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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

Michael Denny; Contestant. vs. John Arntz, Director of Elections; Dennis Herrera, City Attorney; Defendants.	Case No.:CGC-19-575070 CONTESTANT/APPELLANT REPLY OPPOSING RESPONDENTS' MOTION TO DISMISS APPEAL Appellate Court Case No.: TBD Date Action Filed: April 5, 2019 Hearing Date: Not set

I. BACKGROUND

This is an appeal of the improper grant of a demurrer by a judge who demonstrated bias through a complete rejection of the law of election contests as pronounced by the California Supreme Court. All section references are to the Elections Code.

Counsel and Defendants are desperate to preserve their illegal practice of knowingly and intentionally influencing the outcome of local measure elections using sales pitches paid for with public moneys. In San Francisco, it's a trifecta -- in the ballot statement on the ballot itself, in the allegedly "simplified" digest by the inherently partisan members of the Ballot Simplification Committee, and in the printing and mailing of taxpayer-subsidized "paid" arguments included in the voter information guide at pennies on the dollar. *Cf. Stanson v. Mott* (1976) 17 Cal.3d 206.

Without a judicial decision, Counsel surreptitiously and without authority prepared the order changing the nature of the election contest from a limited civil case to an unlimited civil case. This reclassification was deceitful, without notice, and a gross violation of Appellant's right to due process. These shenanigans are now the pretext to dismiss the

appeal of the grant of a demurrer based on dicta in cases unrelated to an election contest.

Not surprisingly, the Defendants have doubled down on their lawlessness by placing a different Proposition 46 bond measure on the ballot for the November 5, 2019 election.

Undoubtedly it will also have a sales pitch in the City's unique-in-California "simplified" digest masquerading as an impartial analysis as well the City's *de rigueur*, and also unique-in-California, "paid ballot arguments."

The Appellant (Contestant below) requests that the court take judicial notice of all the filings of the argumentatively labeled "San Francisco Affordable Housing Bonds" currently being placed on the November 5, 2019 ballot under Evidence Code sections 451(f), 452(g), 452(h), and 453.

> SAN FRANCISCO AFFORDABLE HOUSING BONDS. To finance the construction, development, acquisition, and preservation of housing affordable to extremely-low, low and middle-income households through programs that will prioritize vulnerable populations such as San Francisco's working families, veterans, seniors, and persons with disabilities; to assist in the acquisition, rehabilitation, and preservation of existing affordable housing to prevent the displacement of residents; to repair and reconstruct distressed and dilapidated public housing developments and their underlying infrastructure; to assist the City's middle-income residents or workers in obtaining. affordable rental or home ownership opportunities including down payment assistance and support for new construction of affordable housing for San Francisco Unified School District and City College of San Francisco employees; and to pay related costs; shall the City and County of San Francisco issue $600,000,000 in general obligation bonds with a duration of up to 30 years from the time of issuance, an estimated average tax rate of $0.019/$100 of assessed property value, and projected average annual revenues of $50,000,000, subject to independent citizen oversight and regular audits?
> http://sfelections.sfgov.org/sites/default/files/Documents/candidates/Nov2019_AffordableHousingBond_Legislative%20Digest.pdf

It's more than obvious that the Defendants and their corresponding officials around the state will not perform their duty to provide honest ballots unless a court puts a stop to their grand-theft-by-ballot scheme.

The court and the Defendants clearly either do not know the procedures for election contests or refuse to abide by them in favor of comfortable procedural technicalities. The

delay in getting to a speedy trial required by the procedure set out by the legislature is not the fault of the Appellant. It's the result of the rote application of procedural niceties that have no place in the legislature's procedural scheme. All of this places an undue burden on the Appellant and violates the right to due process, as defined by the legislative scheme.

II. INTRODUCTION

Despite the Appellant's objections to the trial court's allowance of multiple unlawful alterations of the rules of election contests -- 1) meet and confer, 2) first unlawful demurrer, 3) second unlawful demurrer -- the trial court persisted in the out-of-hand overruling of those objections.

Appellant objects to the use of any Code of Civil Procedure section that is incompatible with the mandatory and swift resolution of the election contest.

To the point, in this instance, the rules of classification for modern civil cases are anathema to and not applicable to election contests.

In the case of *Anderson v. County of Santa Barbara* (1976) 56 Cal.App.3d 780, the court of appeals held (a real holding, unlike the dicta used by the court below and the subject of this appeal) that the modern civil practice of motions for summary judgment do not apply to election contests.

"We conclude that because of an inherent inconsistency between the procedural requirements of Code of Civil Procedure section 437c dealing with summary judgment and the statutory scheme governing election contests, the summary judgment remedy is not available." *Supra*, at 787

Generalia Specialibus Non Derogant

Perhaps one of the most recognized maxims of law involving the construction of

legislative enactments requires that the provisions of a general statute must yield to those of a special one.

> It is a canon of statutory construction that a later statute, general in its terms and not expressly repealing a prior special statute, will ordinarily not affect the special provisions of such earlier statute. In other words, where there are two statutes, the earlier special and the later general — the terms of the general broad enough to include the matter provided for in the special — the fact that the one is special and the other is general creates a presumption that the special is to be considered as remaining an exception to the general, and the general will not be understood as repealing the special, unless a repeal is expressly named, or unless the provisions of the general are manifestly inconsistent with those of the special.
> *Rodgers v. United States* (1902) 185 U.S. 83, 87-88

Here we have not just a single statute, but an entire, integrated procedural scheme in Division 16 on how to conduct election contests. As the court pointed out in *Anderson*: "The procedures for contest of an election (Elec. Code, § 20050 et seq.) are vestiges of those prevailing in 1850." The legislature has had nearly 170 years to change it. It hasn't.

Had the legislature intended that the entire Code of Civil Procedure, or even specific sections, apply, it could have done so explicitly. It hasn't.

Neither the term motion nor move appears anywhere in Division 16. The terms demurrer, answer, and appearance do appear. The term evidence appears, but not Evidence Code. Section 446 of the Code of Civil Procedure appears explicitly, but no other mention of civil procedure.

The Evidence Code is not mentioned, but Section 16602 provides that "In the trial and determination of election contests, the court shall be governed by the rules of law and evidence governing the determination of questions of law and fact, so far as the same may be applicable." This further establishes that the purpose of an election contest is focused on the trial. That's exactly what the Defendants are trying desperately to avoid. Why? Because the law and the facts are against them.

III. ELECTION CONTESTS (Division 16)

The current Elections Code was repealed and reenacted in 1994 (Stats. 1994, Ch. 920, Sec. 2.) as a single, integrated body of law.

In Section 3 of the reenactment, the legislature indicated its intent "that the changes made to the Elections Code, as reorganized by this act, have only technical and nonsubstantive effect." With respect to the reorganized Division 16, the rules for election contests had been unchanged from the previous reorganization of the Elections more than 30 years earlier.

This should not come as a surprise. The law of election contests in every state has remained virtually unchanged from the time California was admitted to the union in 1850. *Cf. The Resolution of Election Disputes* (2008) Barry H. Weinberg, http://www.ifes.org /sites/default/files/ifes_2008_resolution_of_election_disputes_2nd_edition.pdf.

In the succeeding 25 years, the original 62 sections of Division 16 have remained virtually intact. One section (16001) was repealed. Two sections (16204, 16402.5) were added in 2003. Sixteen sections (16400, 16464, 16500, 16501, 16502, 16503, 16520, 16521, 16540, 16700, and 16741 in 1996; 16100, 16101, and 16603 in 2003; and 16401 and 16421 in 2010) were amended.

Cf. Elections Code 16001. "As used in this division, 'elections official' does not include 'registrar of voters.'"

Cf. Elections Code 16204 and 16402.5 are identical, but in different contexts. "An election shall not be set aside on account of eligible voters being denied the right to vote, unless it appears that a sufficient number of voters were denied the right to vote as to change the result."

Compared to the Code of Civil Procedure, the Division 16 of the Elections Code is etched in stone.

Had the legislature wished to "modernize" Division 16 it could have, but chose not to. In the Code of Civil Procedure, the Elections Code is referenced but two times (203 and 416.80), neither of which is relevant to Division 16.

It is not for the courts to "know better" than the legislature and make all manner of

dilatory procedures applicable to election contests.

Division 16 sets out the rules for an election contest. Rules are set out for the parties, the court clerks, and the judges. Through incorporation by reference, Division 18 (Penal Provisions), referenced as "offenses against the elective franchise," the parties could be anyone, circumscribed only by their acts. When the legislature has set the rules, it is not for Counsel or any court to expand the rules to turn an election contest into a general-purpose civil action. Cf: *Enterprise Residents Etc. Committee v. Brennan* (1978) 22 Cal.3d 767 ("no 'nicety of pleading' is required").

The *Anderson* court agreed with the California Supreme Court that an election contest is a special proceeding. *Dorsey v. Barry* (1864) 24 Cal. 449.

In reviewing the history of election contests leading up to its holding, the *Anderson* court cited the holding of *Packard v. Craig* (1896) 114 Cal. 95 that a motion for a new trial may not be made in an election contest as an example.

The Appellant deserves a trial on this election contest. Hundreds of billions of local taxpayer dollars are stake in every county, city, and special district in California. For more than 40 years, despite existing statutes prohibiting it (*Cf.* Section 10403 and Section 9051.), local governing bodies have funded their existence and their pet projects by flouting the law and hoodwinking the unsuspecting voting public trained to believe that its public officials follow the law. *Cf.* California Election Data Archive (CEDA) at California State University, Sacramento. The People of California have a right to fair and impartial elections. The powers-that-be have the power to thwart that right in ways that sales-pitch-battered voters have little understanding of.

IV. CONCLUSION

Counsel and the trial court have already abused the election contest process to their mutual advantage. This is just one more abuse.

"Nowhere in the time limit is there leeway for the pretrial skirmishing and motion practice that has become commonplace in today's traditional lawsuit." *Anderson*, *supra*.

The motion to dismiss should be denied.

The Appellant also prays that this court hold that the classification scheme provisions of the Code of Civil Procedure is incompatible with and not applicable to an election contest.

The Appellant also prays that this court sanction Counsel for their abuse of due process in *sua sponte* reclassifying this contest.

Dated: August 7, 2019

Respectfully submitted,

By: _____
Michael Denny - Pro-Per