

**Case No. B203097**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION EIGHT

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DAVID HERNANDEZ and TED HAYES,  
*Plaintiffs and Appellants,*

vs.

COUNTY OF LOS ANGELES, CITY OF LOS ANGELES, LOS ANGELES  
CITY COUNCIL, et al.,  
*Defendants and Respondents.*

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Los Angeles County Superior Court Case No. BS106456  
The Honorable David Yaffe, Judge

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**CITY OF LOS ANGELES AND LOS ANGELES CITY COUNCIL  
RESPONDENTS' REQUEST FOR JUDICIAL NOTICE**

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OFFICE OF THE LOS ANGELES  
CITY ATTORNEY  
Rockard J. Delgadillo (SBN 125465x)  
Valerie L. Flores (SBN 138572)  
Harit U. Trivedi (SBN 217282)  
200 North Main Street  
Room 800, City Hall East  
Los Angeles, CA 90012  
Telephone: (213) 978-7100  
Facsimile: (213) 978-8250

*Attorneys for Respondents*  
CITY OF LOS ANGELES and the  
LOS ANGELES CITY COUNCIL

## **REQUEST FOR JUDICIAL NOTICE**

Respondents City of Los Angeles and Los Angeles City Council (“City”) respectfully request that the Court take judicial notice of true and correct copies of the items listed below. The items contain indisputable facts that are relevant to the City’s argument that Appellants were required to bring their action in a quo warranto proceeding, not a mandamus proceeding, because Measure R affects the title of City Councilmembers to elected office and because Measure R contains ratified and perfected amendments to the Los Angeles City Charter. These items did not exist at the time of the trial court’s ruling.

1. Declarations of Intention to Solicit and Receive Contributions filed by five City Councilmembers who have begun soliciting and receiving campaign contributions toward a third elected term in office. (Exhibit 1.) The five City Councilmembers – Eric Garcetti, Janice Hahn, Jan Perry, Ed Reyes and Dennis Zine – are eligible for a third term because of Measure R. The Declarations of Intention are official City forms promulgated by and filed with the City Ethics Commission pursuant to City Charter §§ 470(c)(1) and 702. The Declarations of Intention are submitted for the narrow purpose of showing that the City Ethics Commission has implemented, administered and enforced the provisions of Measure R and that City Councilmembers have taken official actions toward a third elected term in office pursuant to Measure R.

2. California Form 501 Candidate Intention Statements filed by five City Councilmembers who have begun soliciting and receiving campaign contributions toward a third elected term in office. (Exhibit 2.) The five City Councilmembers – Eric Garcetti, Janice Hahn, Jan Perry, Ed Reyes and Dennis Zine – are eligible for a third term because of Measure R. The Form 501s are official state forms promulgated by the California Fair Political Practices Commission and filed with the City Ethics Commission

pursuant to Government Code § 85200 and City Charter § 702. The Form 501s are submitted for the narrow purpose of showing that the City Ethics Commission has implemented, administered and enforced the provisions of Measure R and that City Councilmembers have taken official actions toward a third elected term in office pursuant to Measure R.

3. California Form 460 Recipient Committee Campaign Statements filed on behalf of two City Councilmembers who have begun soliciting and receiving contributions toward a third elected term in office. (Exhibit 3.) The two City Councilmembers – Jan Perry and Ed Reyes – are eligible for a third term because of Measure R. The California Form 460s are official state forms promulgated by the California Fair Political Practices Commission and filed with the City Ethics Commission pursuant to Government Code §§ 84200 and 84215(e) and City Charter § 702. The California Form 460s are submitted for the narrow purpose of showing that the City Ethics Commission has implemented, administered and enforced the provisions of Measure R, that City Councilmembers have taken official actions toward a third elected term in office pursuant to Measure R, and that City Councilmembers and others have solicited, received, donated and spent monetary contributions pursuant to Measure R.

4. Official publications of the Los Angeles City Ethics Commission issued pursuant to the City Ethics Commission's responsibilities under the City Charter. These recent publications are: Lobbyist Bulletin No. 2007-3; Lobbyist Bulletin No. 2007-4; the Information for Contributors Pamphlet; and the 2009 Election Update. (Exhibit 4.) The publications are submitted for the narrow purpose of showing that the City Ethics Commission has implemented, administered and enforced the provisions of Measure R.

## MEMORANDUM OF POINTS AND AUTHORITIES

The power of an appellate court to take judicial notice of a matter is the same as the power of the trial court. (Cal. Evid. Code § 459; *Martin v. General Finance Co.* (1966) 239 Cal.App.2d 438, 442; *Ahlgren v. Carr* (1962) 209 Cal.App.2d 248, 257.) Accordingly, this Court may take judicial notice of the items identified above pursuant to California Evidence Code Sections 452(c) and (h).

The items are relevant to the City's argument that Appellants were required to bring their action in a quo warranto proceeding, not a mandamus proceeding, because Measure R affects the title of City Councilmembers to elected office and because Measure R contains ratified and perfected amendments to the Los Angeles City Charter. (See *Nicolopuls v. City of Lawndale* (2001) 91 Cal.App.4th 1221, 1225-1226 [taking judicial notice of developing circumstances to determine whether quo warranto has become the exclusive remedy].) These items did not exist at the time of the trial court's ruling in this case and therefore the City was not able to present them below.

Declarations of Intention to Solicit and Receive Contributions and California Form 501 Candidate Intention Statements (Exhibits 1 & 2). The first category of documents are official Declarations of Intention to Solicit and Receive Contributions ("Declarations of Intention") and California Form 501 Candidate Intention Statements ("Form 501s") filed with the City Ethics Commission by five City Councilmembers who are eligible for a third term in office because of Measure R: Eric Garcetti (filed March 10, 2008); Janice Hahn (filed February 11, 2008); Jan Perry (filed September 4, 2007); Ed Reyes (filed October 10, 2007); and Dennis Zine (filed April 1, 2008). (Exhibits 1 & 2.) The Declarations of Intention and Form 501s are submitted for the narrow purpose of showing that the City Ethics Commission has implemented, administered and enforced the provisions of

Measure R and that City Councilmembers have taken official actions toward a third elected term in office pursuant to Measure R.

The Declarations of Intention and Form 501s are required filings under state and City law. City Charter Section 470(c)(1) provides that no candidate for City office shall solicit or accept campaign contributions “unless and until such candidate shall have filed a Declaration of Intention to Solicit and Receive Contributions ... with the City Ethics Commission on a form prescribed by the City Ethics Commission.” City Charter Section 702 provides that the Ethics Commission is required to receive and maintain these filings. The Form 501s are official forms promulgated by the California Fair Political Practices Commission (“FPPC”) that the City’s elected officers and candidates must file with the City Ethics Commission pursuant to state and City law. (Cal. Govt. Code § 85200; City Charter § 702(c).)

Thus, the Declarations of Intention and Form 501s identified above were promulgated by the City Ethics Commission and FPPC, completed by the City Councilmembers, and then filed with and maintained by the City Ethics Commission, all pursuant to the requirements of state and City law. Judicial notice of these official filings maintained in the records of the City Ethics Commission is appropriate. (See Cal. Evid. Code § 452(c) [authorizing judicial notice of “[o]fficial acts of the legislative, executive, and judicial departments” of the United States or any state]; *Fowler v. Howell* (1996) 42 Cal.App.4th 1746, 1750 [holding that Evid. Code § 452(c) permits the court “to take judicial notice of the records and files of a state administrative board”]; *City of Sacramento v. State Water Resources Control Bd.* (1992) 2 Cal.App.4th 960, 967, fn. 2 [taking judicial notice of the minutes of a regional water quality control board meeting]; *Commercial Union Assurance Co. v. City of San Jose* (1982) 127 Cal.App.3d 730, 740 [taking judicial notice of city documents].)

The legally-required nature of these Declarations of Intention and Form 501s and their administration by the City's Ethics Commission and FPPC make them particularly suitable for judicial notice. These are not self-serving filings made to buttress the arguments in this litigation. Rather, the Declarations of Intention and Form 501s are *mandatory* filings under state and City law personally signed by the City Councilmembers under *penalty of perjury*. (Cal. Govt. Code § 85200; City Charter §§ 470(c)(1), 702.) Moreover, the Declarations of Intention and Form 501s are administered and maintained by not just any department, but the City Ethics Commission, a semi-independent City body charged with the impartial administration and enforcement of the City's campaign finance, lobbying, conflict of interest and governmental ethics laws. (City Charter §§ 702, 706.) Judicial notice under these circumstances is proper. (See Cal. Evid. Code § 452(c); Evid. Code § 452(h) [authorizing judicial notice of “[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.”].)

California Form 460 Recipient Committee Campaign Statements.

The second category of documents are official California Form 460 Recipient Committee Campaign Statements (“Form 460s”) filed on behalf of two City Councilmembers who are eligible for a third term in office because of Measure R: Jan Perry (filed January 31, 2008) and Ed Reyes (filed January 28, 2008). (Exhibit 3.)

The Form 460s are submitted for the narrow purpose of showing that the City Ethics Commission has implemented, administered and enforced the provisions of Measure R, that City Councilmembers have taken official actions toward a third elected term in office pursuant to Measure R, and that City Councilmembers and others have solicited, received, donated and spent monetary contributions pursuant to Measure R. Specifically, the

Form 460 filed by Councilmember Jan Perry indicates that as of December 31, 2007, more than 200 persons had made a total of over \$100,000 in monetary contributions to her campaign for a third term and that she had spent more than twelve thousand dollars toward re-election. The Form 460 filed by Councilmember Ed Reyes indicates that as of December 31, 2007, more than 125 persons had made a total of over \$60,000 in monetary contributions to his campaign for a third term and that he had spent more than fourteen thousand dollars toward re-election.<sup>1</sup>

The Form 460s are official forms promulgated by the FPPC that the City's elected officers and candidates must file with the City Ethics Commission pursuant to state and City law. (See Cal. Govt. Code §§ 84200, 84215(e); City Charter § 702(c).) Thus, the Form 460s identified above were promulgated by the FPPC, completed by the City Councilmembers, and then filed with and maintained by the City Ethics Commission, all pursuant to the requirements of state and City law. Judicial notice of these official filings maintained in the records of the City Ethics Commission is appropriate. (See Cal. Evid. Code Section 452(c); *Fowler, supra*, 42 Cal.App.4th at p. 1750; *City of Sacramento, supra*, 2 Cal.App.4th at p. 967, fn. 2; *Commercial Union, supra*, 127 Cal.App.3d at p. 740.)

The legally-required nature of these Form 460s and their administration by the FPPC and City Ethics Commission make them particularly suitable for judicial notice. The Form 460s are *mandatory* filings under state and City law that have been signed by the City Councilmembers under *penalty of perjury*. (Cal. Govt. Code § 84200.)

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<sup>1</sup> Additional contributions to and spending by these two Councilmembers, as well as the contribution and spending activity of the three other Councilmembers who filed Declarations of Intention earlier this year, will be reported in their next Form 460 filings covering the period January 1, 2008 through July 31, 2008.

Moreover, the Form 460s are administered and maintained by the FPPC and the City Ethics Commission. (Cal. Govt. Code § 84215(e); City Charter § 702(c).) The City Ethics Commission is a semi-independent City body charged with the impartial administration and enforcement of the City's campaign finance, lobbying, conflict of interest and governmental ethics laws. (City Charter §§ 702, 706.) Judicial notice under these circumstances is proper. (See Cal. Evid. Code § 452(c); Cal. Evid. Code § 452(h) [authorizing judicial notice of “[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.”].)

Official Publications of the City Ethics Commission. The third category of documents are official publications of the Los Angeles City Ethics Commission: Lobbyist Bulletin No. 2007-3; Lobbyist Bulletin No. 2007-4; the Information for Contributors Pamphlet; and the 2009 Election Update. (Exhibit 4.) These publications were produced and issued after the trial court's July 2007 decision in this case. The publications are submitted for the narrow purpose of showing that the City Ethics Commission has implemented, administered and enforced the provisions of Measure R.

The City Ethics Commission issued these publications pursuant to its duties under the City Charter. (See City Charter § 702(j) [requiring Ethics Commission to “advocate understanding” of, *inter alia*, the City's campaign finance laws, lobbying laws and electoral process]; § 704 [requiring Ethics Commission to “publish manuals and instructions” regarding applicable duties of persons and committees under City's campaign finance, lobbying and other laws].) Judicial notice of the bulletins and publications of the City Ethics Commission is appropriate under Evidence Code §§ 452(c) and (h). (*Carleton v. Tortosa* (1993) 14 Cal.App.4th 745, 753, fn. 1 [taking judicial notice of official publications and bulletins of government agency]; *Board of Education v. Watson* (1966)

63 Cal.2d 829, 836 [same]; see also *Commercial Union, supra*, 127 Cal.App.3d at p. 740 [taking judicial notice of city documents].)

**CONCLUSION**

For the reasons stated above, the City respectfully requests that the Request for Judicial Notice be granted.

Dated: April 28, 2008

Respectfully submitted,

OFFICE OF THE LOS ANGELES  
CITY ATTORNEY  
Rockard J. Delgadillo  
Valerie L. Flores  
Harit U. Trivedi

By: \_\_\_\_\_  
Valerie L. Flores

Attorneys for Respondents  
CITY OF LOS ANGELES and LOS  
ANGELES CITY COUNCIL