

COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT, DIVISION TWO

MICHAEL DENNY

Case No. A160234

Contestant

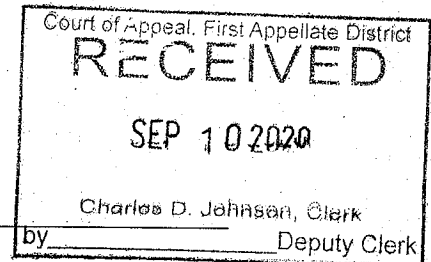
San Francisco County Superior

Court No. CPF-19-516970

vs

JOHN ARNTZ, Director of Elections;
DENNIS HERRERA, City Attorney,

Defendants/Respondents.



**CONTESTANT'S RESPONSE TO RESPONDENTS' NOTICE OF MOTION
AND MOTION FOR PREFERENCE**

The Honorable Ethan P. Schulman

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RESPONSE TO MOTION FOR PREFERENCE

CASE NO. A160234

Contestant objects to this court granting the motion for preference.

Background

Contestant is NOT a petitioner. This is an appeal of an election contest special proceeding and not of a petition for a writ of mandate.

Counsel has, from the first encounters regarding elections, mendaciously asserted, contrary to the Contestant's Statement of Contest, that Contestant's action is not an election contest special proceeding. Counsel can't even be honest in its motion filing, still trying to conflate an election contest special proceeding with a petition for a writ of mandate. Counsel's and Defendants single-minded purpose to avoid the possibility of a decision based on the law of election contest special proceedings oozes from every move they make.

MEMORANDUM OF POINTS AND AUTHORITIES

1. Laches

Counsel has waited until political pressure, rather than jurisprudence, can be leveraged to justify special privilege. It's been months since the notice of appeal, which was the direct result of Counsel's religious war against due process at the trial court.

This was not the City's first go at building a slippery and slimy homeless-affordable-housing industrial complex. Hundreds of millions of dollars from prior bonds have already been wasted with nothing to show for it but the establishment of bureaucracy and the transfer of the People's money to "nonprofit" agencies who live high on the hog without a smidgen of accountability for results. The City will be the last to admit that its own policies have created the purported crisis. Invoking the never-let-a-good-crisis-go-to-waste playbook of Chicago politics, the City doubled-down by creating its own purported "pandemic" crisis.

Contestant used all the means that he could muster to get the presiding judge of the San Francisco Superior Court to follow the rules of election contest special proceedings. It was to no avail. Counsel, with the complicity of the trial court judge who was peremptorily challenged, made sure to turn the election contest special proceedings into its own lawless sideshow, complete with a fallacious ex parte hearing and failure to notice Contestant of the true purpose of the hearing.

The trial court judge should have made a decision on the election contest special proceeding before the end of January 2020. Neither he nor Counsel would have any of that. Due process? Those words appear to be foreign to Superior Court of San Francisco.

If the situation had been reversed and Contestant were asking for preference, a lowly People would have been dismissed out of hand, just as Contestant has been dismissed out of hand at every other step in Contestant's attempt to assert his fundamental right to both procedural and substantive due process.

2. Unclean Hands

When it suited Counsel, it ran out the clock on the petition for a writ of mandate. That case, which is not before this court, was made moot by the election of November 5, 2019.

The illustrious trial judge in the petition case, when it was brought to his attention about election matters having precedence on the court's calendar famously said, "It doesn't say must."

So, if the Vehicle Code says that one of the People "shall" register their motor vehicle, I guess the People can simply ignore the legislative command, along with millions of others scattered throughout the volumes and volumes of California codes.

Must the legislature now amend every statute containing the word "shall" and replace it with "must?"

Defendants' and Counsel, instead of fighting to keep its federal reserve note printing press going, could have done the honorable thing and followed all the rules for constructing a ballot statement and conducting an honest election. Defendants' and Counsel have persisted and doubled down by placing dishonest ballot statements before the voters at the March 3, 2020 election day and, as we write this, at the November 3, 2020 election day.

3. Request for Judicial Notice

Is anything more absurd than that "news articles ... are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy?" In the era of a politicized press, all reporting is influenced by the bias of either the governmental agency providing the purported facts, the reporter's political bias, and, if all else fails, the institutional bias of the editors and publishers.

If news articles are subject to judicial notice, then the corrupt press runs the country. That's probably true even without judicial notice elevating the stature of the press to somewhere above the used car salesman or the lawyer.

On the other hand, stopping corruption is never an urgency matter. After the federal indictments, did the City stop all public expenditures for projects using bond money. Of course not. Once it's wasted or spent, it's a never-to-be-appointed judge that would actually order that the money be clawed back or disgorged. So, spend, spend, spend. The faster the better. The courts will never provide true justice.

Reports of public agencies filled with political appointees are equally suspect as to the truth of the matter. As long as there's money to be extracted and bureaucracies to build, it's all about the money. In case you haven't noticed, the People's trust in government agencies has fallen off the cliff into the abyss in direct correlation to the rise of corruption.

The press is even less trusted than the government, if that is possible, according to a recent CBS News.

<http://twitter.com/FrankLuntz/status/1302984973520044037>.

4. Corruption

The corruption in the City is endemic systemic. Other people's money, taxpayer money, feeds the corruption. The public works director is under federal indictment. That's the department that spends bond money. This court should be able to take judicial notice of that under the "common knowledge" rule. Evidence Code 452(g)

The People of the City would benefit from as long a delay as possible as more dominoes fall in the corruption probe.

Adam Andrzejewski, founder of OpenTheBooks.com watchdog and erstwhile Illinois gubernatorial candidate, knows what corruption looks like. He's from Chicago. Have you seen his recent assessment of the City's financial dystopia?

<http://www.forbes.com/sites/adamandrzejewski/2020/09/01/why-san-francisco-is-in-trouble--19000-highly-compensated-city-employees-earned-150000-in-pay--perks/>

5. Due Process

Due process is the law of the land. The implications of that short, yet powerful statement should be the guide for all departments of government, but the burden falls most heavily on the judicial department, the place of last resort.

One basic tenet of due process is that you don't change the rules after the game has started. Favoring Counsel by granting the motion is just the kind of privileged attitude endemic in public employees that puts this court in the position of violating the judicial canons, especially the appearance of bias or favoritism for one party over another.

Contestant, at every turn, has been denied due process, by Counsel and by the trial court. Winning at all costs is the standard operating procedure of the City and the judges of the superior court that receive compensation from the City. In the San Francisco Superior Court, that's all of them. This court should not accede to political pressure. Doing so would demonstrate bias and further violate Contestant's right to due process.

Conclusion

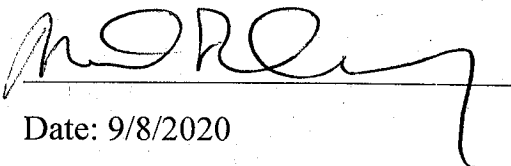
Granting this motion would implicate this court in the politics of the day. The City will never be without a crisis. The corruption will likely outlast the current crises. The purported watchdogs, whose salaries the People pay, are either asleep at the wheel or complicit or both.

Staying the normal course, i.e., not responding to the crisis of the day, which is and always will be political, would demonstrate that this court is, at least in this instance, above the external political influences of those who control the expenditure of the People's money.

This court should deny Counsel's motion for preference and let this appeal proceed along the normal course, just as every other appeal brought before it.

By

Michael F Denny – In Pro Per



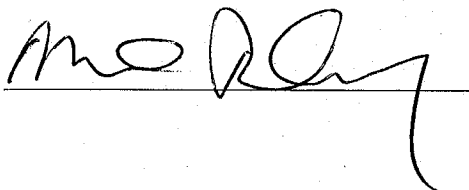
Date: 9/8/2020

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief has been prepared using proportionately double-spaced 13 point Times New Roman typeface. According to the "Word Count" feature in my Microsoft Word for Windows software, this brief contains 1,380 words.

I declare under penalty of perjury that this Certificate of Compliance is true and correct and that this declaration was executed on September 8, 2020.

By Michael Denny
In Pro Per



PROOF OF SERVICE

I, MICHAEL DENNY, declare as follows:

I am a citizen of the United States, over the age of eighteen years and a party to the above-entitled action.

On September 8th, 2020, I served the following document.

**CONTESTANT'S RESPONSE TO RESPONDENTS' NOTICE OF MOTION
AND MOTION FOR PREFERENCE**

On the following persons at the locations specified:

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Attorney for Defendants

Hon. Ethan P. Schulman
San Francisco County Superior Court
400 McAllister Street
Dept 302
San Francisco, CA 94102
[VIA PERSONAL SERVICE ONLY]
(Delivered September 10, 2020)

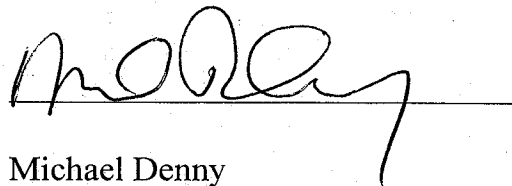
In the manner indicated below:

BY ELECTRONIC MAIL: Based on an agreement of the parties, I caused the document above to be sent to the person above at the electronic service address above. Such document was transmitted via electronic mail from the electronic mail address of Mike@Dennz.com in portable document format.

BY PERSONAL SERVICE: I delivered true and sealed copies of the above document in an addressed envelope and caused said envelope to be delivered by hand at the above location. – Hon. Ethan P. Schulman Only.

I declare under penalty of perjury, pursuant to the laws of the State of California that the forgoing is true and correct.

Executed September 8, 2020, at San Francisco, CA.



Michael Denny