Minute Order

Case RIC1208403 - FLYNN VS. VINSON

RULING ON MATTER SUBMITTED 08/01/12 RE: ALTERNATIVE WRIT OF MANDATE/ORDER TO SHOW CAUSE
08/03/2012 8:30 AM DEPT. 02

HONORABLE JUDGE DANIEL A OTTOLIA, PRESIDING

CLERK: D. CLEMENTS

COURT REPORTER: NONE

NO APPEARANCE BY EITHER PARTY.

WHEREAS, THIS MATTER CAME ON FOR HEARING ON PETITIONER STEPHEN FLYNNS PETITION FOR AN

ALTERNATIVE WRIT OF MANDATE ON AUGUST 1, 2012, AND WHEREAS, THE COURT TOOK THIS MATTER UNDER

SUBMISSION, THE COURT NOW RULES AS FOLLOWS:

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PETITIONER STEPHEN FLYNN CHALLENGES A BALLOT MEASURE, THE MURRIETA PROHIBITION OF AUTOMATED

TRAFFIC ENFORCEMENT SYSTEMS ACT (THE INITIATIVE), PUT FORWARD BY REAL PARTIES DIANA

SERAFIN AND ROBIN NIELSEN. NOTWITHSTANDING THE FACT THAT THE INITIATIVE RECEIVED A SUFFICIENT

NUMBER OF VALID SIGNATURES TO QUALIFY FOR THE NOVEMBER BALLOT, PETITIONER CLAIMS THAT THE

INITIATIVE IS BEYOND THE POWER OF MURRIETA VOTERS TO ENACT BECAUSE TRAFFIC REGULATION IS

MATTER OF STATEWIDE CONCERN AND THE LEGISLATURE HAS DELEGATED THE REGULATION OF AUTOMATED

TRAFFIC ENFORCEMENT SYSTEMS (ALSO KNOWN AS RED LIGHT CAMERAS) SPECIFICALLY TO CITY COUNCILS.

PETITIONER ALSO CLAIMS THAT THE INITIATIVE IS NOT PROPER BECAUSE IT FAILS TO ENACT AN ACTUAL STATUE

OR ORDINANCE. THE PETITIONER IS OPPOSED BY REAL PARTIES AS MORE PARTICULARLY DESCRIBED BELOW.

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THE COURT FINDS THAT TRAFFIC REGULATION IS A MATTER OF STATEWIDE CONCERN. (E.G., MERVYNNE V.

ACKER (1961) 189 CAL.APP.2D 558, 561-562.) PURSUANT TO VEH. C. SECTION 21455.6, THE

LEGISLATURE HAS SPECIFICALLY DELEGATED THE AUTHORIZATION OF AUTOMATED TRAFFIC ENFORCEMENT

SYSTEMS TO CITY COUNCILS (OR COUNTY BOARDS OF SUPERVISORS), AND SUCH DELEGATION PRECLUDES THE

MUNICIPAL ELECTORATE FROM USING THE INITIATIVE AND REFERENDUM PROCESS TO AUTHORIZE OR PROHIBIT

RED LIGHT CAMERAS. (SEE COMMITTEE OF SEVEN THOUSAND V. SUP. CRT. (1998) 45 CAL.3D 491

(COST).)

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IN ADDITION, THE SUBJECT INITIATIVE FAILS TO ADOPT AN ACTUAL ORDINANCE. INSTEAD, IT

IMPROPERLY DIRECTS THE MURRIETA CITY COUNCIL TO ADOPT AN ORDINANCE BANNING THE USE OF RED LIGHT

CAMERAS WITHIN THE CITY OF MURRIETA. (SEE MARBLEHEAD V. CITY OF SAN CLEMENTE (1991) 226

CAL.APP.3D 1504, 1509.)

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THE COURT CONCLUDES THAT REAL PARTIES BALLOT MEASURE CANNOT PROPERLY BE ENACTED USING THE

INITIATIVE PROCESS.

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REAL PARTIES NEVERTHELESS ARGUE THAT MANDAMUS RELIEF IS NOT APPROPRIATE BECAUSE PETITIONERS

HAVE FAILED TO IDENTIFY A MINISTERIAL OR MANDATORY DUTY THAT RESPONDENTS HAVE FAILED TO

PERFORM. HOWEVER, WHILE MANDAMUS IS COMMONLY UTILIZED TO COMPEL PUBLIC OFFICERS, BOARDS, OR

AGENCIES TO PERFORM THEIR MINISTERIAL, NON-DISCRETIONARY DUTIES, IT IS ALSO

APPROPRIATELY USED TO PROHIBIT OR INVALIDATE AN ACT THAT IS UNAUTHORIZED, IN VIOLATION OF THE

LAW, OR AN ABUSE OF DISCRETION. (SEE E.G. COST, SUPRA; SCHRAM CONSTRUCTION V. REGENTS (2010) 187

CAL.APP.4TH 1040; COLONY COVE PROPERTIES V. CITY OF CARSON (2010) 187 CAL.APP.4TH 1487; KEIFFER V.

SPENCER (1984) 153 CAL.APP.3D 954.)

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REAL PARTIES ALSO CLAIM THAT PRE-ELECTION JUDICIAL REVIEW IS NOT PROPER, AND THE COURT

SHOULD DEFER REVIEW UNTIL AFTER THE ELECTION. PETITIONERS CLAIMS ARE SUSCEPTIBLE TO RESOLUTION

AFTER THE ELECTION. IT IS GENERALLY MORE APPROPRIATE TO REVIEW CONSTITUTIONAL AND OTHER

CHALLENGES TO INITIATIVE MEASURES AFTER THE ELECTION RATHER THAN POTENTIALLY DISRUPTING THE

ELECTORAL PROCESS BY PREVENTING THE EXERCISE OF THE PEOPLES INITIATIVE FRANCHISE. HOWEVER, THE

GENERAL RULE THAT JUDICIAL CHALLENGES TO INITIATIVES ARE MORE APPROPRIATE AFTER THE

ELECTION DOES NOT APPLY WHERE PRE-ELECTION REVIEW RESTS ON THE CONTENTION THAT THE MEASURE

IS NOT ONE THAT CAN BE ENACTED BY INITIATIVE, PARTICULARLY WHERE THERE IS A CLEAR SHOWING OF

INVALIDITY. (INDEPENDENT ENERGY PRODUCERS ASSN. V. MCPEHERSON (2006) 38 CAL.4TH 1020, 1029.)

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THE COURT IS SATISFIED THAT PRE-ELECTION RELIEF IS PROPER WHERE, AS HERE, PETITIONER HAS

ESTABLISHED THE CLEAR ILLEGALITY OF THE INITIATIVE. (SEE E.G9.) REAL PARTIES, ON THE

OTHER HAND, SIMPLY IGNORE KEY STATUTES AND CASE LAW IN

QUESTION. THEY FAIL TO ADDRESS, DISTINGUISH OR EVEN CITE TO VEH. C. SECTION 21455.6 OR THE

MERVYNNE, COST, AND MARBLEHEAD CASES REFERENCED ABOVE. THE COURT IS NOT REQUIRED TO WAIT UNTIL

AFTER THE ELECTION SIMPLY FOR THE SAKE OF WAITING. POSTPONING JUDICIAL RESOLUTION OF

PETITIONERS CHALLENGE IS NOT WITHOUT POTENTIAL COST. THE PRESENCE OF AN INVALID MEASURE ON THE

BALLOT STEALS ATTENTION, TIME AND MONEY FROM VALID PROPOSITIONS ON THE SAME BALLOT. IT WILL

CONFUSE SOME VOTERS AND FRUSTRATE OTHERS, AND AN ULTIMATE DECISION THAT THE MEASURE IS INVALID

COMING AFTER THE VOTERS MAY HAVE VOTED IN FAVOR OF THE MEASURE TENDS TO DENIGRATE THE LEGITIMATE

USE OF THE INITIATIVE PROCESS. (SENATE V. JONES (1999) 21 CAL.4TH 1142,

1154.)

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ACCORDINGLY, THE COURT GRANTS THE PETITION FOR WRIT OF MANDATE, AND EXECUTES HEREWITH THE

JUDGMENT SUBMITTED BY PETITIONERS COUNSEL ON AUGUST 1, 2012, AND ORDERS PETITIONER TO SERVE

THE WRIT OF MANDATE PER THE REQUIREMENTS OF THE CODE OF CIVIL PROCEDURE.

NOTICE TO BE GIVEN BY CLERK.

NOTICE SENT TO BELL MCANDREWS & HILTACHK LLP ON 8/03/12

NOTICE SENT TO STUTZ, ARTIANO, SHINOFF & HOLTZ ON 8/03/12

NOTICE SENT TO COUNTY COUNSEL ON 8/3/12
NOTICE SENT TO LEPISCOPO & ASSOCIATES ON 8/3/12
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