

Case No. H043540

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOR THE SIXTH APPELLATE DISTRICT**

**PETER CONSTANT, STEVEN HAUG, and SILICON VALLEY
TAXPAYERS' ASSOCIATION, a California non-profit corporation,**
Proposed Intervenors, Appellants and Petitioners

v.

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SANTA CLARA,**
Respondent

**THE PEOPLE OF THE STATE OF CALIFORNIA on the
RELATION of SAN JOSE POLICE OFFICERS' ASSOCIATION,**
Plaintiff, Respondent, and Real Party in Interest

CITY OF SAN JOSE, and CITY COUNCIL OF SAN JOSE,
Defendants, Respondents, and Real Parties in Interest

**CITY OF SAN JOSE'S SUPPLEMENT TO ITS
PRELIMINARY OPPOSITION TO A STAY OR
OTHER RELIEF**

From Order of the Superior Court of Santa Clara County
The Honorable Beth McGowen, Presiding
Superior Court Case No. 2013-cv-245503

(Counsel listed on following page)

CHARLES D. SAKAI (SBN 173726)
csakai@publiclawgroup.com
SHERRY LIN (SBN 307335)
slin@publiclawgroup.com
RENNE SLOAN HOLTZMAN SAKAI LLP
1220 Seventh Street, Suite 300
Berkeley, California 94710
Telephone: (510) 995-5800
Facsimile: (415) 678-3838

Attorneys for Defendants, Respondent, and Real Party In Interest
CITY OF SAN JOSE

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SUPPLEMENT TO PRELIMINARY OPPOSITION

INTRODUCTION

One key requirement for a writ of supersedeas is a showing of the merits of the pending appeal. Petitioners Peter Constant, Steven Haug, and Silicon Valley Taxpayers' Association (collectively "Petitioners") have no basis for success on the merits of this action.

The case below is an action in quo warranto, limited to addressing the single question of whether the City of San Jose fulfilled its collective bargaining requirements with the San Jose Police Officers' Association ("SJPOA") before placing Measure B on the ballot. Whether the City fulfilled its collective bargaining obligations with SJPOA is a matter properly litigated – and resolved – between the two interested parties at the bargaining table: the City and SJPOA.

Petitioners' appeal has no merit and should be denied.

Petitioners' Appeal has No Merit – Indeed, Petitioners Have No Interest in this Case Because the Question Presented On Appeal is Limited to the Single Procedural Bargaining Issue in the Quo Warranto Action.

To prevail on a writ of supersedeas, the Petitioners must show that "substantial questions will be presented upon the appeal; that some special reason exists, differing from the ordinary suit to compel an inspection of the records why the judgment of the trial court should be stayed pending

appeal; and that this is an exceptional case presenting exceptional circumstances...” (*Homestake Mining Co. v. Superior Court of City & Cty. of San Francisco* (1936) 11 Cal. App. 2d 488, 492; see also *Deepwell Homeowners’ Protective Ass’n v. City Council of Palm Springs* (1965) 239 Cal. App. 2d 63, 67.) “Affirmances must be contemplated as well as reversals and the presumption is in favor of the lower court’s decision.” (*Deepwell Homeowners’ Protective Ass’n, supra*, 239 Cal. App. 2d at 67.)

Here, Petitioners’ appeal from the judgment of an action in quo warranto, where the Attorney General limited the issues in SJPOA’s suit against the City to the single question of “whether the City of San Jose fulfilled its statutory collective bargaining obligations before placing an initiative measure on the June 2012 ballot that, after its passage, amended the City Charter so as to increase city police officers’ retirement contributions and reduce their retirement benefits.” (96 Cal. Op. Att’y Gen. 1.) The extremely limited scope of this quo warranto proceeding makes it clear that Petitioners will be unable to present any “substantial questions” on appeal.

The grounds for initiating a quo warranto proceeding are set forth in Code of Civil Procedure section 803, which provides that “An action may be brought by the attorney-general, in the name of the people of this state, upon his own information, or upon a complaint of a private party, against

any person who usurps, intrudes into, or unlawfully holds or exercises any public office, civil or military, or any franchise, or against any corporation, either de jure or de facto, which usurps, intrudes into, or unlawfully holds or exercises any franchise, within this state.”

“The key to the remedy of quo warranto is that it can only be brought by the Attorney General, on his or her information, or by the request of a private party.” (*Rando v. Harris* (2014) 228 Cal. App. 4th 868, 875.) Where a private party seeks to file an action in quo warranto, that party must obtain the consent of the Attorney General. (*Int'l Assn. of Fire Fighters v. City of Oakland* (1985); 174 Cal. App. 3d 687, 693-98.) In determining whether to grant leave to sue in quo warranto, the Attorney General evaluates whether the application presents substantial issues of fact or law that warrant judicial resolution and whether granting the application will serve the public interest. (*Rando, supra*, 228 Cal. App. 4th at 879.)

An action in quo warranto is the exclusive method for a party to attack a charter amendment based on a City’s failure to comply with the bargaining requirements of the Meyers-Milias-Brown Act (“MMBA”). (*Int'l Assn. of Fire Fighters, supra*, 174 Cal. App. 3d at 698; see also *People ex rel. Seal Beach Police Officers Assn. v. City of Seal Beach* (1984) 36 Cal. 3d 591, 594.) The MMBA “requires governing bodies of local agencies to ‘meet and confer [with employee representatives] in good faith

regarding wages, hours, and other terms and conditions of employment.”
(*Seal Beach, supra*, 36 Cal. 3d at 596 [citing Gov. Code. § 3505].) A City Council must comply with the MMBA’s “meet and confer” requirement “before it proposes an amendment to the city charter concerning the terms and conditions of public employment.” (*Id.* at 594.)

In this case, the SJPOA obtained the consent of the Attorney General to bring this action in quo warranto to challenge “whether the City sufficiently met and conferred with the SJPOA – as it is required to do under the Meyers-Milias-Brown Act (MMBA) – before the City Council voted to place Measure B on the ballot.” (96 Cal. Op. Att’y Gen. 1.) In granting SJPOA leave to sue, the Attorney General opinion stated: “... we have reviewed the materials submitted to us concerning the other complaints and legal disputes involving Measure B, but those matters involve different complaining parties and/or different legal questions. Under the circumstances, we believe that the separate proceedings fail to present an adequate opportunity for these two parties to air their respective and opposing positions regarding the present MMBA-related dispute and have that dispute resolved.” (*Id.* at *4.)

As the Attorney General’s opinion points out, this quo warranto action was an opportunity for the two parties – SJPOA and the City – to resolve the dispute of whether the City adequately met and conferred with

SJPOA prior to placing Measure B on the ballot. Moreover, because they were the only parties to the underlying dispute – the negotiations underlying the ballot measure – the City and SJPOA had full authority to resolve this limited issue by stipulation. Despite Petitioners’ attempt to expand the scope of this case, there are simply no “substantial questions” that they can raise on appeal.

CONCLUSION

For all the foregoing reasons, the Petition for Writ of Mandate, Supersedeas, or Other Appropriate Relief should be denied.

Dated: May 16, 2016

Respectfully submitted,

RENNE SLOAN HOLTZMAN SAKAI LLP

By: 

Charles Sakai
Attorneys for Real Party In Interest
CITY OF SAN JOSE

CERTIFICATION OF WORD COUNT

(California Rules of Court, Rule 8.204(c)(1))

The foregoing brief contains 1,009 words (including footnotes, but excluding the table of contents, table of authorities, certificate of service, and this certificate of word count), as counted by the Microsoft Word processing program used to generate the brief.

Dated: May 16, 2016

RENNE SLOAN HOLTZMAN SAKAI LLP

By: 

Charles Sakai

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

I am employed in the County of San Francisco, State of California.

I am over the age of 18 and not a party to the within action; my business address is 350 Sansome Street, Suite 300, San Francisco, California 94104.

On May 16, 2016, I served the foregoing document described as:

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OPPOSITION TO A STAY OR OTHER RELIEF** on the parties in this
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Marguerite Mary Leoni (mleoni@nmgovlaw.com)
Christopher E. Skinnell (sckinnell@nmgovlaw.com)
James W. Carson (jcarson@nmgovlaw.com)
Nielsen Merksamer Parrinello Gross & Leoni, LLP
2350 Kerner Boulevard, Suite 250
San Rafael, CA 94901
Tel: (415) 389-6800

Attorneys for Petitioner Pete Constant

Kenneth H. Lounsbury (khl@lfap.com)
James P. Lough (jpl@lfap.com)
Alena Shamos (aso@lfap.com)
Yana L. Ridge (ylr@lfap.com)
Lounsbury Ferguson Altona & Peak, LLP
950 Canterbury Place, Suite 300
Escondido, CA 92025
Tel: (760) 743-1201

*Attorneys for Petitioners
Steve Haug and Silicon Valley Taxpayers Association*

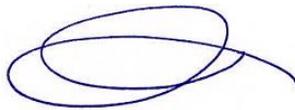
Gregg McLean Adam
Jonathan Yank
Jennifer S. Stoughton
Messing Adam & Jasmine LLP
235 Montgomery St., Ste. 828
San Francisco, CA 94104
Telephone: (415) 266-1804
email: gregg@majlabor.com
jonathan@majlabor.com

*Attorneys for Plaintiff
San Jose Police Officers' Association*

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The Honorable Beth McGowen
c/o Clerk, Santa Clara Superior Court
191 N. First Street
San Jose, CA 95113

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on May 16, 2016 at San Francisco, California.



Rochelle Redmayne