

RIVERSIDE SUPERIOR COURT

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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 FLYNN'S 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 STATUTE

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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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