

FILED *amj*

AUG 27 2012

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3 Stockton, CA 95206
4 (209) 525-7755

5
6 In Propria Persona

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

8 **UNITED STATES BANKRUPTCY COURT**

9 **EASTERN DISTRICT OF CALIFORNIA-SACRAMENTO**

10
11 **IN RE:**

CASE NO. 12-32118-C-9

12 **CITY OF STOCKTON, CALIFORNIA**

) DC-RLW1

13 **DEBTOR**

) **MEMORANDUM OF POINTS AND**

) **AUTHORITIES IN SUPPORT OF**

) **MOTION FOR RELIEF FROM**

) **AUTOMATIC STAY**

) **DATE:** September 11, 2012

) **TIME:** 1:30 PM

) **DEPT:** 35

16
17 **INTRODUCTION**

18 Movant Ralph Lee White, a resident and voter in the City of Stockton, is a petitioner in Case No.39-2012-
19 00281432-CU-WM-STK which was consolidated with Case No. 39-2012-0027995-CU-WM-STK brought in the
20 Superior Court of California County of San Joaquin prior to the filing of bankruptcy by debtor, CITY OF
21 STOCKTON. This court action was filed requesting the court make a determination as to whether language in the
22 Stockton City Charter imposes certain term limits of the current mayor of the City of Stockton. It is clear that the
23 mayor is actually seeking a fourth term, although she has already served two(2) terms as a Councilmember and one
24 (1) as mayor, the election to be held this November 6, 2012. She alleges, as does the City of Stockton, that she could
25 serve two four (4) year terms as a councilmember then an additional two (2) terms as mayor for a total of four (4) four
26 year terms or sixteen (16) years in total. Petitioners in the above mentioned state action allege that no person on the
27 City Council including the mayor can exceed two (2) four (4) year terms or eight (8) years according to the language
28 of the current city charter and therefore she is ineligible to run in the next upcoming election. Petitioners in that state
29 court action were not asking for money damages for themselves nor have they made a claim therefore are seeking a

1 declaration and clarification by the court as to the meaning of the City Charter provision in question so as to protect
2 the Constitutional rights of both the voters and candidates, now and prospectively, regarding the limitation of terms
3 language passed by the voters in 1986 under Measure C. The City of Stockton has been asked to stipulate to removal
4 of the Automatic Stay imposed as a result of this state action being listed by the City in its bankruptcy petition. The
5 City however, has refused to do so indicating that it has to pay attorney's fees and costs to defend this state action and
6 therefore are entitled to the Automatic Stay on those grounds. A copy of this letter of refusal to so is attached as
7 **Exhibit A.**

9 **FACTS AND PROCEDURAL BACKGROUND**

10 Petitioners in the state court action are residents and voters in the City of Stockton. Movant is a petitioner in the state
11 court action and a voter and resident of the City of Stockton. Petitioners allege that they have a right to seek a full
12 judicial review of the effect of the language regarding term limits in the current Stockton City Charter. In 1986 the
13 voters in the City of Stockton approved Measure C which then became incorporated into the provisions of the Charter.
14 One provision of Measure C provided for two (2) term limits of the Councilmembers and Mayor. Petitioners argue
15 that this provision restricts all members of the Council, including the mayor to two (2) four (4) year terms for a total
16 of eight (8) years. The mayor and the City of Stockton herein allege a councilmember may serve two (2) four (4) year
17 terms then return and serve two (2) more four (4) year terms as mayor in addition. The language of this provision is
18 subject to dispute as to its intended meaning even though the City itself placed the measure on the ballot. Yet the City
19 of Stockton is fighting petitioners rather than attempting to seek clarification of its own Charter. One might wonder
20 why when the provision in question is ambiguous at best.

21 Petitioners filed their action in the San Joaquin Superior Court seeking a clarification by the court by way of
22 Mandamus. The current mayor served two terms as a councilmember then subsequently ran and won an additional
23 four (4) year term as mayor. The issue of term limits was not challenged at the time of her mayoral election four (4)
24 years ago. Now, however petitioners claim she is ineligible to run for mayor again and sought the courts help since
25 the election will be held on November 6, 2012, time being of the essence to protect the resident voters' rights as well
26 as those of current and prospective mayoral candidates including those rights of the current mayor herself.

1 If the election were to proceed this November 2012 without a full judicial review and the current mayor were to win
2 the election and thereafter the Petitioners were to prevail in their action resulting in the current mayor being deemed
3 ineligible to hold office then it is alleged that the City of Stockton, will have to spend a considerable amount of money
4 for a Special Election and there could be, in addition, significant disruption of the legislative process as a result.

5 A ruling has been received from the State court denying petitioners request although the court did confirm the
6 ambiguity of the language in the term limits provision in the City Charter. Petitioners wish, as is their right, to appeal
7 the decision to a higher court or move for reconsideration based on additional information but cannot do so because
8 of the Automatic Stay imposed as a result of the filing the petition under Chapter 9 naming petitioners as creditors.

9 The City has refused to stipulate to lift the Stay, even though no money damages are sought, indicating that because it
10 will incur attorney's fees and costs in defending the state court action that fact alone entitles it to protection by way of
11 the Automatic Stay. Movant, Ralph Lee White, alleges that to prevent, by way of an Automatic Stay in bankruptcy, a
12 resident or voter or candidate from seeking a determination as to the eligibility of individuals to hold public office and
13 challenge provisions of the City of Stockton's Charter (its Constitution in essence) money damages are not in issue,
14 this is highly prejudicial to the public good. If such is the case the City of Stockton would be able to avoid any
15 legitimate challenge to its Charter or legislative or administrative actions or other conduct running afoul of the law
16 simply by alleging it would have to spend money in the form of attorney's fees to defend such judicial actions.
17 Movant wonders then what the salaried attorneys in the Stockton City Attorney's office are there for.

18 19 **LAW AND ARGUMENT**

20 Movant now seeks relief from the Automatic Stay provisions of 11 U.S.C Sec. 362 so that Petitioners may pursue
21 their legal remedies whether by appeal to the California Court of Appeals or by reconsideration or other remedy at the
22 local state court level.

23 Relief may be granted by the Bankruptcy Court "for cause". Cause is determined on a case by case basis, with the
24 Bankruptcy Court having wide latitude in crafting relief from the Automatic Stay. In re Kissinger, 72 F. 3d107 108-
25 109 (9th Cir. 1995); In re Tucson Estates, Inc. 912 F. 2d. 1162, 1166 (9th Cir.1990). Once cause is shown for the

relief from the stay, the burden shifts to the debtor that it is entitled to the stay. 11 U.S.C. Sec, 362 (g); In re Marine Power and Equipment Company, Inc. 71 B.R. 925,928 (W.D. Wash. 1987)

A. THE INDIVIDUAL PETITIONERS IN THE STATE COURT ACTION ARE NOT CREDITORS NOR HAVE THEY MADE A CLAIM FOR MONEY UNDER 11 U.S.C. Sec 101 (10) A and 11 U. S. C. Sec. 101 (5)

As this court is fully aware a "creditor" is defined in the Bankruptcy Code in section 101(10) as follows:

- (A) entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor
- (B) entity that has a claim against the estate of a kind specified in section 348(d), 502(f) (g) (h) or (i) of this title; or
- (C) entity that has a community claim

A "claim" is defined in section 101(5) as follows:

- (A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured or
- (B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

Movant contends that in no way by definition in the Bankruptcy Code or by logic can the Petitioners in the state court action be considered "creditors" nor does any cause of action therein hint that a "claim" as defined in the Bankruptcy Code has been made. Petitioners were simply seeking a determination of the meaning of a provision of the Stockton City Charter to determine the eligibility for office of the current mayor and thus attempting to protect the First Amendment and other rights of Stockton voters and residents. Whether the City of Stockton would have to expend attorney's fees to

1 defend such a challenge does not render the Petitioners "creditors" nor is the action one that makes a "claim"
2 contemplated by the language of the Bankruptcy Code set forth above. In that sense there are really no substantive
3 financial implications to the Debtor. There is no pre- petition debt attempting to be enforced, actually no real existing or
4 prospective debt at all. If petitioners are not existing or prospective creditors under the law then of course the City of
5 Stockton is not now and will not be a "debtor" as it pertains to the state court action.

6
7 **B. IT WOULD BE INCONSISTENT AND PREJUDICIAL NOT TO ALLOW PETITIONERS TO**
8 **SEEK REDRESS AGAINST THE CITY WHERE ISSUES LIKE THIS ARE PRESENT,**
9 **WHERE MONEY DAMAGES ARE NOT SOUGHT AND CONSTITUTIONAL RIGHTS**
10 **ARE AT STAKE**

11
12 Pursuant to 11 U.S.C. Sections 362(b) (4) and 904 (1) it appears the City of Stockton even as a debtor may
13 commence actions to enforce its police and governmental powers and are not subject to the Automatic Stay. In
14 addition Section 904 (1) limits the bankruptcy Courts power to interfere with any municipality's regulatory or
15 political powers. When it comes to these provisions of the Code it appears that where a city is not the debtor it
16 can still seek even money remedies against an individual or entity debtor and where the City is a debtor under
17 chapter 9 the Bankruptcy Court has limited power to interfere with the City's political and regulatory powers. It
18 appears at first blush by opposing the lifting of the Automatic Stay the City is hiding behind the Stay and saying
19 that while it can enforce its regulations including its Charter against anyone else who has run afoul thereof the
20 City, even if it has run afoul of the law itself or is not willing to obtain a judicial review of the application and
21 meaning of its own law that it is untouchable simply because it may incur only incidental costs in defending
22 such an action. What remedy therefore would any resident have against a municipality whose laws may be
23 unconstitutional or applied in an unconstitutional manner or as in the present case ignored where others' First
24 Amendment or other constitutional rights may be affected? It should actually be the obligation of the City to
25 obtain clarification of its own Charter, not fight Petitioner, especially where the proponents of Measure C in
26 1986 meant to limit the terms of office of Councilmembers including the mayor where by stating in their

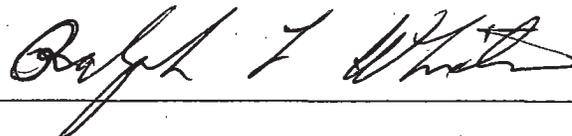
1 argument in favor, thereof on the ballot that "Measure C would also limit council members to two terms in
2 office, ridding the City of 'Career Politicians' and provide a fresh source of new ideas." See **Exhibit B** attached
3 hereto.

4 Movant therefore alleges that unless the stay is lifted so as to allow the state court action to proceed through full
5 judicial review that petitioner and others in the city may be divested of important rights they are entitled to and
6 that the City could hide behind the stay even where such important rights are involved simply because it would
7 cost the city only money in the form of attorney's fees to defend such actions. Again the Movant questions why
8 the city couldn't just use the salaried attorneys in the Stockton City Attorney's office to avoid such costs.

9
10 **CONCLUSION**

11 It is respectfully submitted that Petitioners in the state action are not creditors nor have they filed a claim seeking money
12 damages under the Bankruptcy Code; that the City of Stockton is not a debtor as it relates to the state court action and that
13 as a result the Petitioners in the state court action be allowed to seek full Judicial review in that matter.

14
15
16
17 Dated: 8-27-2012



18 Ralph Lee White, Movant



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August 17, 2012

Michael F. Babitzke, Esq.
Michael F. Babitzke, Inc.
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Via Fax & U.S. Mail
(209) 465-0714

Re: ***SBLC (White) v. The City of Stockton, et al.***
San Joaquin County Superior Court No. 39-2012-00279925-CU-WM-STK
[Consolidated with No. 39-2012-00281432-CU-WM-STK]

I have had an opportunity to discuss your client's proposal for further handling of this matter. Specifically, yesterday you requested that in order to get this matter moving forward, the City stipulate to relief from the automatic bankruptcy stay, and further, stipulate to have the consolidated matters heard by the Third District Court of Appeals on the current record.

After discussing your proposal with the appropriate City officials, I must respectfully reject your proposal. The City will not stipulate to relief from the automatic stay, nor will it stipulate to have this matter heard on appeal on the current record.

Please call if you have any questions.

JOHN M. LUEBBERKE
CITY ATTORNEY

BY 

NEAL C. LUTTERMAN
DEPUTY CITY ATTORNEY

NCL:eg

c: Manuela Albuquerque

EXHIBIT A

REBUTTAL TO ARGUMENT AGAINST MEASURE B

Measure "B" provides for substantial reforms by providing for majority voting in neighborhood districts and a Mayor elected city-wide not representing a district.

This is the type of system which is used in ten of the fourteen cities in California with a population over 100,000.

Measure "B" is the product of a city-wide Charter Revision Committee and the Government Committee of the Stockton Project. Unlike Measure "C", it was formulated with full and open participation by the general public.

The pay increase is governed by the state law applicable to general law cities and is only slightly more than provided for by Measure "C" but it does not have an automatic escalation provision as does Measure "C".

Unlike Measure "C", Measure "B" provides for homogeneous districts but would provide for real change by providing for a majority election in districts in general election years.

Measure "B" would discourage big spending in city-wide election campaigns. It would avoid the essential unfairness of meaningless district boundaries and election of candidates who cannot get a majority vote in their own districts.

Measure "B" is legally sound and does not violate the Voting Rights Act. Measure "C", with its arbitrarily drawn districts and provision for city-wide rejection of successful candidates in district primaries, is defective and certain to be challenged in Court.

Avoid further embarrassment and costly delay. Vote for MEASURE "B" which is legally sound. It brings needed and substantial reform with fairness to all.

s/ Howard L. Seligman
s/ William Biddick
s/ Judy M. Alva
s/ Dario L. Marengo
s/ Doris Backwith

ARGUMENT IN FAVOR OF MEASURE C

Measure C offers the best hope for commonsense change in the system of election of city council members.

Measure C will make city council members accountable to the city as a whole, to all citizens of Stockton.

In California, there are 444 incorporated cities. Only 15 of those cities, large or small, have district-only elections, have district-only accountability. District-only accountability has not worked for the City of Stockton. It is time for a change.

Measure C would also limit council members to two terms in office, ridding the city of "Career Politicians" and provide a fresh source of new ideas.

Measure C would further combine municipal with state and federal elections to allow for higher voter turnout and less election expense to you, the taxpayer.

We urge you to vote for a positive, commonsense change, a change that will make city government responsive to all of us. We urge you to vote for Measure C.

CITIZENS FOR STOCKTON

s/ Ronald M. Stein
s/ Dean F. Andel
s/ Tony Gutierrez
s/ Judith Williams
s/ Robert W. Foy

ARGUMENT AGAINST MEASURE C

Measure "C" takes away the rights of voters in neighborhoods to elect their own representatives.

Measure "C" does away with identifiable neighborhoods with common interest.

Measure "C" allows voters outside of each neighborhood to determine the representative to be elected from within each neighborhood.

Measure "C" will increase campaign costs substantially.

Measure "C" makes it easier for the "moneyed special interests" to control the outcome of each election.

Measure "C" makes it easier to produce elected officials accountable to the special interests at the expense of the general public.

Measure "C" will create community division and community confrontation. By reducing the Council from 9 to 5 district members, Measure "C" violates the Federal Voting Rights Act, as amended in 1982.

Measure "C" illegally deprives the voters within each neighborhood the right to elect representatives of their own choices.

Measure "C" has the possibility of retaining the present City Council for years to come, while it's legality is being tested in the Courts.

Measure "C" could result in a continuation of what is bad.

To improve the system; to insure change now; to improve the quality of leadership now, do Not vote for "C".

VOTE FOR MEASURE "B"

s/ Howard L. Seligman, Chairperson
Charter Revision Committee
s/ William Biddick, Chairperson
Government Committee, Stockton Project
s/ Doris Backwith
s/ Dario Marengo
s/ Judy M. Alva

REBUTTAL TO ARGUMENT AGAINST MEASURE C

We are very pleased and proud to offer our support as attorneys to the Measure C campaign for Stockton City Council reform.

Measure C, which was put on the ballot by 10,000 registered Stockton voters, was prepared and drafted by the highly regarded law firm of Pillsbury, Madison, and Sutro, recognized in the legal community as experts in elections law.

That firm, which carefully researched all issues involving city, state and federal election laws -- including the Federal Voting Rights Act -- drafted Measure C consistent with all applicable laws.

By complying with these legal requirements, Measure C ensures the right of voters in all neighborhoods to determine who represents them.

Measure C improves the present inadequate district-only election system, which has produced for the past 15 years, a City Council that is an embarrassment to all Stocktonians -- people, like you and I, who live, work and pay taxes in our city.

Measure C provides just the right type of common sense reform of our City Council.

Are you happy with the past 15 years of district-only elections? Do you think the City Council properly represents you? If not, vote for Measure C.

CITIZENS FOR STOCKTON

s/ Tony Gutierrez, Attorney at Law
s/ Robin Appel, Attorney at Law
s/ Richard Konig, Attorney at Law
s/ Gary Christopherson, Attorney at Law
s/ Ron Stein, Attorney at Law