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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO
HONORABLE SHELLYANNE W.L. CHANG, JUDGE
DEPARTMENT NO. 24

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STAND UP CALIFORNIA!)
Plaintiffs,)
)
)
-vs-)
)
THE CITY OF ELK GROVE,)
Defendants.)
_____)

Number
34-2016
800002493

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

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THURSDAY, DECEMBER 22, 2016

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Reported By: Shiela M. Connolly, RPR, CSR No. 5659

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APPEARANCES:

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For the Plaintiffs:

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OFFICE OF THE CITY ATTORNEY
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For the Real Parties in Interest:

BALLARD SPAHR LLP
By: SCOTT M. PEARSON,
Attorney at Law

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1 THURSDAY, DECEMBER 22, 2016

2 MORNING SESSION

3 ---o0o---

4 The matter of STAND UP CALIFORNIA!, Plaintiffs,
5 versus THE CITY OF ELK GROVE, Defendants, Case Number
6 34-2016-800003493-CU-WM-GDS, came on this day before
7 the Honorable SHELLYANNE W.L. CHANG, Judge of the
8 Superior Court of California, in and for the County of
9 Sacramento, sitting in Department Number 24.

10 The Plaintiffs, STAND UP CALIFORNIA!, were
11 represented by BRIGIT S. BARNES, Attorney at Law.

12 The Defendants, THE CITY OF ELK GROVE, were
13 represented by MONA G. EBRAHIMI, Attorney at Law, and
14 JENNIFER A. ALVES, Assistant City Attorney.

15 The Real Parties in Interest, ELK GROVE TOWN
16 CENTER and HOWARD HUGHES, were represented by
17 SCOTT M. PEARSON, Attorney at Law.

18 The following proceedings were then had:

19 THE COURT ATTENDANT: Remain seated and come to
20 order. Department 24 is now in session.

21 THE COURT: Good morning.

22 MS. BARNES: Good morning, your Honor.

23 MS. EBRAHIMI: Good morning, your Honor.

24 MS. ALVES: Good morning, your Honor.

25 MR. PEARSON: Good morning, your Honor.

26 THE COURT: All right. May I have the appearances
27 of counsel, please, starting from my left?

28 MS. BARNES: Brigit Barnes on behalf of Stand Up

1 California, Petitioners and Plaintiffs.

2 MS. EBRAHIMI: Mona Ebrahimi here representing the
3 Defendant, the City of Elk Grove.

4 MS. ALVES: Jennifer Alves, assistant to the
5 attorney, for The City of Elk Grove.

6 MR. PEARSON: Good morning, your Honor.

7 Scott Pearson for Elk Grove Town Center and
8 Howard Hughes Corporation, the Real Parties.

9 THE COURT: Good morning to you all.

10 I have had an opportunity to read all of the
11 papers. I received the Oppositions yesterday
12 afternoon. I have reviewed those.

13 I'm just going to cut to the chase, Ms. Barnes.

14 Now that the City has filed and recorded that
15 Notice regarding the First Amendment suspending the
16 effectiveness of the Ordinance and the Amendment to the
17 Development Agreement, why are we here?

18 MS. BARNES: Your Honor, I asked to see you even
19 though I had received that late, was that when you are
20 dealing with a First Amendment and the issues of the
21 Reverend as a part of our Constitution, you have an
22 extraordinary responsibility on behalf of the State of
23 California.

24 The Notice acknowledges the reality that the
25 affect is suspending that Ordinance, but the
26 recording of the First Amendment to the DA is still of
27 record.

28 And I had requested two -- several things in my

1 papers and also in negotiations with the City
2 Attorney's Office, including the recording of an
3 expungement so that the affect on title would be
4 cleared.

5 The City has chosen instead to record what they
6 consider to be acceptable to them, but it is the
7 minimum, and it is -- I'm arguing that it's going to be
8 ineffective given the extraordinary circumstances of
9 the timeline that we're dealing with.

10 I would not have bothered you three days -- or
11 these people three days before Christmas if I was not
12 really concerned about the timeline. And the timeline
13 is that the City Clerk has determined that they have
14 until the 9th of January on whether to certify the
15 Referendum.

16 The earliest that the City Council can meet to
17 make a determination to rescind, if they were going
18 to do so, according to Mr. Hobbs, was I think
19 January 11th. If I have the date right.

20 And the earliest that the Department of the
21 Interior can take into trust and at the same time --
22 and at the same time verify the gaming contract is
23 January 13th. So they all come together very
24 quickly.

25 And my concern and my belief is that the Notice
26 that has been recorded is going to be insufficient to
27 stop that rolling down the wall which also has the
28 affect of completely making the Referendum -- even

1 though the Referendum can go forward -- possibly
2 ineffective as to the federal actions unless we start
3 here with you.

4 That's why; not to be a pain in the butt to be
5 frank, but this is what I'm concerned about.

6 So I wanted to ask you to exercise your
7 extraordinary jurisdiction, which you have in these
8 kinds of cases related to referendum, to order the
9 expungement of the Notice. And by doing so, that
10 would, at least for the time being, remove the
11 First Amended DA from the Chain of Title.

12 THE COURT: Okay. Ms. Ebrahimi?

13 MS. EBRAHIMI: Your Honor, I share your
14 initial sentiments about this hearing and the purpose
15 for which we've all been -- come -- come before
16 you, and I don't want to take up more time than has
17 already been taken.

18 For the most part I do rest on my papers; however,
19 in response to what Ms. Barnes has just said, the
20 City's actions are in direct reflection with the sought
21 remedy.

22 Page 3 of the Application, lines 6 through 7,
23 and this is a direct quote, has asked to take all
24 necessary actions immediately in order to restore
25 Plaintiff's guaranteed rights by rescinding, slash,
26 repealing said Ordinance and/or expunging recording of
27 the First Amendment.

28 So let me address that first.

1 We have done that, and I have asked this Court to
2 take judicial notice of that Notice which has been
3 recorded with the Sacramento County.

4 Number two. They've asked -- and this is another
5 quote -- notify BIA, slash, Department of the Interior
6 that the First Amendment is suspended.

7 Again, that's the Application at page 3, lines 10
8 through 13, direct quotes from the Request.

9 First, that action is not required. That would
10 fall under a mandatory injunction, a much higher
11 burden, which Petitioners have not met.

12 Second, BIA is not a party to this action, and we
13 have -- we owe them no obligation to provide such
14 notice.

15 And third, this I think was probably the most
16 interesting thing to me. Petitioner's own Declaration
17 acknowledges that the City Council retains its
18 legislative discretion in the next steps.

19 And that can be found at page -- the Declaration
20 of Ashlee, that's A-S-H-L-E-E, Titus, T-I-T-U-S, at
21 page 4, paragraph 15, where they acknowledge that
22 after the City Clerk certifies the results of the
23 examination of the Petition, which we still have two
24 or three weeks to do and has not yet occurred, the
25 City -- and I'm quoting now -- the City Council shall
26 have two options; entirely repeal the Ordinance against
27 which the Petition is filed or submit the Ordinance to
28 the voters at the next regular Municipal Election or a

1 Special Election occurring not less than 88 days after
2 the Order.

3 Petitioners are now asking this Court to usurp the
4 legislative authority of the City Council by requiring
5 the Ordinance to be rescinded.

6 That's not proper, your Honor.

7 THE COURT: All right. Thank you.

8 Ms. Alves, anything you wish to add?

9 MS. ALVES: Nothing further, your Honor.

10 THE COURT: Okay. Mr. Pearson?

11 MR. PEARSON: Well, your Honor, this is the first
12 time that we're hearing concerns about the nature of
13 the document that was filed.

14 To be clear, this document was provided to
15 Ms. Barnes before it was filed. We repeatedly asked
16 her that if there's anything inadequate about the
17 document, why don't we discuss it because we can
18 address it; there's no need to go to the Court with
19 this.

20 And as you can see from the declarations that were
21 submitted, that wasn't the response that we got. We
22 didn't hear any of this until just now, this morning
23 when we're up here.

24 Your Honor, could I use the easel for one
25 second --

26 THE COURT: Sure.

27 MR. PEARSON: -- just to explain some background
28 issues?

1 Because we didn't address the merits of this at
2 all in our papers. But I think it might be useful for
3 the Court just to have some background on what this
4 case is about.

5 THE COURT: Mr. Pearson, before you start, let
6 me just tell you this, a little bit about my
7 background.

8 I was on Governor Gray Davis' legal staff. I was
9 one of the principal drafters of the 1999 Indian Gaming
10 Compacts, so ...

11 MR. PEARSON: Okay.

12 THE COURT: I also worked with the Legislature and
13 the federal agencies to get those Compacts ratified,
14 and I also was involved in the ratification of those
15 Compacts that was put to the people afterwards.

16 So I know a lot, probably more than I care to
17 confess, about this area of Indian gaming. I know all
18 about tribal lands and the issue of taking the land
19 into trust by the Secretary of Interior.

20 So I just give you --

21 I'm happy and want to hear what you have to say,
22 but I'm not starting from zero. So let me just tell
23 you that.

24 MR. PEARSON: That's very helpful background,
25 your Honor. I appreciate that.

26 And I'm not going to get into the gaming issues in
27 particular, but I would like to explain what this title
28 issue is.

1 THE COURT: Sure.

2 MR. PEARSON: I don't intend to speak for more
3 than maybe five minutes.

4 THE COURT: All right.

5 MR. PEARSON: So your Honor, this property,
6 which is in Elk Grove, there's a parcel shaped kind of
7 like this that's part of a much larger project
8 that's about 300 acres. This is the land that
9 Howard Hughes Corporation, through Elk Grove Town
10 Center, owns. And originally this was supposed to be a
11 regional shopping center, a traditional shopping center
12 with department store anchor tenants.

13 When the credit crisis hit -- General Growth
14 Properties had been the owner of this project, and it
15 went bankrupt -- the project was spun out into
16 Howard Hughes Corporation, which used to be part of
17 General Growth Properties. And given the economic
18 conditions, the project was redesigned to be an outlet
19 mall instead of a traditional shopping center with a
20 smaller footprint.

21 So instead of taking up this entire property --
22 the outlet mall is now going to take up most of it --
23 but there's a remainder parcel here, and it's the
24 remainder parcel that we're talking about.

25 There is a Development --

26 This Development Agreement that's at issue here
27 was the approval for this project, okay, and it
28 included this entire part of land. And it's not an

1 encumbrance as the Petitioners continually suggest. It
2 is an entitlement, a development agreement, something
3 that is very valuable to have on property. It allows
4 you to develop the property.

5 It's not like a lien, where you could lose the
6 property. It's something that lets you develop it. It
7 costs hundreds and hundreds of thousands of dollars to
8 get those entitlements.

9 So the entire premise of this case is flawed to
10 begin with that this is a problem. And as you know,
11 BIA is not precluded from taking this property into
12 trust, this remainder property simply because there's
13 something on title. But they would have to evaluate
14 what is it and is it a problem and should we not take
15 this into trust because of that.

16 So what this Amendment to the Development
17 Agreement did, this Ordinance that's at issue here is
18 all it did is it took the Development Agreement and
19 then redefined the project area.

20 So instead of being the entire parcel, it's just
21 where the outlet center is going to be built, and it
22 just removes the entitlements from this remainder
23 portion which has now been optioned to this potential
24 buyer, and that's -- you know, this is the casino
25 project that this entity is -- this entity is trying to
26 block.

27 So all the Ordinance did is it just redefined that
28 project area and removed the entitlements from that

1 project there.

2 When you record the Ordinance -- and our
3 position is there's nothing wrong with recording
4 that Ordinance early. There's nothing actionable about
5 it -- but when you record a document, it doesn't have
6 any legal effect other than to give notice to the
7 world. That's all that recordation does.

8 So just because the Ordinance was recorded didn't
9 cause anything to happen. It just puts something on
10 title that anyone's going to evaluate when they're
11 looking at title.

12 Well, what does this Ordinance mean?

13 And so, if BIA is aware of the fact that there
14 is a pending Referendum to repeal the Ordinance or
15 potentially -- it hasn't been certified yet -- but
16 there is this Referendum Petition that's pending, then
17 they're well aware of what these title issues are.

18 And so, there's no harm to anyone from any of
19 this. But the recordation of this Notice certainly
20 cleared up whatever impact recording the Ordinance
21 early arguably may have had, and our position is it has
22 no impact at all.

23 If it had any impact, it's certainly cured by
24 recording this Notice, because the Notice puts the
25 world on notice that hey, there is a Petition that's
26 been filed. It looks like it's got enough signatures.
27 It hasn't been certified yet, but the Ordinance hasn't
28 taken effect.

1 And with respect to the claim that BIA is
2 inadequately aware of all of this or that the City
3 should be compelled to communicate this organization's
4 position to BIA which to me is a little bit absurd. I
5 mean, I don't know how you can compel someone to give a
6 speech that they don't agree with essentially.

7 But your Honor, if I could -- I just received the
8 document yesterday after we filed our papers. If I
9 could provide it to the Clerk. I have copies for the
10 parties.

11 THE COURT: Certainly.

12 MR. PEARSON: I'm sorry. The Clerk's over
13 here.

14 Your Honor, Ms. Barnes' client apparently
15 sent this letter to BIA yesterday laying out all these
16 facts.

17 So why do we need the Court to order
18 something?

19 I just don't understand. BIA knows exactly what's
20 going on. None of these issues matter.

21 We went and we -- we -- the City recorded this
22 Ordinance or recorded this Notice that clearly cures
23 whatever impact recording the Ordinance early may have
24 had.

25 So there's just nothing here. There's no
26 emergency. Nothing needs to be done. This is all
27 premature, and, you know, with all due respect is a
28 waste of the Court's time.

1 THE COURT: All right.

2 MS. BARNES: Your Honor, may I respond --

3 THE COURT: Ms. Barnes?

4 MS. BARNES: -- briefly?

5 THE COURT: Yes.

6 MS. BARNES: I agree partially with the
7 presentation that was just given to you by the
8 Howard Hughes Organization.

9 But as we included for the Court in the documents
10 from the City, on September 15th, the staff of the
11 City Council, in recommending approval of the Amendment
12 for the DA, explicitly stated that the Development
13 Agreement needed to be removed from the affected parcel
14 in order to allow the BIA to take it into trust.

15 That's because -- and I know about your
16 background, so I'm not going to bore you -- but you
17 understand that a DA is both; it is a wonderful set of
18 entitlements that can preserve rights for the
19 developer. It also obligates the developer. But
20 usually there are significant financial contributions
21 that are required over time. There are explicit
22 restrictions on the type of development that has been
23 explicitly approved, et cetera.

24 So both; it is always a contract and it is adopted
25 by ordinance, and because it's adopted by ordinance, it
26 is subject to the referendum. So that is what is at
27 issue here.

28 Now, back -- so with -- and because I recognize

1 that, I believe that the argument that it had no affect
2 is simply inapposite.

3 to what we're doing here.

4 One of the things that I think --

5 THE COURT: Ms. Barnes, can I just stop you for a
6 moment?

7 The recording of that Development Agreement is
8 basically a notice issue.

9 Correct?

10 I mean, it doesn't --

11 MS. BARNES: You mean the one that was recorded in
12 October --

13 THE COURT: Correct.

14 MS. BARNES: -- in early November.

15 THE COURT: Right.

16 MS. BARNES: Yeah, it gives notice that as far as
17 the City was concerned, the property north of the --
18 well, let's call it the Target side is no longer
19 subject to the DA.

20 THE COURT: Right.

21 MS. BARNES: And it was recorded two weeks after
22 the City adopted the Ordinance which was premature.
23 That's why I referred to it as illegal.

24 THE COURT: Right.

25 MS. BARNES: And then a week later, the City Clerk
26 received the package of the Referend, and the City did
27 nothing to notify anyone.

28 THE COURT: Right.

1 But the recording of it is simply a reflection of
2 the agreement that creates rights and obligations.

3 Right?

4 MS. BARNES: Yes.

5 And this recording is a reflection of the fact
6 that this section doesn't have it on it anymore.

7 THE COURT: Right.

8 But the recording itself, as Mr. Pearson says, is
9 really just a notice issue; as you just said, chain of
10 title. It just notifies anybody, any subsequent
11 purchaser, what obligations, what encumbrances or not
12 are attached to that piece of property.

13 Correct?

14 MS. BARNES: Correct.

15 THE COURT: So the Notice that was just filed,
16 what, six days ago, the 16th I believe says it's not
17 effective.

18 To the extent, you know, the Ordinance and the
19 Amendment --

20 MS. BARNES: It just says that it's suspended by
21 the way it's --

22 THE COURT: The effectiveness is suspended. The
23 effectiveness of both is suspended.

24 MS. BARNES: Right.

25 It does not say that it's expunged from title.

26 THE COURT: Well, true.

27 But isn't that by your own papers one in the
28 same?

1 MS. BARNES: No, I don't believe it is.

2 I went back and looked after receiving the
3 Opposition papers yesterday afternoon, and the
4 closest case that I can find on point was Lyndal
5 (phonetic) versus Town of San Anselmo. And this is
6 4 Cal -- 4 Cal Reporter 3d.

7 I'm happy to give you my notes, your Honor. I
8 brought you -- I have a copy.

9 I'm sorry, Mona. Here, let me give you my notes
10 of this.

11 But in any event, it's an interesting case.
12 It's a garbage case and the garbage wars that always go
13 on. And the City of San Anselmo was not using a
14 Development Agreement, but they -- almost immediately,
15 after the adoption of this Ordinance and then the
16 Referendum is imposed, they enter into a contract with
17 the new company. The old company is fighting to stop
18 the whole thing.

19 And what the Court held there and the citations
20 from the Court going all the way back to Martin v.
21 Smith and Associated Home Builders was that the mere
22 notice of the -- let me rephrase that.

23 That the agreement, the substantive agreement,
24 which they treated as being ineffective and not
25 interfering with the Referend, was also illegal because
26 it adversely affected the Referendum.

27 The City has only one choice. It has two choices.
28 It can rescind the Ordinance, as Mona said, but at

1 the same -- but if it chooses not to do that, it is
2 affirmatively bound not to take any actions to
3 interfere with the rights of the public to participate
4 in the Referend.

5 Now here we've got a much more complicated
6 situation because it's not just what is the City doing
7 with its contracting parties.

8 We have a situation where the actions of the
9 City have the effect of enabling a federal agency that
10 is not subject directly to anything you would do in my
11 favor, in their favor. I acknowledge that.

12 But as you can also see from the Notice from the
13 Bureau of taking into trust in which they attached the
14 title documents that they had received, the Development
15 Agreement was identified as a problem. It's
16 identified. They've put their notice on in November,
17 immediately thereafter the Special Notice by the City,
18 acknowledging that they have removed the DA from this
19 property. It's recorded, and it's recorded early.

20 When you look at the timeline I have in there, you
21 can see why all of these things are inter-related.
22 That is why I'm coming in here today and saying if you
23 order them to take the next step, which is they've
24 already acknowledged that the Referend affects a
25 suspension.

26 If you say you've got to just record an
27 expungement and then wait the time, we all know they're
28 going to have to certify because the number of

1 signatures was so much higher than the minimum,
2 that that's going to be certified, and then they can
3 take whatever action they're going to do.

4 They're either going to have a Special Election,
5 as I've laid out in the papers in April, or they're
6 going to wait for the next affective time, and they
7 have time to make that decision. But during this
8 period of time, no action will likely be taken at the
9 federal level.

10 The other issue is, your Honor, you have the
11 opportunity by taking this of directing this recission
12 by doing an expungement. It makes things -- it is much
13 more likely that action in Federal Court seeking an
14 Injunction will be unnecessary. Otherwise we're
15 looking at duplications of actions.

16 THE COURT: Isn't it somewhat speculative and
17 premature to try to figure out what the BIA is going to
18 do now that they've received clearly your transmitted,
19 signed communication to the BIA, and presumably they
20 are now on notice of the Notice that the City filed a
21 few days ago suspending the effectiveness of the
22 Amendment and Ordinance.

23 Isn't it somewhat premature to do anything at this
24 point?

25 Because for all we know the BIA may say hey,
26 there's enough of a cloud or enough of an issue here,
27 this Referendum may well likely qualify, and it's
28 still subject to the voters of Elk Grove to do

1 anything.

2 And so, for this Court to get in there, order the
3 City to now file an expungement is somewhat premature
4 because we don't know whether or not what the City has
5 filed and recorded is sufficient for the BIA to stop
6 doing anything or whether or not they're going to just
7 keep on going.

8 And you know, obviously this Court has no
9 jurisdiction over the BIA, but clearly it's speculative
10 to know what's going to come to pass.

11 First, we don't know whether or not the Referendum
12 is going to qualify. Presumably, since they have so
13 many signatures, it will.

14 Once it qualifies and is certified, then it goes
15 to the voters or the City Council can take whatever
16 action.

17 So it seems somewhat premature for this Court to
18 sort of interject itself into.

19 Now, I agree with you. I do think that Amendment
20 was prematurely recorded and was not appropriate at the
21 time.

22 But now that the City has taken some action to
23 maintain the status quo. Everything -- nothing's
24 affected. Nothing's going to happen --

25 MS. BARNES: Well --

26 THE COURT: For this Court to then interject
27 itself, not knowing what the BIA is going to do at this
28 point.

1 MS. BARNES: I fully acknowledge that
2 in many ways it's always a cloud of ether in trying
3 to figure out what the BIA is going to do on any
4 given action.

5 And yes, my clients did file this, although I
6 wasn't a participant in the preparation of this
7 document.

8 But I think it is fair to say for all of us
9 that have ever been involved in Indian-related issues
10 that the receipt of a letter from an opponent
11 to a tribe is not given very much weight at a -- you
12 know, compared to the City who has publicly adopted an
13 ordinance and then it being forced by the people to put
14 it to a vote, because there's a substantial number of
15 people who are not necessarily sure they want this
16 particular shopping center turned into a gaming
17 casino.

18 THE COURT: Right.

19 MS. BARNES: So that is the other end of it.

20 If the City records the Expungement, you're right.
21 It's a title issue. All of the title companies -- I
22 think this one was Chicago Title that turned out the
23 prelim on this one -- are going to record that
24 Expungement.

25 It's no longer going to be a debate about whether
26 or not, from a matter of title, the First Amendment to
27 the DA applied until after the Referendum is certified
28 and a vote is held.

1 But you are -- but I'm not going to tell you that.
2 I mean, I'm sure that they've received this.

3 My experience is just okay. It came from the
4 Opponents. They're not going to give it the kind of
5 weight they would if, for example, the City transmitted
6 their Notice, which they didn't do, at least as far as
7 I know. I've never received anything. I've suggested
8 it about four times or records an expungement, either
9 way.

10 THE COURT: Ms. Barnes, can't your clients --

11 It's a public record, the filing of that Notice of
12 the Amendment that was filed six days ago or so.

13 MS. BARNES: Yeah.

14 THE COURT: Can your clients get a certified copy
15 of that, it's a public record, and transmit that to the
16 BIA?

17 There's nothing that prevents them from doing
18 that. Even though I agree; maybe this letter doesn't
19 hold a lot of weight.

20 MS. BARNES: I mean, yes, we could, your Honor,
21 and I can send that to them. I'm just -- I'm just
22 pointing out to you that it would still be coming on
23 behalf of these folks.

24 THE COURT: But it's a public --

25 MS. BARNES: Can't the City --

26 Can't the City take a certified copy and send it?

27 THE COURT: It's a public record.

28 Right?

1 MS. BARNES: Yes.

2 THE COURT: It will be a certified public record,
3 you know, and if the BIA has questions, they can
4 certainly call the City of Elk Grove and say hey, is
5 this an authentic document or not and did you actually
6 record this, sign it and record it?

7 I mean, I'm just saying. As a practical matter --

8 MS. BARNES: Yes.

9 THE COURT: -- I understand what you're saying,
10 but I think there are practical solutions to what
11 you're saying.

12 MS. BARNES: Well, I mean, I'm sure that we're
13 going to be doing that. It's just that I don't think
14 my transmittal or the transmittal of my client has the
15 same effect as the City doing it.

16 THE COURT: Right.

17 MS. BARNES: And since the City recorded it in
18 the first place, it would seem to me that the
19 language, especially in these cases, would require them
20 to take every step necessary to not interfere with the
21 effects of the Referendum for the pendency of that
22 Referendum.

23 You know, clearly they have the right to
24 rescind, which they've chosen not to do, and the
25 timing really didn't allow for it because of the
26 holiday.

27 But the alternatives that are laid out in these
28 various cases, any of which could have accomplished

1 this purpose, has not happened yet; we have, like, a
2 part action, and I'm trying to finish that action with
3 your help.

4 THE COURT: All right. Ms. Ebrahimi, why won't
5 the City simply file a Notice of Expungement?

6 MS. EBRAHIMI: Your Honor, as I explained in my
7 Opposition, it has no statutory or other duty to do
8 so; moreover, this sets very dangerous precedent.

9 At what point then would we have to send notices
10 to other non-parties or members of the public who,
11 number one, haven't requested such notice?

12 And number two, again, as I previously mentioned,
13 there's no obligation for the City to do so.

14 Your Honor had mentioned that the more simple
15 solution, which I agree with, the City's position
16 is that Petitioners can provide a copy, a conformed
17 copy of this public record or obtain it from the
18 Sacramento County Recorder's Office and provide it
19 to the BIA which should address all of Petitioner's
20 concerns.

21 I don't believe that the purveyor of this
22 particular document is going to make any
23 difference.

24 And again, the BIA is not a party to this
25 particular case.

26 THE COURT: Right.

27 But I guess my question is instead of the Notice
28 that was in fact filed, what's the City's hesitation in

1 just filing a Notice of Expungement of the Amendment
2 that was filed in October?

3 That seems to be what Ms. Barnes is asking for
4 now, notwithstanding her alternative request in her
5 papers for one or the other. She's now asking --
6 clearly has preference for the Expungement.

7 MS. EBRAHIMI: Your Honor, that interferes
8 directly with the legislative discretion that the
9 City Council retains.

10 As I previously mentioned in the Government Code
11 and the Elections Code, the City has two choices; it
12 can either rescind the Ordinance or it can call a
13 Special Election, and the Petitioners are asking the
14 Court to make that decision for the Council.

15 THE COURT: Mr. Pearson?

16 MR. PEARSON: Well, your Honor, I think the
17 suggestion that there needs to be an expungement is
18 sort of a request.

19 I think it's inappropriate for two reasons:

20 First of all, essentially it's saying we would
21 like the Court to order our opponents to help us which
22 we shouldn't have to do as a practical matter.

23 And number two, it's sort of a request that we do
24 something -- that the City do something dishonest which
25 is essentially to say something didn't happen which did
26 happen.

27 The City did pass an ordinance changing the
28 description of the project area for this Development

1 Agreement. That's all it did.

2 It said the project area has changed from, you
3 know, the large thing I drew on the easel to just -- to
4 everything except the area that I've marked through.
5 The City did do that.

6 So what the City has done is it has now recorded a
7 document clarifying the record, eliminating any
8 suggestion that by recording that Ordinance, the City
9 is communicating to anyone that it has actually taken
10 affect. The City has cured that issue.

11 There's no reason why the City should say oh,
12 never mind. We never passed the Ordinance.

13 That's not true.

14 So the City has actually done everything it
15 possibly could to truthfully and accurately correct the
16 record.

17 MS. ALVES: Your Honor?

18 THE COURT: Yes.

19 MS. ALVES: Could I add that when the City did
20 move forward with the passing of that Ordinance,
21 nothing was forwarded by the City to the BIA.

22 So it's not as if we have put forward a message to
23 the BIA previously and then are now trying to be
24 dishonest in not putting forward a new message.

25 The City has stayed out of any communications with
26 the BIA on this matter in any way. We've simply
27 retained our local authority.

28 There was a request made by HHC to grant a DA

1 Amendment. That DA Amendment was approved, it was
2 recorded, and then we realized the Petitioner came in..

3 And we've now put forth a Notice, and we recorded
4 it the same way that we recorded the original Notice of
5 the Ordinance.

6 We feel like those are both in the record, that
7 they would --

8 Even if there was some sort of expungement, all of
9 that would still be in the record because it all
10 happened.

11 And I do agree with Mr. Pearson that it would be
12 somewhat dishonest to try to pretend it didn't happen,
13 and there's nothing we can do now to erase that if you
14 will.

15 So I think the City still retains its First
16 Amendment rights as well. So to force us to now put
17 forth some sort of communication with the BIA about
18 something we don't agree with or we think the facts
19 kind of stand for themselves if you will, and that
20 would be our position.

21 THE COURT: Okay. Ms. Barnes?

22 MS. BARNES: Well, the implication that what I'm
23 asking for is to ask the City to do something dishonest
24 I think is -- it completely misunderstands where I'm --
25 what I'm coming from.

26 It was a matter of public record that they
27 held their hearing and adopted the Ordinance. We're
28 not -- we're not asking anyone to say that that didn't

1 happen.

2 What we're saying is that if, as you mentioned, it
3 was inappropriate to record it two weeks afterwards
4 when it wasn't even effective for 30 days.

5 The reason it's not effective for 30 days, this
6 Ordinance or other Ordinances --

7 In speaking to you I'm always worried that I'm
8 talking -- you would think I'm talking down to you
9 because I know you understand all of this, but I have
10 to put it on the record.

11 So I apologize.

12 THE COURT: Sure.

13 MS. BARNES: -- but we're talking about the rights
14 of Referendum and Petition here, and the effect of the
15 early recording, besides being improper just in and of
16 itself, is that it interfered with the Referendum.

17 Moreover, because of the unique circumstances that
18 we're dealing with here, it then enabled within seven
19 days -- and anyone who knows anything about dealing
20 with the Bureau of Indian Affairs knows nothing happens
21 in seven days with them -- would know that this was all
22 choreographed in order to move with express speed to
23 accomplish certain purposes.

24 The City did not acknowledge its error
25 voluntarily. I was communicating with them beginning
26 on December 1st, and it wasn't until I began
27 threatening in writing on the 12th that I even received
28 a response from the City.

1 During that time they were going to go into closed
2 session and make a decision. They had determined
3 instead to record this document. But it doesn't
4 accomplish the effect that we're talking about.

5 You are -- I'm not -- I understand the City's
6 position that they should not have to write directly to
7 BIA. I can understand that that would be -- you might
8 consider that an improper supervisory role for the
9 Court to another -- to a legislative body.

10 That is why, of the remaining requests that I had
11 originally submitted, the Request for Expungement makes
12 the most sense. Every title company will show the --
13 that there -- it has been expunged.

14 The BIA will then make their decision based on the
15 full record and not an interpretation of what does it
16 mean in the language that the Referendum has the effect
17 of suspending the Ordinance.

18 That's why I'm asking for it. I can certainly do
19 what you suggested, and I will do what you suggested.

20 I think it would be an effective -- I think it is
21 a much more effective remedy for the City to record the
22 Expungement.

23 THE COURT: Okay.

24 MS. BARNES: Thank you, your Honor.

25 THE COURT: All right. I think this --

26 Well, let me just say this:

27 The Court is going to deny the Temporary
28 Restraining Order. I do believe that the Amendment

1 that was filed a few days ago cures the issue.

2 And frankly, while I understand, Ms. Barnes, your
3 request for relief was couched in the alternative, it
4 is in fact what Petitioners requested through the
5 issuance of a TRO.

6 So the relief requested by the Petitioners has in
7 fact been achieved.

8 I think it is premature for this Court to take
9 any further action, and as I said, I think it
10 appropriate for the Referendum process to go forward,
11 be certified. I understand the concerns about it
12 interfering with the referendum process.

13 But I do think -- and I'm looking at the proposed
14 Referendum that was submitted to the Court -- it says
15 nothing about the recording of anything. It's
16 just frankly I don't think the average citizen is going
17 to understand the significance of anything being
18 recorded.

19 It simply says do you want -- should that
20 Ordinance be repealed by the -- considered and repealed
21 by the City Council or submitted to a vote of the
22 people at the next regular election.

23 So I think, you know, to the extent you're voicing
24 some concerns about that recording impacting or somehow
25 inhibiting the power of the people to referend, I don't
26 think that's the case.

27 I think the fact now that the Amendment has been
28 suspended, the effectiveness has been suspended, the

1 Referendum process is, in fact, going to go forward.

2 And I think it's a legitimate concern. I agree
3 that they should be, and this referendum process should
4 be allowed to go forward in an orderly process.

5 But I think all the more reason then this Court
6 should not get involved in telling people to send
7 notices to anyone, including the BIA. It doesn't
8 obviously prohibit the Petitioners from petitioning the
9 Government, including the BIA, to take whatever actions
10 they think appropriate.

11 And if, in the opinion of the Petitioners, they
12 think the BIA is acting inappropriately, they have a
13 remedy, probably not in this court, but probably in
14 Federal Court in light of the fact that the Amendment
15 was filed suspending the effectiveness, so ...

16 I mean, I think whatever remedy you are seeking
17 against the City has, in fact, been achieved. I think
18 it's now going to have to play out. The Referendum is
19 going to have to be qualified or not. I mean, for all
20 we know, it may not qualify, so ...

21 Again, for this Court to start interjecting itself
22 into the process at this point I don't think is
23 appropriate. I think the Petitioners have achieved the
24 relief that they've sought, and at this point I do not
25 see any irreparable harm to the Petitioners.

26 Obviously circumstances can change, and you're
27 free to bring in whatever ex parte relief you think
28 appropriate as things go along, but as the record

1 stands now, I do not think ex parte relief is
2 appropriate.

3 The one other issue I did want to address, and
4 this is directed to Mr. Pearson, and I know in your
5 papers you had requested sanctions, and I think it
6 important that the Court set the appropriate tone for
7 this litigation.

8 And I do not want to get into a sanctions war.
9 I think these are important issues, and I do not think
10 sanctions are appropriate at this juncture. I think
11 people can have honest disputes and honest
12 disagreements, and I don't think sanctions are
13 necessarily the remedy at this point.

14 So I'm going to respectfully decline your request
15 to impose sanctions, Mr. Pearson.

16 Okay?

17 MR. PEARSON: Thank you, your Honor.

18 THE COURT: Anything else?

19 MS. BARNES: No, your Honor.

20 THE COURT: We probably need to have a formal
21 order.

22 If you don't mind, I'll ask counsel for the City
23 to prepare a formal order denying the TRO and the OSC
24 just so it's clear.

25 MS. BARNES: Okay.

26 THE COURT: Okay?

27 MS. EBRAHIMI: Thank you, your Honor.

28 THE COURT: All right. Thank you all for your

1 time.

2 I appreciate the briefings that you have
3 provided to the Court. It was very helpful and very
4 thorough.

5 So thank you very much.

6 You all have a nice holiday season.

7 MR. PEARSON: Thank you, your Honor.

8 THE COURT: You're welcome.

9 (Proceedings Concluded)

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CERTIFICATE OF OFFICIAL SHORTHAND REPORTER

STATE OF CALIFORNIA)
) ss.
COUNTY OF SACRAMENTO)

I, SHIELA M. CONNOLLY, hereby certify that I am a Certified Shorthand Reporter, and that I recorded verbatim in stenotype the proceedings had on THURSDAY, DECEMBER 22, 2016, in the matter of STAND UP CARLIFORNIA! versus THE CITY OF ELK GROVE, Case Number 34-2016-800003493-CU-WM-GDS, completely and correctly to the best of my ability; that I caused said shorthand notes to be transcribed into typewriting, and that pages 1 - 33 constitute a complete and accurate transcript of said stenotype notes taken at the above-mentioned proceedings.

I further certify that I have complied with CCP 237(a)(2), in that all personal juror identifying information have been redacted, if applicable.

Dated: December 30, 2016.

SHIELA M. CONNOLLY, RPR, CSR No. 5659

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