5 FROM THERE ON OUT TO GET ONTO THE JUNE BALLOT, AND THAT
6 INJUNCTION IS STILL IN EFFECT, YOUR HONOR. AND UNTIL WE
7 CAN GET THIS ON THE JUNE BALLOT, THE CITY'S GOING TO BE
8 BOUND BY THAT.

9 AND SO WE HAVE IRREPARABLE HARM HERE. THE
10 CITY -- AND THAT'S PART OF THE FINDINGS HERE, THAT WE
11 SHOULDN'T BE LOOKING UNDER THE HOOD. THE CITY COUNCIL,
12 THE ELECTED REPRESENTATIVES, CAN MAKE THE CHOICE.

13 I WANT TO MAKE TWO QUICK POINTS, YOUR HONOR,
14 BASED ON WHAT THEY SAID. THE CLERK IS DIFFERENT THAN
15 THE COUNCIL. YOU HAVE TO LOOK AT THE ROLES. THE
16 COUNCIL IS A LEGISLATIVE BODY. THE CLERK IS ACTING AS
17 AN EXECUTIVE HERE.

18 TAKE THE EXTREME EXAMPLE, YOUR HONOR. WHAT IF
19 THE CLERK HAD BEEN OPPOSED TO THE CHARTER AMENDMENT
20 BEING ON THE BALLOT, AND THE CLERK RECEIVES A DIRECTIVE
21 AND INTENTIONALLY SAYS, YOU KNOW, "I'M NOT GOING TO MAKE
22 IT DOWN TO THE REGISTRAR'S OFFICE TODAY. MAYBE I'LL
23 MAKE IT MONDAY"?

24 WOULD THE ANSWER STILL BE THAT THE CLERK,
25 ACTING MALICIOUSLY, COULD NULLIFY THE ACTS OF THE
26 ELECTED REPRESENTATIVES OF THE CITY COUNCIL? THE ANSWER

1 HAS TO BE NO, YOUR HONOR. THE WRIT OF MANDATE HAS TO
2 ISSUE AT THIS POINT BECAUSE YOU CAN'T HAVE A CLERK WITH
3 A -- A DUTY THAT'S JUST INFALLIBLE MAKE A DECISION TO
4 SAY "I'M NOT GOING TO SUBMIT THIS"; RIGHT? SHE'S --
5 YOU'RE ALLOWING HER TO VETO THE ACTIONS OF AN ELECTED
6 BODY.

7 **THE COURT:** YEAH. THAT'S A HYPOTHETICAL QUESTION
8 THAT --

9 **MR. GRABOWSKI:** IT'S HYPOTHETICALLY --

10 **THE COURT:** IT'S NOT OPPOSED BY THIS -- THERE'S NO
11 INDICATION IT WAS ANYTHING MORE OR WORSE THAN AN OOPSY,
12 AND I DON'T HAVE THE TIME TO GO OVER THE
13 COUNTERARGUMENTS OF HOW YOU DEAL WITH THAT PROBLEM. BUT
14 I WILL MENTION ONE OF THE THINGS I THOUGHT ABOUT, ONE OF
15 THE THEORIES FOR HER HAVING STANDING, ALTHOUGH IT WASN'T
16 ALLEGED, IS, YOU KNOW, THAT'S SOMETHING YOU CAN LOSE
17 YOUR JOB FOR EVEN AS AN OOPSY.

18 **MR. GRABOWSKI:** YOUR HONOR, EVEN --

19 **THE COURT:** BUT I THINK, ON THE OTHER HAND, ANYBODY
20 WHO'S LIVED LIFE, LET ALONE WORKED IN BUSINESS OR
21 GOVERNMENT OR THINGS LIKE THAT, UNDERSTANDS THAT. OR AS
22 I LIKE TO SAY IT, THE ONLY THING -- THE ONLY PROBLEM
23 WITH THE OPERATION IS WE HAVE TO RUN IT WITH HUMAN
24 BEINGS. AND SO THAT'S, OBVIOUSLY, ONE OF THE DYNAMICS
25 HERE IN TERMS OF THESE VARIOUS CASES IS WHEN IT IS
26 APPROPRIATE TO GRANT RELIEF FROM A MISTAKE AND WHEN IT

1 IS NOT.

2 I WANT YOU TO WAIT JUST FOR A SECOND. I'M
3 GOING TO INQUIRE.

4 **(PAUSE IN PROCEEDINGS)**

5 **THE COURT:** I'VE -- I READ THE PERTINENT PART OF
6 *MHC*, WHICH DESCRIBED *WILLETT* AS YOU DID. AND I'LL TELL
7 YOU CANDIDLY I DIDN'T READ *WILLETT* PERSONALLY BECAUSE I
8 TRUSTED THE COURT OF APPEAL IN *MHC*, AND -- AND IT ALSO
9 COMPORTED WITH YOUR RECITATION OF *WILLETT*.

10 BUT IT'S CLEAR FROM BOTH OF THOSE CASES THAT
11 THERE WERE A COUPLE DYNAMICS OCCURRING IN TERMS OF
12 WHETHER OR NOT THE INITIATIVES WERE GOING TO QUALIFY,
13 AND ONE OF THEM WAS, AS NOTED IN BOTH INSTANCES, WE
14 DIDN'T HAVE AN ISSUE OF TIMELY FILED. AND -- AND ALSO
15 IT HAD TO DO -- AND THEY POINT OUT THIS APPLICATION OF
16 RELATION-BACK DOCTRINE, WHICH IS APT WHEN ESSENTIALLY
17 THE PARTY WHO'S SEEKING TO INVOKE THE DOCTRINE HAD NOT
18 HAD A PART -- WAS ESSENTIALLY NOT AT FAULT IN THE ERROR
19 THAT GAVE RISE TO THE RELATION BACK, E.G., THE ERROR OF
20 THE ALAMEDA CLERK IN *WILLETT* BY GIVING THE WRONG COUNT
21 THAT CAUSED THE PROBLEM FOR THE -- THOSE WHO WERE
22 SEEKING TO HAVE THE SECRETARY OF STATE PLACE IT ON THE
23 BALLOT.

24 SO I DO THINK THAT'S INAPPOSITE. YOU CAN
25 CHARACTERIZE IT HOW YOU'D LIKE, BUT I THINK, FOR BETTER,
26 FOR WORSE, THE CITY'S POSITION IS EVEN THOUGH THE

1 COUNCIL MAY NOT BE THRILLED THAT MS. FOLCIK DIDN'T GET
2 IT FILED ON TIME, AND, AGAIN, IT MAY HAVE BEEN FOR BAD
3 INFORMATION, ANY NUMBER OF REASONS, BUT HER ACTIONS FOR
4 THE PURPOSE OF THIS ANALYSIS, IN MY VIEW, IS THE CITY'S
5 ACTION.

6 AND SO I'M GOING TO DENY THE WRIT OF MANDATE.
7 I FIND *WONG -- BARNES V. WONG* PERSUASIVE. I THINK SOME
8 OTHER COURT -- AND I'M NOT -- I'M NOT, AS THEY SAY,
9 KICKING IT UPSTAIRS. BUT SOME OTHER COURT MAY DECIDE
10 THAT THERE ARE DYNAMICS THAT ESCAPE ME THAT MAKE IT
11 APPROPRIATE UNDER THESE CIRCUMSTANCES TO SAY THAT THE
12 REGISTRAR OF VOTERS EITHER HAS A MANDATORY DUTY TO
13 ACCEPT A LATE FILING OR -- AND ONLY EXERCISE HIS
14 DISCRETION IN FAVOR OF ACCEPTING A LATE FILING. SO I
15 JUST DON'T THINK THIS COURT HAS THE POWER UNDER THESE
16 CIRCUMSTANCES TO SAY ACCEPT IT.

17 WITH REGARD TO -- SO THERE'S THE PROBLEM IN
18 TERMS OF THE COURT'S LEGAL DUTY -- OR LEGAL -- THE
19 COURT'S ABILITY TO ORDER THE RELIEF REQUESTED UNDER
20 THESE FACTS.

21 WITH RESPECT TO IRREPARABLE HARM, I THINK UNDER
22 THESE CIRCUMSTANCES, I HAVE DISCRETION WHETHER OR NOT TO
23 TAKE JUDICIAL NOTICE. I'M GOING TO TELL YOU VERY
24 CANDIDLY WHAT I'M GOING TO DO IS -- BECAUSE WE KNOW
25 WHERE THIS IS GOING. WE'RE NOT GOING TO KID OURSELVES,
26 AND I'D RATHER HAVE IT DONE ON A LARGER RECORD THAN A

1 SMALLER, AT LEAST -- AND SO I WILL TAKE JUDICIAL NOTICE
2 OF THE TWO REQUESTED ITEMS, THE REQUEST FOR JUDICIAL
3 NOTICE FILED TODAY. OBVIOUSLY, THE OTHER SIDE WILL
4 RETAIN THEIR RIGHT TO ARGUE THE REASON WHY I SHOULD NOT
5 HAVE DONE THAT, BUT I'LL DO IT.

6 I DO KNOW, HOWEVER, I THINK THERE'S AN ISSUE
7 WHEN YOU GET THIS PRELIMINARY INJUNCTION THAT'S CAUSING
8 PROBLEMS FOR THE CITY AS A -- AS A GENERAL LAW CITY, AND
9 APPARENTLY THERE -- THEY'VE BEEN AWARE THAT THEY'VE GOT
10 A PROBLEM. AND THIS IS JULY 15, 2001. YOU KNOW, I
11 THINK THERE'S A PROBLEM IN TERMS OF, A, I DON'T THINK
12 THIS, IN ITSELF, SHOWS THE LEVEL OF IRREPARABLE HARM
13 THAT MERITS THE ISSUING OF THE WRIT OF MANDATE,
14 NUMBER 1.

15 NUMBER 2, THE CONCEPT TO ISSUE THE
16 EXTRAORDINARY RELIEF IS IT'S NECESSARY AFTER THE CITY
17 DID EVERYTHING THAT IT NEEDED TO DO. AND, YOU KNOW,
18 AGAIN, I'VE WORKED IN A LOT OF ORGANIZATIONS, AND I
19 THINK A LOT OF TIMES THERE'S A LOT OF CRITICISM OF
20 ORGANIZATIONS JUST BECAUSE THEY'RE ORGANIZATIONS.

21 BUT JUST AS HUMAN BEINGS, A LOT OF TIMES TRYING
22 TO DO THE BEST THEY CAN, THERE'S A LOT OF DISAGREEMENT A
23 LOT OF TIMES ABOUT WHETHER THEY COULD HAVE DONE IT
24 BETTER OR WHETHER THEY HAVE BAD MOTIVES AND THINGS LIKE
25 THAT.

26 FORTUNATELY, WE LIVE IN A DEMOCRATIC SOCIETY,

1 AND WE DO HAVE THE FREEDOM TO CRITICIZE AND IN CERTAIN
2 VENUES, ALTHOUGH TRADITIONALLY NOT THE COURT VENUE, THE
3 FREEDOM TO BOO. AND I WILL SAY I THINK -- I HAVE TO,
4 YOU KNOW, SAY THAT CAN'T HAPPEN HERE, BUT I DO KNOW IN
5 ENGLAND IT'S VERY DE RIGUEUR FOR LEGISLATORS TO BOO ONE
6 ANOTHER ON A REGULAR BASIS, AS I UNDERSTAND, AND
7 PROBABLY ONLY IN THE HOUSE OF COMMONS. THE HOUSE OF
8 LORDS ARE PROBABLY ABOVE THAT.

9 BUT THE POINT IS, ON THE ONE HAND, IT WOULD BE
10 GREAT, YOU KNOW, THE SOONER -- KIND OF BY NATURE THE
11 KIND OF PERSON WHO FEELS, WELL, THE SOONER, THE BETTER
12 WITH THIS SORT OF THING. BUT ON THE NARROW LEGAL ISSUE
13 PRESENTED TO ME IN TERMS OF PROPRIETY OF ISSUING A WRIT
14 OF MANDATE, I DO NOT, BESIDE THE FAILURE OF A LEGAL
15 BASIS TO DO SO, I DON'T FIND SUFFICIENT SHOWING OF
16 IRREPARABLE HARM.

17 THERE'S AT LEAST SOME SOLACE THAT THE ISSUE
18 WILL -- THIS IS NOT ONE OF THOSE THINGS WHERE TIME HAS
19 COMPLETELY PASSED, SO THERE'S SOME SOLACE THAT THE
20 MATTER WILL BE HEARD AT SOME POINT.

21 BUT I DO THINK IT'S IMPORTANT RATHER THAN
22 TAKING THE MATTER UNDER SUBMISSION, YOU KNOW, I WANT TO
23 MAKE SURE THAT THE LAWYERS HAVE YET ANOTHER CHANCE TO
24 WORK ALL NIGHT AND NOT SEE THEIR FAMILIES AND ALL THIS
25 STUFF. BUT I THOUGHT EVEN BETTER THAN TOMORROW MORNING,
26 I WOULD JUST GIVE YOU THE RULING.

1 IT WAS VERY, VERY WELL ARGUED. THERE'S A LOT
2 TO SAY ON BOTH SIDES. I HAVE FAITH, AT THE VERY LEAST,
3 THAT IF MANY -- IF THIS MANY PEOPLE ARE INTERESTED IN
4 THE BEST INTEREST OF THE CITY OF COSTA MESA, THAT THEY
5 WILL ULTIMATELY, NO MATTER HOW THIS COMES OUT, BE
6 BENEFITED BY THE INTERESTS THAT THE CITIZENS AND ELECTED
7 OFFICIALS IN COSTA MESA, THE CONCERN THEY HAVE FOR WHAT
8 THEY THINK ARE THE BEST INTERESTS OF THE CITY.

9 SO GOOD LUCK.

10 **MR. KAHR:** YOUR HONOR?

11 **THE COURT:** WHO WANTS -- I MAY ORDER YOU TO -- AS
12 SOON AS YOU SUBMIT A WRITTEN ORDER, I'LL SIGN IT.

13 **MR. GRABOWSKI:** OKAY. WE'LL SUBMIT. WE'LL HAVE IT
14 HERE FIRST THING IN THE MORNING, YOUR HONOR.

15 **THE COURT:** I'LL BE HERE AT LEAST BY THE TIME THE
16 DOORS OPEN AT 8:00.

17 **MR. GRABOWSKI:** OKAY.

18 **MR. STEPHENS:** YOUR HONOR, MAY WE SEE THE ORDER
19 BEFORE IT'S SUBMITTED?

20 **THE COURT:** WHAT IT'S GOING TO SAY IS, BY THE WAY,
21 "PETITION FOR WRIT OF MANDATE IS DENIED."

22 **MR. GRABOWSKI:** THAT'S WHAT IT WILL SAY.

23 **THE COURT:** AND THE REST OF THE RECORD WILL SPEAK
24 FOR ITSELF. I HOPE I'VE DONE MY BEST TO KIND OF
25 EXPLICITE WHAT MY THINKING IS ON IT, ALTHOUGH EVEN --
26 EVEN THOUGH THESE TYPES OF PROCEEDINGS ARE ABOUT

1 99 PERCENT ISSUES OF LAW, ANYWAY. AND THAT'S WHAT MY
2 THINKING IS, IS TO GET THIS THING MOVING AND RESOLVED AS
3 QUICKLY AS POSSIBLE FOR EVERYBODY'S -- FOR EVERYBODY'S
4 SAKE.

5 **MR. KAHR:** YOUR HONOR, IF I COULD BE HEARD VERY
6 BRIEFLY JUST SO WE HAVE A COMPLETE RECORD HERE. I WANT
7 TO POINT OUT IF THE REQUEST FOR JUDICIAL NOTICE IS BEING
8 ADMITTED INTO THE RECORD, WE WOULD LIKE TO NOTE THE
9 PRELIMINARY INJUNCTION, THAT CASE IS ON APPEAL RIGHT
10 NOW, AND THE CITY HAS STIPULATED TO INDEFINITE STAY OF
11 THE PROCEEDINGS IN THE TRIAL COURT. THERE'S BEEN NO
12 ORAL ARGUMENT DATE SET FOR THE HEARING BEFORE THE COURT
13 OF APPEAL.

14 **THE COURT:** I CAN'T REMEMBER THE NUMBER. IT'S
15 SOMEWHERE IN THE 450S OF THE EVIDENCE CODE. BUT YOU CAN
16 TAKE A CRACK OF HAVING THE COURT OF APPEAL NOTICE
17 ANYTHING THAT COULD HAVE BEEN PROPERLY NOTICED IN THIS
18 COURT. SO I'M SURE YOU'LL BE ASKING THEM TO DO THAT IF
19 YOU THINK IT'S IMPORTANT.

20 **MR. KAHR:** SURE. UNDERSTOOD, YOUR HONOR.

21 **THE COURT:** OKAY. YEAH. I THINK THAT'S IT. THANK
22 YOU, FOLKS.

23 **(ADJOURNMENT)**
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 28TH DAY OF MARCH, 2012.

JANET M. TAYLOR, CSR 9463, RMR, CRR