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CITY OF EAST PALO ALTO

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IN THE DISTRICT COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

GERTRUDE WILKS, et al.,)
Appellants and Contestants,)
vs.)
BARBARA A. MOUTON, et al.,)
Appellees and Defendants.)

No. A024878

APPELLANTS' OPENING BRIEF

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13 Appellants and Contestants,)
14 vs.)
15 BARBARA A. MOUTON, et al.,) APPELLANTS' OPENING BRIEF
16 Appellees and Defendants.)
17

18 Preliminary Statement

19 For the June 7, 1983 incorporation election in East Palo
20 Alto, six proponents of incorporation used an entirely new method
21 of absentee ballot campaigning, previously unknown or at least
22 unrecorded in California election history.

23 They were successful. Out of over 3500 ballots cast,
24 94 absentee ballots obtained personally by these individuals
25 changed a 79 vote defeat at the polls into a 15 vote victory.

26 The procedures to obtain those 94 absentee ballots, how-
27 ever, squarely violate California Constitutional or statutory
28 provisions designed to protect the secrecy and integrity of the

1 absentee ballot process. These provisions are Article II, Sec-
2 tion 7 of the California Constitution which states that "voting
3 shall be secret" and Elections Code Sections 1007, 1009, 1013,
4 and 1015.

6 I.

7 Statement of the Case

8 Appellants, electors in East Palo Alto, contest the
9 election to incorporate their community which was held on June 7,
10 1983. The ballot measure for incorporation passed by 15 votes
11 out of over 3500 ballots cast.

12 Absentee ballots were the determining factor.

13 Votes cast in precinct polling places on election day
14 opposed incorporation, 1678 to 1599. The absentee ballot count,
15 however, was 183 to 89 for incorporation, the 2 to 1, 94-vote
16 margin thus turning a 79 vote defeat into a 15 vote victory. 1/
17 (Finding of Fact 32, C.T. 497)

18 Historically, the absentee ballot process in California
19 was limited to those who had bona fide reasons to be away from
20 home on election day or who were disabled. In 1978, however, the
21 California legislature broadened the law to permit any person to
22 vote by absentee ballot who chose to do so.

23 In April, 1983, while the East Palo Alto election was
24 pending, the Mayor of San Francisco successfully defeated a
25

26 1/ At trial this margin was reduced to 13 votes by virtue of
27 8 ballots, 5 for incorporation and 3 against, which the trial
28 court invalidated on grounds of non-domicile or residency.
(Conclusions of Law 6, 7 and 15. C.T. 503; 505)

1 recall effort, relying to a substantial degree on a massive
2 absentee ballot campaign.

3 The San Francisco election was observed with consid-
4 erable interest by Mrs. Carmeleit Oakes, chairperson of EPACCI
5 ("East Palo Alto Citizens Against Incorporation"), a committee of
6 people in East Palo Alto who favored incorporation of that com-
7 munity of approximately 18,000 people, predominantly minority and
8 predominantly below the poverty level, lying at the southerly tip
9 of San Mateo County. On the basis of the San Francisco result,
10 Mrs. Oakes decided that EPACCI should develop an absentee ballot
11 strategy. (R.T. 512, ll. 4-11)

12 Mrs. Oakes' group had lost an incorporation election on
13 April 13, 1982 by 21 votes but had been successful in getting the
14 San Mateo Local Agency Formation Commission ("LAFCO") to waive
15 the two year delay provision of Section 35264 of the Government
16 Code and call a second election for June 7, 1983. The County of
17 San Mateo strongly favored incorporation and successfully moved
18 to be named in this action as a party defendant on the ground
19 that if the incorporation was unsuccessful the County would be
20 required to administer the area. (C.T. 12-13)

21 At least 94 of the 272 absentee ballots cast, almost
22 precisely the margin of difference, were voted through the
23 efforts of five leaders of EPACCI. These five EPACCI leaders,
24 Mrs. Oakes, Joseph Goodwill, Brad Davis, Frank Omawale
25 Satterwhite and James Blakey, solicited voters to sign absentee
26 ballot applications prepared by EPACCI, which were then taken or
27 mailed to the County Clerk's office. (C.T. 489, 491-494)

1 In 15 contested 2/ instances , Goodwill's business
2 address, 1493 E. Bayshore, or residence address, 710 Runnymede,
3 was written in on the absentee ballot application as the address
4 of the voter to whom the County Clerk should mail the absentee
5 ballot materials. The Clerk asked the District Attorney for an
6 opinion on the mailing to Goodwill's business address, and there-
7 after mailed the 15 contested ballots to Goodwill. (R.T. 3127,
8 1. 18 - 3129, 1. 20) (Three of the voters involved, Roy Lee
9 Ashford, Chester Fontenot and Anitra Gilbert, testified that they
10 never received the punch card ballot, never saw such a ballot and
11 did not punch out the ballots which were ultimately cast in their
12 names. R.T. 1674, 11. 4-23; 1510, 11. 12-28; R.T. 264,
13 11. 12-18; 267, 11. 6-18; R.T. 1550, 1. 12-1551, 1. 2) twelve of
14 these ballots were returned with Goodwill's address rather than
15 the voter's as required by Election's Code §1009, as well as
16 3 others bearing wrong addresses, a total of 15. (R.T. 3131,
17 11. 10-23)

18 The completed absentee ballot applications were taken to
19 EPACCI campaign headquarters at 321 Bell Street, East Palo Alto,
20 copied, and the originals either mailed or taken personally to
21 the County Clerk's office in Redwood City by another EPACCI
22 worker, Onyango Bashir. (Finding of Fact 3; C.T. 489)

23 Oakes and Goodwill then followed a procedure whereby
24 they would wait until they believed that the Clerk had received
25 and returned to the voters the actual absentee ballot

27
28 2/ One voter who would have been in this category has already
had his vote invalidated--Joseph Minter.

1 materials. (C.T. 491-492) They would then go to the voters'
2 homes, often two or three times, to "instruct" or "assist" the
3 voter in the casting of his or her ballot. Confronted by
4 Goodwill or Oakes on their doorstep, many voters would get out
5 the absentee ballot materials and either permit the campaign
6 worker to punch out all or part of the ballot, or the voter would
7 punch out his or her own ballot in the campaign worker's presence
8 (see pp. 10-33 infra).

9 Goodwill alone obtained 79 signed ballot envelopes
10 (C.T. 491), 30 which he delivered to EPACCI headquarters
11 (C.T. 491) and 49 which he mailed to the Clerk's office
12 (C.T. 492).

13 At a senior citizens federally subsidized housing center
14 in East Palo Alto, Runnymede Gardens, the manager, Brad Davis
15 punched out the ballots of 2 elderly voters (C.T. 494) and at
16 Davis' request, city council candidate Omawale Satterwhite came
17 to the senior housing center and there, by his own testimony at a
18 public meeting punched out the ballots for 4 voters and assisted
19 2 or more others in so doing. (C.T. 493-494)

20 In a number of instances, with ballots handled either by
21 Oakes or Goodwill, the voter testified that he or she had never
22 seen a ballot card nor punched one out, or that the campaign
23 worker had punched the ballot in a manner unbeknownst to the
24 voter. (See Appendix A.) Only in this last category were there
25 significant differences in testimony between Oakes, Goodwill and
26 the voters involved.

27 The trial court found in each of these instances that no
28 fraud had occurred, ruling that each of these ballots was cast

1 with the voter's "understanding and consent" and reflected the
2 voter's "decision" or "wishes." (Findings of Fact 10 and 15,
3 C.T. 491-493)

4 Forty-six of the absentee ballots so obtained by
5 Goodwill, Oakes, Satterwhite and Davis, including a number of
6 those they had punched out or assisted the voter in punching out,
7 were delivered by Goodwill (30), Oakes (5) and Davis (11) to a
8 vacant desk at EPACCI campaign headquarters at 321 Bell Street
9 where they remained until the next weekday afternoon pickup.
10 (C.T. 492-496) This desk was characterized as belonging to
11 everybody by one of the EPACCI witnesses, (R.T. 631, ll. 16-21)
12 indeed there were four separate organizations which used the
13 building and had access to the desk during this period, including
14 the East Palo Alto Chamber of Commerce of which Goodwill was
15 president. (R.T. 1505, ll. 1-5; 1506, l. 1 - 1507, l. 18) In
16 many cases these ballots passed from the voter through the hands
17 of two or three different campaign workers before being left for
18 an indeterminate time on the desk. (R.T. 807, ll. 12-26)

19 From this "everybody" desk, 46 absentee ballots were
20 picked up and hand delivered to the County Clerk's office on
21 weekday afternoons between May 9 and May 24, 1983, by a sixth
22 EPACCI leader, Onyango Bashir. (C.T. 495)

23 When Mr. Bashir deposited these 46 ballots in the ballot
24 box at the Clerk's office between May 9 and May 24, he was
25 observed to do so without objection by the deputy clerks present
26 in the room, (C.T. 495; R.T. 828, ll. 4-9) despite the require-
27 ment of Section 1013 of the Elections Code requiring that such
28

1 ballots be delivered by the individual voter and not by a third
2 party.

3 Mr. Bashir and Ms. Oakes were deputy county clerks for
4 the purpose of registering voters. (C.T. 496-497) Prior to and
5 as of the date of the election, they had not been authorized by
6 the Clerk to perform any function other than registering
7 voters. (C.T. 496) Messrs. Goodwill, Blakey, Satterwhite and
8 Davis were not registrars. (C.T. 497)

9 Sixteen ballots were returned to the clerk bearing a
10 different address than the voter's address as shown on his or her
11 registration affidavit in violation of Elections Code §1009.
12 (Exs. 70, 71, 16, 116, 73, 74, 24, 83, 82, 93, 76, 26, 25, 32,
13 79, 57)

14 On these facts, Contestants challenged seven categories
15 of ballots:

- 16 1. the absentee ballots which were not cast
17 in secret and were punched out by campaign
workers,
- 18 2. the 46 ballots hand-delivered to the
19 Clerk by campaign workers in violation of
Elections Code §1013,
- 20 3. ballots challenged on residency grounds,
- 21 4. the 15 ballots mailed to Goodwill rather
22 than the voter,
- 23 5. the 16 ballots which were returned with a
24 different address than the voter's as required
by §1009,
- 25 6. 1 ballot not signed by the voter as
required by §1009, and
- 26 7. 1 ballot returned by the voter's sister
27 in violation of §1013.

1 II.

2 The Trial Court's Judgment
3 and Conclusions of Law

4 Save for 8 ballots invalidated on residency grounds, the
5 trial court denied all of the foregoing categories of Contest-
6 ant's challenges, and in its conclusions of law reached three
7 unique conclusions of first impression:

8 FIRST, that it is permissible for
9 campaign workers and candidates to go unso-
10 licited into voters' homes, invite the voters
11 to produce their ballots and actually "punch
12 out" those absentee ballots themselves;

13 SECOND, that Elections Code §1013, as
14 interpreted to permit mailing by third parties
15 but requiring hand delivery in person by the
16 voters themselves, was unconstitutional; and

17 THIRD, that the two most recent
18 California appellate decisions upholding the
19 validity of §1013, Fair v. Hernandez, 138
20 Cal.App.3d 578 (1982) and Beatie v. Davila,
21 132 Cal.App.3d 424 (1982) were in error and
22 should be disregarded;

23 There are other grounds of appeal argued herein, but the
24 foregoing conclusions of law by the trial court, if allowed to
25 stand, are of such immense import to future elections in
26 California that Appellants believe they are entitled to special
27 emphasis.

1 III.

2 Argument

3 Contestants challenge seven categories of ballots:

4 (1) Absentee ballots where the secrecy of the ballots
5 was compromised. This breaks down into 17 ballots not punched
6 out by the voters and 30 ballots where Goodwill or Satterwhite
7 went to the voter and assisted them.

8 (2) 46 absentee ballots hand-delivered to the Clerk by
9 campaign workers in violation of Elections Code §1013.

10 (3) 17 ballots cast by voters where the sole evidence
11 at trial showed they did not reside within East Palo Alto during
12 the 29 day period prior to the election.

13 (4) 15 absentee ballots mailed to Goodwill rather than
14 to the voter, in violation of Elections Code §1007.

15 (5) 16 ballots returned in ballot envelopes bearing a
16 residence address different from that on the affidavit of regis-
17 tration, in violation of Elections Code §1009.

18 (6) 1 absentee ballot, that of Rosalind Simon, which
19 was not signed by the voter, in violation of Elections Code
20 §1009.

21 (7) 1 absentee ballot, that of Lanette Cody, hand-
22 delivered to the polls by a third party, in violation of Elec-
23 tions Code §1013.

24 In categories 2, 4, 5, 6 and 7 Appellants further con-
25 tend that the San Mateo County election officials were guilty of
26 malconduct sufficient to change the election result in accepting
27 the ballots in question.

1 A. The Non-Secret Ballots Should Be Found to Have
2 Been Illegally Cast.

3 There are 17 ballots where the testimony is unequivocal
4 and uncontested that the ballot was not punched out by the voter.

5 These ballots were those of:

	<u>Voter</u>	<u>Puncher</u>	<u>Transcript</u>	<u>Exhibit</u>
7	1. Lillie Howard	Goodwill	(1089, 11.21-26)	65
8	2. James Howard	Goodwill	(1092, 11.23-25; 1093, 11.6-7)	66
9	3. Roy Lee Ashford	Goodwill	(1104, 11.1-6)	70
10	4. Alice Harvey	Goodwill	(1550, 1.12- 1551, 1.2)	148
11	5. Robbie Lee Shephard	Goodwill	(1778, 11.3-26; 1779, 11.12-18)	131
12	6. Anitra Gilbert	Goodwill/Blakey	(125, 11.12-13)	10
13	7. Mary (Owens) White	Oakes	(650, 11.9-24)	17
14	8. Grant White	Oakes	(651, 11.23-25)	18
15	9. Geraldine Gadlin	Oakes	(651, 11.17-22; 550, 1.17)	27
16	10. Calvin Dixon	Oakes	(651, 11.12-14; 534, 11.4-5)	13
17	11. Matielda Dixon	Oakes	(651, 11.15-16)	14
18	12. Rosa Lee Ahern	Satterwhite	(871, 11.21-22)	45
19	13. Ann Brandon	Satterwhite	(871, 11.21-22)	50
20	14. Betty Brandon	Satterwhite	(871, 11.21-22)	51
21	15. Luberta Brookter	Satterwhite	(871, 11.21-22)	49
22	16. Mary Hall	Davis	(688, 11.20-23)	35
23	17. James Fields	Davis	(687, 11.11-24)	34

24 There were 4 additional ballots where Goodwill testified
25 he might have punched out the voter's ballot.

26 These were:

27	18. M.C. Cherry	(R.T. 1345, 11. 1-2)
28	19. Chester Fontenot	(R.T. 1341, 11. 11-12)
29	20. Bernice Smith	(R.T. 1256, 11. 7-8)
30	21. Lorine Ross	(R.T. 1270, 11. 19-20)

31 There were 28 additional instances, by Goodwill's or
32 Satterwhite's own testimony, where one or the other either
33 assisted the voter to punch out his ballot or was present in the
34 voter's home while the ballot was punched out. (See Appendix B

1 hereto.)

2 In the case of 9 ballots, all handled by Goodwill, the
3 voter testified that he or she had never seen a ballot card nor
4 punched one out. In 2 of these cases, those of Alice Harvey and
5 Anitra Gilbert, the voter's testimony was not challenged by
6 Goodwill or any other witness. In 2 cases, those of M.C. Cherry
7 and Chester Fontenot, Goodwill "couldn't remember" whether he or
8 the voter had punched out the ballot. In the remaining 5 cases,
9 those of Willie Pearl Cherry, Roy Lee Ashford, Aron Strong,
10 Kenneth Lee Strong and Freddie Strong, the voter's testimony was
11 denied by Goodwill.

12 The manner in which Goodwill, Oakes, Satterwhite, Davis
13 and Blakey obtained the 17 clearly non-secret ballots is illumi-
14 nating.

15
16 Joseph Goodwill

17 Goodwill by his own testimony visited the homes of
18 46 voters to assist them with their ballots. A list of these
19 voters is attached as Appendix C hereto.

20 In the best light possible, the trial court described
21 that procedure as follows with respect to Goodwill:

22 "Joseph Goodwill distributed approximately 79
23 absentee ballot applications When
24 enough time had elapsed for the Clerk to have
25 processed the application and mailed an absen-
26 tee ballot to the voter, Mr. Goodwill got back
27 in touch with the voter and asked whether the
28 absentee ballot had been received, and whether
the voter had completed and returned the
absentee ballot to the County Clerk. In some
instances, because of age, physical disability
or lack of familiarity with the computer card,
the voter asked Mr. Goodwill for help complet-
ing the absentee ballot." (Findings 9 and 10,

1 C.T. 491)

2 However, with regard to the ballot of Roy Lee Ashford,
3 Goodwill had the following to say:

4 "Yes, I punched it out, his computer card at
5 his request not knowing that he . . . I know
6 he didn't have that much education at that
7 time . . ." (R.T. 1104, 11. 1-3)

8 Moreover, the testimony of one of the "assisted" voters,
9 Alice Harvey, is illuminating. She didn't know Goodwill's first
10 name (R.T. 1546, 1. 6). She had been given an absentee ballot
11 form by Goodwill at a bar across from his office (R.T. 1546,
12 11. 11-15). She filled the form out in his office (R.T. 1547,
13 11. 10-12). When the first absentee ballot came, she threw it
14 away (R.T. 1547, 1. 20). He asked her to sign a second applica-
15 tion which she did (R.T. 1548, 11. 12-18). When the second
16 absentee ballot came she put it in a china cabinet, and took it
17 down when Goodwill came to her house (R.T. 1549, 1. 20).

18 Ms. Harvey's unchallenged testimony then proceeds:

19 "Q And -- okay. After you received your
20 second ballot envelope, Mr. Goodwill came
21 to your house?

22 A Yeah, I seen him again, and he said, Did
23 it come, and he said, I'll come and pick
24 it up, and I said, Okay.

25 Q When Mr. Goodwill came over to see you
26 that time, had you opened the ballot
27 envelope?

28 A Huh-uh.

Q What did you do with the ballot envelope
once Mr. Goodwill showed up?

A I signed it and gave it to him.

Q What did you sign?

A Some piece of paper, an envelope or

1 something. I don't know what it was. I
2 just signed it and gave it to him.

3 Q Let me show you what's been marked as
4 Exhibit 148-A, which is the outside of
5 the absentee voter envelope. Do you
6 recognize your handwriting on that
7 document?

8 A Yep.

9 Q Is the entire document in your
10 handwriting?

11 A Yes, I guess so.

12 Q When you say that you signed the envelope
13 and gave it to Mr. Goodwill, did you do
14 anything else with regard to the
15 materials that were in that package other
16 than sign the envelope?

17 A No.

18 Q Did you -- did you open the package to
19 see what was in there?

20 A It was a white paper in there, I think
21 white, something with holes in it. I
22 don't know what it is. He said, just
23 sign it, and I don't have to do any-
24 thing. I just sign it and gave it to
25 him.

26 Q So, he said, just sign it, and you
27 wouldn't have to do anything?

28 A Yeah.

Q So, you just signed it and gave it to
him?

A Yeah.

Q And then you gave all that materials to
Mr. Goodwill?

A Yep.

Q And is that the last you saw of those
materials?

A Uh-huh."

(R.T. 1549, l. 22 - 1551, l. 2)

1 Ms. Harvey's unchallenged testimony is remarkably simi-
2 lar to that of other voters who testified that they didn't punch
3 out ballot cards and in fact never saw such cards.

4 For example, Ms. Anitra Gilbert, age 20 (R.T. 115,
5 1. 23) registered to vote on May 26, 1983 (R.T. 120, 11. 3-5).
6 She wanted to vote for her friend and barber, James Blakey
7 (R.T. 127, 1. 16) and for incorporation (R.T. 127, 1. 19). At
8 Blakey's barber shop she signed an absentee ballot application
9 with her residence address (R.T. 120, 11. 11-13), but at the time
10 she signed and gave the application back to Blakey, the
11 "1493 E. Bayshore" address (Goodwill's business address) to which
12 the ballot was to be mailed had not been inserted (R.T. 120,
13 1. 25 - 121, 1. 4).

14 She never received an absentee ballot in the mail
15 (R.T. 122, 11. 14-16); never saw the punch card ballot until her
16 deposition (R.T. 124, 1. 24 - 125, 1. 11); never punched out any
17 holes in the ballot (R.T. 125, 11. 12-13) but did sign a ballot
18 envelope for Blakey. Her testimony is remarkably similar to that
19 of Alice Harvey's:

20 Q What did Mr. Blakey tell you when you had
21 signed the envelope?

22 A I asked him if that was all I had to do,
and he said "Yes," and I left.

23 Q And you understood when you signed it,
24 then that you would not have to go down
to the church and vote election day?

25 A Yes.

26 Q That you had already voted?

27 A Yes.

28 Q But you didn't poke a hole in any cards,

1 you didn't put a card in the envelope?

2 A No, I did not.

3 Q Was there anything in the envelope at the
4 time you signed it?

5 A I don't know. I didn't look inside. I
6 just signed it.

7 Q Was the envelope sealed when you signed
8 it?

9 A No. No, it was not.

10 Q And you were relying on Mr. Blakey's
11 statement to you that by signing these
12 two documents, that was all you had to do
13 to vote?

14 A Yes.

15 (R.T. 126, l. 12 - 127, l. 8)

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17

Carmeleit Oakes

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With respect to Mrs. Oakes, the chairperson for the pro-incorporation committee, the trial court, again putting the most favorable light on the testimony, found

"She visited those five voters after enough time had elapsed for them to have received their absentee ballots. She was invited into their homes. She offered to help them with their absentee ballots. They all accepted her offer. All five people discussed their votes with her and voluntarily showed their ballot materials to her She helped four voters complete their absentee ballots in the privacy of their own homes The four voters were Grant White, Mary White, Matilda Dixon and Calvin Dixon. The fifth voter, who completed her own absentee ballot, was Geraldine Gadlin." (Finding of Fact 15,

1 C.T. 492-493) 3/

2 With respect to voters Calvin and Matielda Dixon,
3 Mrs. Oakes testified:

4 "Q So when you went in the second time, what
5 happened when you went into the house?

6 A They greeted me. They said, "Oh, I
7 remember you. You did take in my request
8 for the absentee ballots. You know, I
9 have it."

10 I said, "Well, I thought you would have
11 it." You know, they didn't know I was
12 coming.

13 I said, "I thought you would have it,
14 because I know I received mine."

15 Q Mm-hmm.

16 A "And so if you need some instructions, I
17 will be happy to help you."

18 Q You would be glad to help them out?

19 A Yes.

20 Q So what did they do then?

21 A They got their ballots. They got their
22 ballots out and --" (emphasis added,
23 R.T. 523, 11. 8-24)

24 Mrs. Oakes actively campaigned for her views while
25 punching out Mr. and Mrs. Dixons' ballots.

26 "Q So in terms of handling the ballot, did
27 you start with the measure --

28 A Yes.

Q -- or did you start with --

A Yes, and I can tell you why. That --

3/ The trial court was clearly in error in one particular.
Mrs. Oakes helped five voters, not four. Mrs. Oakes own
testimony conceded that she had punched out at least part of
Mrs. Gadlin's ballot. (R.T. 550, 11. 7-10)

1 that's the most important. We simply had
2 to create a city. After all, understand,
3 now, that -- and in talking with these
4 people, I said, you know, I've done a lot
5 of walking, a lot of walking for incorpo-
6 ration, but, really, I wasn't walking for
7 myself, I was walking for unborn genera-
8 tions.

9 I say, "You see these babies here, you
10 see your baby, this baby," I said, "They
11 are the ones who are going to profit when
12 we become a city." (R.T. 530, l. 19 -
13 531, l. 15.)

14 Both Mr. and Mrs. Dixon confirmed part of Mrs. Oakes'
15 testimony but differed markedly in several particulars, as did
16 two other "assisted" voters, Mary Owens White and Grant White.

17 Calvin Dixon

18 "A A lady -- a colored lady, I don't know
19 what her name was, she -- got the
20 absentee ballots in the mail, and she
21 come, she said she was a registered
22 voter, and she first asked us did we get
23 the thing, and I said, "No," I said we
24 got things with the polls. She said,
25 "You sure you didn't get it?" I said,
26 "To tell you the truth, I ain't open it,"
27 so I got up and got it and that absentee
28 thing was in there. So I signed it."
(R.T. 161, ll. 13-20.)

* * *

29 "Q And did you poke the hole in the ballot
30 for incorporation or did she do it?

31 A She punched the hole. I said -- she
32 said, "You going to vote for incorpora-
33 tion or not?" I said, "Incorporation."
34 (R.T. 163, ll. 6-26.)

35 Q So she punched the hole for you?

36 A She punched the hole. (R.T. 163,
37 ll. 18-23)

1 A No, I never saw a card like that.
2 Q Well, I want you to think back as
3 carefully as you can.
4 A Think back.
5 Q Think of when your husband was casting
6 his vote.
7 A Well, I don't know what he cast. You
8 know. I don't know whether he saw a card
9 like that or not, but I didn't.
10 (R.T. 179, l. 20 - 180, l. 6)

11 The testimony of Grant White and Mary Owens White is
12 shocking.

13 Mary Owens White

14 Q Now, Mrs. White, after you made that
15 application did an envelope come in the
16 mail that contained a set of papers, to
17 your house, addressed to you?
18 A Yes.
19 Q And after it came to your house what
20 happened? Did a lady come to your house?
21 A Yes, a lady came. Mrs. Oakes come to the
22 house.
23 Q Mrs. Oakes. Can you describe what
24 happened when she came? Did she ring
25 your doorbell?
26 A Yes, she rang the doorbell, come in and I
27 asked her in, and she said she come to --
28 she want to fix up the absentee ballots;
did I get one, and my husband. And I
told her yes. And I got 'em.
Q You went and got them from somewhere in
the house?
A Yes.
Q Now, what happened then?
A I give them to her.

1 Q You gave them to her. Yours and your
2 husband's.

3 A Mm-hmm.

4 Q Was your husband there at the time?

5 A Yes, he was there.

6 Q And were you sitting in your living room
7 at a table?

8 A Yes.

9 Q And when you gave the two ballots to
10 Mrs. Oakes, what did she do with them?

11 A She take them out of the envelope and she
12 began to punch the -- these little com-
13 puter cards, punch holes in those cards.

14 Q Did you have any discussion with her,
15 what she was doing?

16 A She didn't explain to me what she was
17 doing.

18 Q Did she say she was -- she wanted to help
19 you fix up the ballot?

20 A That's what she told me first, that she
21 come to fix up the ballots.

22 Q And did you happen to notice on the
23 computer cards which numbers she punched
24 out?

25 A I didn't even see the numbers.

26 Q Did you give her any instructions --

27 A I didn't give her no instructions and she
28 didn't ask me.

Q Now, did she do the same for your
husband's ballot?

A She did the same thing.

Q And after she had punched the cards, what
did she do with the card?

A She told me -- I told her I didn't have
any stamps. She said, "I have stamps. I

1 come prepared for this." I said, "Well,
2 okay."
3 Q And what did she do then?
4 A Let her do it.
5 Q And did she place a stamp on the ballot?
6 A Yes. .
7 Q And did you then sign your name?
8 A On the envelope.
9 Q On the envelope?
10 A Right.
11 Q Now, what did you think you were doing
12 when you signed the envelope and allowed
13 her to put the stamp on it?
14 A I didn't know. I thought she was going
15 to mail it.
16 Q Did you think you had voted?
17 A I didn't know. I thought she was going
18 to mail it.
19 Q Did you think you had voted?
20 A No, I didn't have an idea I had voted.
21 Q Did you think it was an application for
22 an absentee ballot?
23 A No, I didn't think that.
24 Q What did you do on election day?
25 A Went to the polls to vote, and they call
26 here to Redwood City. They said we had
27 already voted. I said, "Already
28 voted?" Say, "Yes, you already voted."
 Say, "You voted absentee." So I didn't
 know. That was the end of that. So I
 had to go back home.
 Q Now, you had not intended to vote when
 you went through that procedure with
 Mrs. Oakes in your home, is that correct?
 A I didn't know what she was doing, really.

1
2 Q Now, Mrs. Owens, when you went to the
3 ballot -- to vote on election day, did
4 you have an intention whether you wanted
5 to vote yes or no for incorporation on
6 June 7th?

7 A Yes, I wanted -- I guess I wanted to vote
8 "no."

9 Q But you didn't have that opportunity?

10 A No, I didn't. Didn't have no opportunity
11 for anything.

12 (Emphasis added; R.T. 278, l. 12 - 281, l. 15)

13 Of Mary Owens White, Mrs. Oakes had the following to
14 say:

15 A I'm quite sure that Mrs. Owens had
16 admitted that she -- somewhere in our
17 conversation, that she was not qualified
18 to know what she should know about the
19 prospective candidates, and at that time
20 she, as I recall, probably asked for some
21 clarification, and one by one it came.

22 Q But with respect to Mrs. Owens, you
23 didn't give her a choice, did you?

24 A She gave me the choice.

25 (R.T. 650, ll. 4-11, emphasis added)

26 Grant White

27 Q And what happened when you went to the
28 polls on June 7th to vote?

A They told me I'd already voted, I
couldn't vote.

Q Now, Mr. White, on an evening before the
election when you tried to vote, did a
woman come to your house with -- excuse
me -- did a woman come to your house
named Carmaleit Oakes?

A Yes.

1 Q And what happened when she came to your
house?

2 A She come in, filled out some papers, and
3 had envelope, and she signed it and put
4 it in envelope, had me sign it. She put
5 it in envelope. She said she would put
6 stamps on it and mail it.

7 Q Did she put a stamp on the envelope in
your presence?

8 A Yes.

9 Q What did she do -- did you see a card
like this card I show you now?

10 A Yes.

11 Q Where was that card when she came to the
house?

12 A She put it on the table.

13 Q Did your wife go and get the ballot
14 materials that had come in the mail at
that time?

15 A The big envelope like that?

16 Q Yes.

17 A Yes, I believe she did.

18 Q And what happened after your wife brought
19 to the table the envelope with the
materials?

20 A Well, I can't think of all what
21 happened. I don't know. I mean, I know
she -- the lady fixed up the things and
22 then she punched out one of these things.

23 Q Do you know what she punched when she
punched the holes?

24 A No.

25 Q Did she ask you about voting when she
punched the holes?

26 A No.

27 Well, she was talking about voting, but I
28 didn't know -- I didn't know I was

1 voting.

2 Q Did she say she would fix up the ballot
3 for you?

4 A Yes.

5 Q And she punched some holes in it?

6 A Yes. ,

7 Q But you don't know which holes?

8 A No.

9 Q And she didn't ask you which holes?

10 A No.

11 (Emphasis added; R.T. 302, l. 6 - 303, l. 25)

12
13 Brad Davis and Frank Omowale Satterwhite

14 Brad Davis, resident manager of the Runnymede Gardens
15 senior home and a member of EPACCI, testified that he had punched
16 ballot cards for James Field (R.T. 687, ll. 11-14) and Mary Hall
17 (R.T. 688, ll. 20-23), and that Mr. Field's ballot and Ms. Hall's
18 ballot, with 10 others were mailed from Runnymede Gardens to the
19 Clerk.

20 With respect to twelve ballots that were not mailed,
21 Davis testified as follows:

22 "Q First of all, you testified yesterday
23 that some of the residents asked you
24 personally for help with absentee
25 ballots.

26 Did you get a number of requests such
27 that you felt maybe a general meeting to
28 discuss absentee ballots might be
29 appropriate?

30 A This is correct. (R.T. 752, ll. 6-12)

31 * * *

1 "I contacted a member of EPACCI, who was
2 Omowale Satterwhite, and he came over and
3 conducted that meeting." (R.T. 752,
4 11. 22-23)

5 "Q And where did Dr. Satterwhite come when
6 he came to meet with these residents of
7 Runnymede Gardens? Is there a room in
8 Runnymede Gardens?

9 A Yes. First he rang the manager and he
10 came in and indicated that he was there
11 to conduct the meeting. And I escorted
12 him to the recreation room where
13 residents were waiting for him to do this
14 service." (R.T. 753, 11. 18-24)

15 * * *

16 "Q About how many people were there in
17 attendance at the meeting when
18 Dr. Satterwhite arrived?

19 A I would say between five and seven, if
20 that many -- four and seven." (R.T. 754,
21 11. 9-12)

22 Satterwhite, a candidate for the East Palo Alto City
23 Council, described his visit to the Runnymede Garden senior home
24 and his activity there as follows:

25 "A . . . I had been approached by Mr. Davis,
26 who's a resident manager there, indicat-
27 ing that the senior club wanted someone
28 from EPACCI to visit Runnymede Gardens to
assist seniors who desired help with the
processing or filling out of their
absentee ballots." (R.T. 859, 11. 15-19)

* * *

"A Yes. With the exception of the Brandons,
who were the last group or individuals
that I worked with, everybody else came
in one by one, and as they came in and
they caught my attention to someone who
needed help with the ballot, I asked them
to sit somewhere, because you've a number
of tables kind of like a cafeteria, and
when I finished with one person and had
their ballot sealed, signed by them, then
I just moved to the next person as they
came in." (R.T. 866, 11. 1-8)

1
2 * * *

3 "A The -- in some instances -- by the way,
4 with the exception, if I haven't been
5 clear, of the two Barrows, I punched out
6 the card for the remaining five or six
7 people." (R.T. 869, ll. 13-15)

8 "A My mind is -- I can't tell you whether or
9 not the voter actually inserted their
10 punched card, sealed it and signed it, or
11 whether or not in some instances I
12 certainly inserted and sealed for them
13 and let them sign from that point. But
14 by either of those two means, with either
15 my inserting or the individual inserting,
16 I don't really recall, then the cards
17 were inserted, sealed, the individuals
18 signed their name, address on the back of
19 the cards, and I asked the question of
20 each individual, 'Would you like for
21 me -- would you like to mail it or would
22 you like for me to see that -- return it
23 to Mr. Davis to see that it gets
24 deposited with the County Clerk?'

25 Q You asked -- in every instance you asked
26 that question?

27 A That's correct, and I ended up with some
28 seven or eight sealed envelopes, and
29 that's the only reason I recall the
30 number of people that I assisted. And I
31 went into Mr. Davis' office and gave him
32 those envelopes and returned to my
33 office." (R.T. 869, l. 18 - 870, l. 10)

34 Satterwhite's perception of the seven or eight people
35 that he is sure he assisted was that with two exceptions they
36 were capable of punching out their own ballots.

37 "Q But in looking at them, you know, were
38 they having difficulty or would they have
39 had difficulty punching out their own
40 computer card?

41 A My -- with the exception, possibly, of
42 Ahern and the older Brandon lady, as I
43 recall, the others, if I had insisted,
44 probably could have punched their own."
45 (R.T. 874, ll. 3-8)

1 There is no precedent in California statute or case law
2 to support a compelling public reason to emasculate the secrecy
3 privilege in this manner.

4 In Scott v. Kenyon, 16 Cal.2d 197 (1940), the plaintiff,
5 a candidate for the city council in El Cajon, had originally
6 received 226 votes to 222 for the defendant. 9 of the 226 votes
7 for plaintiff were absentee ballots which were opened, counted
8 and stored by the election officials in a manner which permitted
9 the identity of how each absentee voter had voted to be ascer-
10 tained by the election officials as well as by unauthorized third
11 persons. There was an opportunity for tampering with the absen-
12 tee ballots, but no evidence that tampering had occurred.

13 Even so, the nine absentee ballots were disqualified
14 since their secrecy had been compromised. This plaintiff,
15 instead of winning by 4 votes, 226 to 222, was adjudged to have
16 lost by 5 votes, 222 to 217.

17 The court said:

18 "It will be observed that these statutes
19 are designed to carefully protect the absent
20 voter in his right to a secret ballot, which
21 is the very foundation of our election sys-
22 tem. Great care is taken to provide that, in
23 handling and counting the absent voters'
24 ballots, the same secrecy which surrounds the
25 casting of regular ballots at the polls shall
26 be preserved and maintained." (p. 201)

27 * * *

28 "If the absent voters' law is to achieve
its purpose it is of the utmost importance
that its terms be substantially complied
with. In the long run this is important to
all voters, including any who might lose their
votes in a particular case. With respect to
the votes of absentee voters, it is not only
important to be able to tell how they actually
voted, but it is of equal importance that the

1 provisions of law be so carried out that it
2 cannot be told how a particular individual
3 voted." (emphasis added) (p. 203)

4 "We therefore hold that there must be a
5 substantial compliance with the essential
6 requirements of the absent voters' law with
7 respect to the counting of the votes, and that
8 such substantial compliance does not here
9 appear. It follows that the trial court
10 correctly found and concluded that these
11 absent voters' ballots should not be counted
12 for anyone." (p. 204)

13 It will be noted that there was no contention in
14 Scott v. Kenyon that the 9 absentee votes for plaintiff had not
15 been validly cast. They were discounted solely because their
16 secrecy had been compromised.

17 In the "second" Fair v. Hernandez, 138 Cal.App.3d 578
18 (1982), a victory for Fair was reversed because 11 of his votes
19 had been absentee ballots hand-delivered by a campaign worker.

20 On the secrecy aspect, the court said:

21 "First of all, it is clearly the purpose of
22 the statute to preserve the secrecy, uni-
23 formity, and integrity of the voting
24 process. (See McFarland v. Spengler, (1926)
25 199 Cal. 147, 152." (p. 582)

26 "Moreover, the integrity and secrecy of
27 the process are such important interests that
28 ballots may be voided even though it is not
shown that the ballots were actually tampered
with. (See Garrison v. Rourke (1948) 32
Cal.2d 430, 443 [196 P.2d 884], overruled on
another point in Keane v. Smith, 4 Cal.3d 932,
939 (1971)"

In both of the foregoing cases, the ballots were voided
despite the fact the voter had committed no wrong.

In Scott, the court said:

"While it is unfortunate that any voter should
lose his vote when it can be told for whom he
intended to vote, it would be equally or more

1 unfortunate to deprive many others of their
2 vote by holding that a substantial compliance
3 with this law is unnecessary. To so hold
4 would be to destroy, by judicial decision, the
5 secrecy with which the law has surrounded the
6 casting of such ballots." (16 Cal.2d at 204)

7 Most recently, in Peterson v. City of San Diego, 34
8 Cal.3d 225 (1983), the California Supreme Court found that there
9 was a compelling public interest in permitting both all-mail
10 voting and absentee voting. The compelling interest was "to
11 secure citizen participation in the maintenance of representative
12 government," (p. 231), in effect, a broadening of the voting
13 franchise.

14 The Peterson decision in no way, however, turned away
15 from strict requirements of secrecy. Rather, the court pointed
16 out that for many years provision for absentee voting and secrecy
17 had been contained in the Constitution with neither stated as an
18 exception or limitation on the other (p. 230-231); that 6.2% of
19 the California electorate cast absentee ballots in the 1980
20 General Elections (p. 229); noted that as of the date of the
21 court's decision, August 4, 1983, "there has been no showing of
22 significant wrongdoing in absentee or mail ballot voting"
23 (p. 231), and that Elections Code §29645 made it a felony to
24 interfere with a voter's secrecy in casting an absentee ballot
25 (p. 231).

26 Contestants argue that the procedure followed by the
27 EPACCI leaders in East Palo Alto was wrongdoing and that the
28 procedure of EPACCI's leaders violated §29645. That procedure
29 not only intruded on the secrecy of the absentee voter's casting
30 of his or her ballot, it was intended to cause the voter to cast

1 his or her ballot in the presence of the campaign worker, and, in
2 Satterwhite's case, in the presence of a candidate.

3 Satterwhite went to the senior home deliberately to
4 assist absentee voters at a public meeting in the casting of
5 their ballots. Goodwill and Oakes visited at least 31 homes
6 deliberately to instruct or assist the voter in casting a
7 non-secret ballot.

8 If Elections Code §29645 prohibiting interference with
9 secrecy is to have any meaning at all, a campaign worker cannot
10 be allowed to go to voters' homes and ask voters to bring out
11 their absentee ballots there to be punched by or in the presence
12 of the campaign worker. Yet this was precisely the procedure the
13 proponents of incorporation deliberately followed.

14 The possibilities for wrongdoing under this procedure
15 are enormous.

16 The possibility of wrongdoing was recognized by the
17 Illinois Supreme Court in Clark v. Quick, 377 Ill. 424 (36 N.E.2d
18 563) (1941): "Our system requires not only that the ballot must
19 be secret, but that the voter himself must be given no opportu-
20 nity to satisfy some other person how he has voted." (emphasis
21 added)

22 In the past, where intrusion on the secrecy of the
23 absentee ballot has been allowed in California, it has been under
24 strict limitations. Three examples are noteworthy.

25 In Beatie v. Davila, supra:

26 (1) "a committee member stood next to the
27 voter while he or she voted and would indicate
28 to the voter the names of the candidates the
committee was supporting in the election; how-
ever, a committee member never marked the

1 ballot or told the voter how to mark the
2 ballot." (Page 427, emphasis added.)

3 In the first Fair v. Hernandez, 416 Cal.App.3d 868:

4 (2) "The absentee vote of Augustine Mayoral
5 (exhibit 7) was cast with the assistance of
6 the voter's wife in the privacy of their com-
7 mon home, and only in the presence of each
8 other, when the voter was partially physically
9 disabled." (Page 878.)

10 (3) "the absentee vote of Molly Lizarde
11 (exhibit 86) was filled out by Irene Lizarde
12 at the specific request and authorization of
13 the voter, in the privacy of their common
14 home, and only in the presence of each other
15 when the voter was partially physically
16 disabled." (Page 879.)

17 It is one thing to permit a close relative to privately assist a
18 person with whom they share a common home, and quite another to
19 allow a campaign worker to go, unsolicited, to a private home and
20 ask the voter to bring out their ballot materials for mutual par-
21 ticipation in the casting of the vote by the campaign worker and
22 the voter.

23 The EPACCI leaders didn't call, they visited the homes
24 of those persons they knew to have received absentee ballots.
25 Many of these people were admittedly unsophisticated, elderly,
26 infirm and some cases illiterate. Counsel for Satterwhite and
27 Blakey, in argument on the first day of hearings, characterized
28 many East Palo Alto voters as simple people, unsophisticated and
29 uneducated. (R.T. A-10, 11. 18-19) Confronted with eager pro-
30 ponents of incorporation on their doorstep, the voters invited
31 them in, got out their absentee ballots and allowed the campaign
32 workers to assist them in punching them out.

33 It is respectfully submitted that there is, and can be
34 no compelling public reason to allow this proceure which

1 obviously places the burden of claiming secrecy on the voter,
2 particularly the elderly, unsophisticated and uneducated voter.

3 There is a final basis for holding invalid the ballots
4 punched out by the campaign workers.

5 To permit this process, the trial court found that the
6 voter had "waived" his or her privilege of casting a secret
7 ballot.

8 Waiver, however, is defined as the intentional relin-
9 quishment of a known right. Lekse v. Municipal Court, 138
10 Cal.App. 3d 188, 192 (1982) (no waiver found re: challenge to
11 small claims court procedure). See also E.D. McGillicuddy
12 Constr. Co. v. Knoll Recreation Assn. Inc., 31 Cal.App.3d 891,
13 980-901 (1973) (no waiver found re: action to foreclose
14 mechanics lien), and Bohlert v. Spartan Ins. Co., 3 Cal.App.3d
15 113, 118 (1969) ("Waiver is the intentional relinquishment of a
16 known right after knowledge of the facts").

17 It has been recognized that the party claiming waiver
18 has the burden of proving it by clear and convincing evidence
19 "that does not leave the matter to speculation" and that "doubt-
20 ful cases will be decided against a waiver" (citation omitted).
21 City of Ukiah v. Fones, 64 Cal.2d 104, 107-108 (1966). The
22 California Supreme Court in City of Ukiah also recognized that
23 the requirement of clear and convincing evidence of waiver "is
24 particularly apropos in cases in which the right in question is
25 one that is 'favored' in the law"; (64 Cal.2d at 108). In City
26 of Ukiah, this favored right was the protection of wages due.
27 Accord, In Re Marriage of Moore, 113 Cal.App.3d 22, 27 (1980)
28 (the right favored in law was the right to retain lawful property

1 entitlements and support).

2 The most precious and most guarded rights of all are
3 those rights guaranteed in the constitution. Article II,
4 Section 7 of the California Constitution states that "voting
5 shall be secret." There is a fine line between loss of the
6 secret ballot and loss of the franchise itself. That line was
7 crossed in the June 7, 1983 election.

8 B. The 46 Hand-Carried Ballots Should Be
9 Found to Have Been Illegally Cast.

10 The trial court discussed at length in its Findings and
11 Conclusions two recent California appellate decisions interpret-
12 ing and upholding Elections Code §1013: Beatie v. Davila, 132
13 Cal.App.3d 424 (1982) and Fair v. Hernandez, 138 Cal.App. 3d 578
14 (1982).

15 Elections Code §1013 reads in pertinent part:

16 "After marking the ballot, the absent voter
17 may return it to the official from whom it
18 came by mail or in person" (Emphasis
added.)

19 Beatie v. Davila had interpreted §1013 to allow campaign
20 workers to mail in absentee ballots for voters saying:

21 "One may logically ask: Why would the
22 Legislature require the voter to deliver his
23 absentee ballot personally to the elections
24 official and yet allow him to utilize a third
25 party for mailing it to the official? We
26 think the answer to the question is clear.
27 The Legislature recognized the impossibility
28 of policing the act of mailing by the absentee
voter, i.e., the elections official would be
unable to determine who in fact mailed the
ballot - the voter or someone else." (132
Cal.App.3d at 429)

After citing Beatie, the trial court nonetheless held

1 that the Clerk had no duty to police the hand-delivery of 46
2 absentee ballots by 3rd parties between May 9 and May 24 had not
3 committed malconduct in failing to do so (Conclusions of Law 10
4 and 11, C.T. 504), and that this requirement of policing hand-
5 delivery was an unconstitutional deprivation of the right to vote
6 of the voters involved. (Conclusion of Law 4b, C.T. 503)

7 In Fair v. Hernandez, 11 absentee ballots which had been
8 hand-delivered to the Clerk by campaign workers were held to have
9 been illegally cast. The invalidation of these 11 ballots
10 changed a 794 to 791 victory by Fair into a 791 to 783 victory by
11 Hernandez. There had been no fraud or tampering involved in the
12 ballots in question.

13 The Fair court said:

14 "Reason and authority both support the judg-
15 ment of the trial court that delivery by a
16 third party to the city clerk was improper
17 under the statute. The rule requiring per-
18 sonal delivery clearly services the paramount
19 purpose of preserving the secrecy, uniformity,
20 and integrity of the voting process." Id. at
21 583.

19 In the case at bar, the trial court dismissed Fair v.
20 Hernandez with the simple finding that since the evidence showed
21 that there had been no fraud or tampering with the 46 hand-
22 delivered ballots, Fair v. Hernandez did not apply to the par-
23 ticular facts of this case.

24 Since there was no evidence of fraud or tampering in
25 Fair v. Hernandez either, the trial court's conclusion is clearly
26 fallacious.

27 There was an opportunity for fraud in both cases, and no
28 finding of fact or conclusion of law to the contrary can refute

1 the clarity of the record on this point. If anything, the oppor-
2 tunity of fraud and tampering in the multiple handling of absen-
3 tee ballots -- from the voter to Satterwhite to Davis to Bashir,
4 for example -- was much greater in East Palo Alto than it was
5 from the court's opinion in Fair v. Hernandez.

6 The second part of the trial court's Conclusion of Law
7 contains several fallacies. With respect to the first point the
8 Court concluded as follows:

9 "b. The Equal Protection of the California
10 Constitution and the United States Constitu-
11 tion prohibit distinguishing between absentee
12 ballots mailed by third parties to the County
13 Clerk, those delivered by third parties to the
14 precinct board and those delivered by third
15 parties to the County Clerk absent a compel-
16 ling state interest. There is no compelling
17 state interest in making such a distinction.

18 The distinction between mailing and hand-delivery does
19 not necessarily appear from Elections Code §1013 itself, but was
20 made in Beatie v. Davila, 132 Cal. App. 3d 424 (1982) and
21 referred to in passing in Peterson v. San Diego, 34 Cal. 3d 225
22 (1983). Even assuming Beatie created an unconstitutional dis-
23 tinction, Beatie's alleged error cannot be construed to invali-
24 date a statute, Elections Code §1013, perfectly valid on its
25 face.

26 In passing, it is noteworthy that the trial court's
27 ruling, therefor, of necessity overrules Beatie v. Davila, as
28 well as the second Fair v. Hernandez.

A final flaw is the trial court's reasoning is the vali-
dating of the 46 hand-carried votes because they had been
accepted by the County Clerk. The last sentence of Conclusion of
Law 46 state:

1 "The votes here were cast in accordance with
2 the procedures established by the County
3 Clerk, who is authorized to conduct elec-
4 tions."

4 But it not the County Clerk who sets elections pro-
5 cedures; it is state law. This problem was squarely addressed in
6 the "first" Fair v. Hernandez, 116 Cal.App.3d 868, cert. denied,
7 454 U.S. 941 (1981). There an absentee ballot was invalidated by
8 the court where the voter had improperly marked her ballot in
9 violation of Election Code §§14211 and 17007, and had done so at
10 the explicit direction of an election official.

11 The court said, at page 878:

12 "Neither the Registrar nor the court has
13 authority to change the laws. It is most
14 unfortunate that the voter is deprived of her
15 franchise through the fault of an official,
16 but no exception exists to cover the circum-
17 stance." (Citing Patterson v. Hanley, 136
18 Cal. 265, 276, (1902)

16 "This vote must be deducted from Hernandez's
17 total, reducing it to 791."

18 If an absentee ballot will be voided where the error of
19 the voter was directed by the elections official, it is difficult
20 to understand how an election official's violation of law can be
21 used as the basis for allowing an illegally-cast ballot.

22 C. Those 17 Voters for Whom the Evidence Was
23 Undisputed That They Did Not Reside at
24 the Address From Which They Were Regis-
25 tered as of the Date of the Election or
26 Within 29 Days Prior Thereto Cast Illegal
27 Votes.

26 Appellants challenged, inter alia, those voters for whom
27 the evidence was undisputed that they did not reside at the
28 address from which they were registered and from which they, or

1 someone on their behalf, voted at the time of the June 7, 1983
2 election or within 29 days prior thereto, if at all. With
3 regard to this category, the lower Court ruled as a matter of law
4 that those ballots were not illegally cast. The lower Court
5 erred.

6 The evidence shows, without contradiction, that none of
7 the following 17 voters was qualified to vote in the June 7, 1983
8 election. The evidence is as follows:

9 1. Marion E. Anderson: (Exhibit 157) Moved from her
10 registration address and returned the key to it on April 30,
11 1983. (R.T. 2003, l. 4 - 2004, l. 14).

12 2. Denise D. Dawson: (Exhibit 163) Moved from her
13 registration address effective January 1, 1983. (R.T. 2267,
14 l. 6 - 2268, l. 6).

15 3. Judith Drew: (Exhibit 164) has not lived at her
16 registration address since at least April of 1983. (R.T. 1756,
17 l. 7-26).

18 4. Lisa Dupee: (Exhibit 165) Lived at 479 E.
19 O'Keefe, #2A (her registration address), for three weeks, during
20 the time a man came by to register voters. (R.T. 2024, l. 23 -
21 2025, l. 8). She registered at this address in November of 1982.

22 5. Gloria Y. Forbes: (Exhibit 166) Has not lived at
23 her registration address since at least May of 1982. (R.T. 2042,
24 l. 13 - 2043, l. 7).

25 6. Violet Forbes: (Exhibit 167) Has not lived at her
26 registration address since at least May of 1982. (R.T. 2042,
27 l. 13 - 2043, l. 7).

28 7. Spurgeon Gardner: (Ehhibit 169) Moved from his

1 registration address on April 7, 1983. (R.T. 2048, 11. 7-13).

2 8. Richard Lara: (Exhibit 172) Has not lived at his
3 registration address since at least April 20, 1983. (R.T. 1763,
4 1. 26 - 1765, 1. 12).

5 9. Eldridge Lyons: (Exhibit 106) Has always lived in
6 the State of Louisiana. (R.T. 3006, 1. 11 - 3007, 1. 10).

7 10. Archie Marshall: (Exhibit 174) Was never a tenant
8 at his registration address, (R.T. 2063, 11. 11-13), Nor was he
9 residing at his registration address at any time since at least
10 April of 1983. (R.T. 1757, 1. 14 - 1758, 1. 7).

11 11. Jacqueline McKenzie: (Exhibit 175) Has not lived
12 at her registration address since March, 1983. (R.T. 3271,
13 1. 13 - 3272, 1. 1).

14 12. Ronnie McKenzie: (Exhibit 176) Has not lived at
15 his registration address since March, 1983. (R.T. 3271, 1. 13 -
16 3272, 1. 1).

17 13. Wanda Robinson: (Exhibit 181) Moved from her
18 registration address effective January 1, 1983. (R.T. 2267,
19 1. 6 - 2268, 1. 6).

20 14. Shawn S. Smith: (Exhibit 183) Reported his last
21 residence address as being in New York State to the California
22 Department of Motor Vehicles on June 2, 1982. (R.T. 3536,
23 1. 21 - 3538, 1. 1).

24 15. Kenneth Stowe: (Exhibit 184) Has not lived at his
25 registration address since March, 1983. (R.T. 2063, 11. 25-28).

26 16. Johnnie L. Taylor: (Exhibit 185) Has not lived at
27 his registration address since the fall of 1982. (R.T. 2251,
28 1. 15 - 2252, 1. 20).

1 17. Daniel L. Zachary: Has not lived at his registra-
2 tion address for at least 11 years, if at all. (R.T. 1759,
3 1. 10 - 1760, 1. 5).

4 Although this evidence was undisputed, the lower Court
5 held that it was insufficient as a matter of law. It held that
6 the Appellants not only have the burden of showing that voters
7 did not reside at their voter registration address within the
8 statutory period of time required to make them qualified elec-
9 tors, but that they also have the burden of showing to where the
10 voters moved and the voters' intent to establish a new domi-
11 cile. This is not the Appellants' burden.

12 As argued to the lower Court, if this were the burden of
13 a Contestant, it could never be met. As the record in this case
14 painfully illustrates (see e.g. R.T. 3005 11.15-19; R.T. 3021,
15 11.16-20; R.T. 2759 1.8 - 2761, 1.3; R.T. 1766, 1.26 - 1767,
16 1.6), the Contestants' efforts to locate and serve challenged
17 voters with subpoenas to appear at trial was met by a wall of
18 silence and outright evasion of service. These efforts all
19 assumed, however, that the challenged voters had actually lived
20 in the area of East Palo Alto at some point and could be
21 located. For those voters who never did, there was no trail to
22 follow. The effect of the lower Court's ruling on Contestants'
23 burden of proof is to encourage people to register voters who do
24 not and never have lived at their registration address (Eldridge
25 Lyons is a case in point), for when it is discovered that they do
26 not reside at their registration address, they will never be
27 located to testify as to where they moved and as to their
28 intent - as required by the lower Court. The lower Court's

1 ruling, if upheld, will open a floodgate of phantom and fraudu-
2 lently registered voters.

3 The Defendants have cited no authority to support the
4 burden of proof the lower Court imposed. They waive the banner
5 of "clear and convincing evidence" as though it offers some
6 solace. They are mistaken.

7 In Pierce v. Harrold, 138 Cal.App.3d 415, 427-428
8 (1982), the Court discussed at length the burden of proof to be
9 applied to the case before it - an election contest based on the
10 assertion that a successful candidate for the office of municipal
11 court judge had knowingly filed a false declaration of candi-
12 dacy. It held that the standard of proof required was the tra-
13 ditional civil standard: by a preponderance of the evidence.
14 (Id.) Defendants herein argue for a higher standard using the
15 language of Elections Code §1403. 4/ That section is inapposite,
16 however, as it relates to challenges made during the canvass of
17 an election, it does not relate to the civil proceeding of an
18 election contest.

19 Moreover, with regard to these 17 challenged ballots, it
20 matters not whether the standard is by a preponderance of the
21 evidence, clear and convincing or beyond a reasonable doubt, for
22 the evidence regarding these ballots is undisputed. The question
23 before this Court is, what is the Contestants' burden? That even
24 the defendants do not truly believe that the Appellants' burden
25

26
27 4/ Elections Code §1403 provides, in pertinent part, that "Since
28 the voter is not present, the challenger shall have the burden of
establishing extraordinary proof of the validity of the challenge
at the time the challenge is made."

1 is to locate each challenged voter and produce evidence as to
2 their intent to establish a new domicile is seen in the manner in
3 which they categorized the challenged voters for the lower
4 Court. (C.T. 446-460) Category 5 therein contains residency
5 challenges for which defendants contend "the evidence has been
6 rebutted." (C.T. 452) Category 6 therein contains the 17 resi-
7 dency challenges listed supra for which the defendants contend
8 there had been a failure of proof. (C.T. 453) The evidence sub-
9 mitted by Contestants with regard to the residency challenges in
10 categories 5 and 6 was identical. The only difference is that,
11 with regard to category 5 challenges, the defendants were able to
12 rebut the showing made by the Contestants; they were not able to
13 do so with category 6.

14 Contestants presented a prima facia case that these 17
15 voters failed to meet the residency requirement to be entitled to
16 vote in the June 7, 1983 election. In the absence of conflicting
17 testimony, these votes should be held to have been illegally
18 cast.

19 D. The Ballots Mailed to Goodwill Rather
20 Than to the Voter Should Be Held to Have
21 Been Illegally Cast.

22 Fifteen allenged ballots were mailed to either
23 Goodwill's office address at 1493 E. Bayshore or his residence
24 address at 710 Runnymede.

25 In many cases, Joseph Goodwill and not the voter wrote
26 on the application that it should be mailed not to the voter, but
27 to the office of Joseph Goodwill. (See e.g., testimony of Melody
28 Whitfield, R.T. 2013, ll. 20-26, and R.T. 2014, ll. 16-22,
wherein she stated she did not know and did not request her

1 ballot to be sent to Joseph Goodwill.)

2 These 15 ballots mailed to Goodwill were those of:

3 Exhibit No.

4	1. Ashford, Roy Lee	70
5	2. Brown, Leona	71
6	3. Fontenot, Chester	16
7	4. Gilbert, Anitra	10
8	5. Harmon, Michael	28
9	6. Julian, William R.	73
10	7. McGee, Lonnie	74
11	8. Mitchell, Alberta	24
12	9. Smith, Earnest	76
13	10. Smith, Ronnie	26
14	11. Smith, Sullen	25
15	12. Whitfield, Melody M.	79
16	13. Williams, Bennie	57
17	14. Simon, Mildred	83
18	15. Simon, Rosalind	82

12 Goodwill testified that when these ballots arrived in
13 the mail he hand-delivered them to the voter, or in the case of
14 Melody Whitfield and Albert Mitchell, to a relative of the
15 voter. He had no recollection of how Anitra Gilbert's ballot was
16 taken from his office to Ms. Gilbert.

17 In any event, none of these 15 ballots was delivered by
18 the election official to the voter personally or by mail as
19 required by Elections Code §1007. The trial court found only:
20 "All of the challenged absentee ballots reached the voters to
21 whom they were addressed." (Finding of Fact 6) (emphasis
22 added) (C.T. 490)

23 Absentee ballots must be delivered in person or by mail,
24 and may not be given to third parties for delivery to the voter
25 except in hardship cases as authorized by Elections Code §1017.
26 62 Ops.Cal.Atty.Gen. 439 (1979). The exception provided by Elec-
27 tions Code Section 1017 pertains to voters who fail to meet the
28 deadline for application for absentee ballots and are unable to

1 go to the polling place due to illness, disability, architectural
2 barriers or absence from the precinct on election day.

3 That such an exception cannot be construed to apply to
4 the ordinary processing of absentee ballots is made clear by the
5 reasoning of the foregoing Opinion of the Attorney General. as
6 follows:

7 "The words of section 1007 are clear. The
8 Legislature has specified the elections offi-
9 cial shall deliver the ballot to the voter
10 personally or shall deliver it by mail to the
11 voter. The language of section 1007 does not
12 evidence any intent to include delivery of the
13 ballot to the voter by any other method than
14 those specified. It is significant to compare
15 the language of section 1007 with that of sec-
16 tion 1017. Had the Legislature intended to
17 include delivery by a voter's authorized
18 representative in section 1007, it is reason-
19 able to conclude it would have expressly
20 included such a provision. (Cf. Sater v.
21 Superior Court (1975) 15 Cal.3d 230, 237-238;
22 Estate of Tkachuk (1977) 73 Cal.App.3d 14,
23 18.)

24 * * * *

25 Construction of section 1007 to permit
26 delivery of an absentee ballot to the voter
27 only by mail or in person comports with the
28 policy behind the absentee voter statutes to
protect the absentee voter's right to a secret
ballot. (Scott v. Kenyon (1940) 16 Cal.2d
197, 201; see also Cal. Const. art II, §7;
§§1013, 1014.)"

29 The 15 ballots mailed to Goodwill, rather than the
30 voters, should be found to have been illegally cast.

31 E. The Ballots Returned to the Clerk Without
32 the Proper Residence Address Required by
33 §1009 Should Be Held to Have Been
34 Illegally Cast.

35 Sixteen ballots were mailed to the Clerk with a resi-
36 dence address on the ballot envelope different from that on the

1 voter's affidavit of registration.

2 Those 16 ballots are the following:

3 Exhibit No.

4	1. Ashford, Roy Lee	70
	2. Brown, Leona	71
5	3. Fontenot, Chester	16
	4. Julian, William R.	73
6	5. McGee, Lonnie	74
	6. Mitchell, Alberta	24
7	7. Simon, Mildred	83
	8. Simon, Rosalind	82
8	9. Smith, Earnest	76
	10. Smith, Ronnie	26
9	11. Smith, Sullen	25
	12. Whitfield, Melody M.	79
10	13. Williams, Bennie	57
	14. Goodwill, Alnette	116
11	15. Smith, Bernice	93
	16. Thomas, Otelia	32

12
13 (Michael Harmon, Ex 28, and Anitra Gilbert, Ex 10 from
14 the D category above (15 ballots mailed to Goodwill) were mailed
15 back with the voter's correct address; the first 13 ballots above
16 had Goodwill's address and the ballots of voters 14, 15 and 16
17 above, Alnetta Goodwill, Ex. 116, Bernice Smith, Ex. 93, and
18 Otelia Thomas, Ex. 32, were mailed back with a different address
19 than the voter's address on her affidavit of registration.)

20 Elections Code §1009 reads:

21 §1009. Identification envelope; contents

22 The identification envelope shall contain the
23 following:

24 (a) A declaration, under penalty of perjury,
25 stating that the voter resides within the
26 precinct in which he or she is voting and is
27 the person whose name appears on the envelope.

28 (b) The signature of the voter.

(c) The residence address of the voter as
shown on the affidavit of registration.

1 (d) The date of signing.

2 (e) A notice that the envelope contains an
3 official ballot and is to be opened only by
the canvassing board.

4 (f) A warning plainly stamped or printed on
5 it that voting twice constitutes a crime.

6 (g) A statement that the voter has neither
7 applied, nor intends to apply, for an absent
voter's ballot from any other jurisdiction for
the same election.

8 Of these seven requirements, four are presumably pre-
9 printed on the ballot by the Clerk with three requirements, the
10 name, residence and date to be supplied by the voter.

11 The use of the word "shall" is clearly mandatory.

12 Elections Code §11.

13 While there is no specific language for rejection of a
14 ballot envelope where the residence address does not match, this
15 can be inferred, however, from the last paragraph of §1015 which
16 states in pertinent part:

17 "In determining from the records of registra-
18 tion if the signature and residence address on
19 the identification envelope appear to be the
20 same as that on the affidavit of registration,
the clerk or registrar of voters may use the
duplicate file of affidavits of registered
voters" (emphasis added)

21 Unfortunately, prior language in §1015 confuses the
22 issue by requiring the elections official, if the signature
23 appears to be the same, to deposit the ballot, still in its
24 identification envelope, in a ballot container in his or her
25 office.

26 The San Mateo County Clerk argues that it is thus
27 immaterial whether the residence address is correct or not.

28 This argument, if accepted, will permit campaign workers

1 in the future to list their own headquarters as both the address
2 where the absentee ballot is to be mailed and the address on the
3 identification envelope when it is returned. Only the voter's
4 correct signature on the envelope will be required.

5 Appellants believe the better view is to conclude that
6 the Legislature intended, by §1009 and §1015, to require that the
7 Clerk match the residence address on the registration affidavit
8 with that on the absentee ballot envelope if the ballot is to be
9 valid. The 15 ballots which did not comply with this requirement
10 should be found to have been illegally cast.

11 F. The Ballot of Rosalind Simon Was
12 Illegally Cast.

13 The sole testimony with respect to the absentee ballot
14 of Rosalind Simon was that she had undergone brain surgery in
15 1981; that her ballot had been punched out by her mother, Mildred
16 Simon; and that Mildred Simon signed her daughter's name.
17 (R.T. 1529, ll. 8-12) This is in violation of Elections Code
18 §1009(b), quoted supra.

19 G. The Ballot of Lannette Cody Was Illegally
20 Cast.

21 Finding of Fact 30 (C.T. 497) states:

22 "One voter, Lanette Cody, completed her absen-
23 tee ballot and gave it to her sister for
24 delivery to the Clerk. The evidence estab-
25 lishes that her ballot was either delivered to
the precinct board on election day or to the
County Clerk's office in Redwood City. No one
tampered with that ballot."

26 Under Elections Code §1013 and the second Fair v.
27 Hernandez decision, Lanette Cody's ballot should be invalidated.

1 H. The Malconduct of the Election Officials
2 Substantially Contributed to the Casting
3 of Illegal Ballots.

4 The Clerk's failure to follow the requirements of Elec-
5 tions Code §§1013, 1007 and 1009, as discussed infra, was malcon-
6 duct and infects all ballots in sections B, D, E, F and G, supra.

7 That the Clerk's malconduct was sufficient to change the
8 election results as required by Elections Code §§20022 and 20023
9 is therefore undeniable.

10 IV.

11 The Relief Sought

12 1. Contestants ask the Court to find that all of the
13 absentee ballots challenged in categories A, B, D, E, F and G
14 were illegally cast, and with respect to categories B, D, E, F
15 and G, were also cast because of malconduct of the San Mateo
16 County election officials.

17 2. Contestants further ask the Court to find that the
18 17 ballots challenged in category C were illegally cast by voters
19 who did not meet the residency requirements for voting in the
20 June 7, 1983 election in East Palo Alto.

21 3. With respect to those 26 absentee ballots obtained
22 by Goodwill, Oakes, Satterwhite, Davis and Blakey, where direct
23 evidence in the record shows them to have been either 1) cast for
24 incorporation, 2) believed by the voter to have been cast for
25 incorporation, or 3) unknown to the voters as to how they were
26 cast but punched out by Goodwill, Oakes or Blakey, Contestants
27 ask the Court to find these ballots to have been cast for
28 incorporation and order them deducted from the total vote for

1 incorporation. A list of these ballots is set forth in as
2 Appendix D hereto.

3 4. With respect to the remaining absentee ballots
4 obtained by EPACCI leaders, Contestants ask the Court to apply
5 the rule in Canales v. Alviso, 3 Cal.3d 118 (1970), and to find
6 that the circumstantial evidence of the manner in which these
7 ballots were obtained, and the conduct of the individuals who
8 obtained them, points strongly to the conclusion that all were
9 cast for incorporation and should be deducted from the total vote
10 for incorporation.

11 5. Finally, if the election result has not finally
12 been determined by the Court from the direct and circumstantial
13 evidence before it, Contestants ask that the matter be remanded
14 to the trial court for immediate determination as to how the
15 remaining illegally-cast ballots were voted pursuant to the
16 procedure approved in Canales, supra.

17
18 Dated: December 23, 1983

19 Respectfully submitted,

20 PAUL N. McCLOSKEY, JR.
21 PATRICIA S. BRODY
22 BROBECK, PHLEGER & HARRISON

23 By /s/ Paul N. McCloskey, Jr.
24 Paul N. McCloskey, Jr.

25 Attorneys for Appellants and
26 Contestants
27
28

APPENDICES

Appendix A

<u>Voter</u>	<u>Exhibit</u>	<u>Transcript</u>
Alice Harvey	Ex. 148	(R.T. p.1550 l. 12- p.1551 l. 2)
Anitra Gilbert	Ex. 10	(R.T. p.125 ll. 12-13)
M. C. Cherry	Ex. 20	(R.T. p.345 ll. 6-12; p.346 ll. 1-4)
Willie Pearl Cherry	Ex. 22	(R.T. p.320 ll. 21- p.321 l. 14)
Chester Fonlenat	Ex. 16	(R.T. p.264 ll. 12-18; p.267 ll. 6-18)
Roy Lee Ashford	Ex. 70	(R.T. p.1674 ll. 4-23; p.1510 ll. 12-28)
Aron Strong	Ex. 105	(R.T. p.1440 l. 4- p.1445 l. 16)
Kenneth Lee Strong	Ex. 123	(R.T. p.1358 ll. 14-25)
Freddie Strong	Ex. 115	(R.T. p.1411 l. 24- p.1413 l.12)
Matielda Dixon	Ex. 14	(R.T. p.170 ll. 2-11; p.171 l.7- p.172 l. 5)
Grant White	Ex. 18	(R.T. p.303 l. 10- p.304 l. 1)
Mary (Owens White)	Ex. 17	(R.T. p.279 l. 10- p.280 l. 5)

Appendix B

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Voter

Exhibit

Transcript

Bennie Williams	Ex. 57	(R.T. p.1068 l. 7-20)
Willie Nichols	Ex. 59	(R.T. p.1073 l. 19-23)
Yvonne Miller	Ex. 61	(R.T. p.1079 l. 22-24)
Carolyn Miller	Ex. 62	(R.T. p.1082 l. 15-22)
Juanita Gaines	Ex. 68	(R.T. p.1097 l. 18-22)
Cynthia Green	Ex. 69	(R.T. p.1099 l. 26- p.1100 l.2)
William Julian	Ex. 73	(R.T. p.1110 l. 16- p.1111 l. 11)
Earnest Smith	Ex. 76	(R.T. p.1115 l. 19-20)
Raymond Wallace	Ex. 80	(R.T. p.1120 l. 2-4)
Henry Crum	Ex. 85	(R.T. p.1135 l. 7- p.1136 l. 18)
Izola Crum	Ex. 86	(R.T. p.1137 l. 20- p. 1138 l. 11)
Bernice Smith	Ex. 93	(R.T. p.1255 l. 21- p.1256 l. 15)
John Banks	Ex. 97	(R.T. p.1267 l. 11-15)
Lorraine Ross	Ex. 99	(R.T. p.1270 l. 19-20)
Nathan A. Bland	Ex. 101	(R.T. p.1275 l. 21- p.1276 l.5)
Joe Minter	Ex. 102	(R.T. p.1279 l. 1-9)
Stanley C. Brown	Ex. 119	(R.T. p.1334 l. 4-5)

1	Sullen Smith	Ex. 25	(R.T. p.1377 l. 13-
2			p.1378 l. 6)
3	Ronnie Smith	Ex. 26	(R.T. p.1380 l. 21-
4			p.1381 l. 14)
5	Consuelo Barrow	Ex. 46	(R.T. p.860 l. 26-
6			p.862 l. 4)
7	Maxine Barrow	Ex. 47	(R.T. p.860 l. 26-
8			p.862 l. 4)
9	Denise Julian	Ex. 126	(R.T. p.1417 l. 10-18)
10	Lucille Strong	Ex. 125	(R.T. p.1399 l. 26-
11			p.1400 l.3)
12	Alice Marie Julian	Ex. 112	(R.T. p.1304 ll. 11-22;
13			p.1427 ll. 13-22)
14	Aron Strong	Ex. 105	(R.T. p.1440 l. 4-
15			p.1445 l. 16)
16	Freddie Strong	Ex. 115	(R.T. p.1411 l. 24-
17			p.1413 l. 12)
18	Kenneth Lee Strong	Ex. 123	(R.T. p.1358 ll. 14-25)
19	Willie Pearl Chevy	Ex. 22	(R.T. p.320 l. 21-
20			p.321 l. 14;
21			p.1367 ll. 15-18;
22			p.1369 ll. 1-6)
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Appendix C

<u>Voter</u>	<u>Exhibit</u>	<u>Transcript</u>
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3	Ex. 59	(R.T. p.1073 l. 11-21)
4	Ex. 60	(R.T. p.1075 l. 22-24)
5	Ex. 61	(R.T. p.1079 l. 22-24)
6	Ex. 62	(R.T. p.1082 l. 15-18)
7	Ex. 64	(R.T. p.1087 l. 4-9)
8	Ex. 65	(R.T. p.1088 l. 25)
9	Ex. 66	(R.T. p.1092 l. 6-19)
10	Ex. 67	(R.T. p.1095 l. 13-17)
11	Ex. 68	(R.T. p.1097 l. 18-22)
12	Ex. 69	(R.T. p.1099 l. 17-23)
13	Ex. 70	(R.T. p.1103 l. 3-10)
14	Ex. 80	(R.T. p.1120 l. 1-4)
15	Ex. 84	(R.T. p.1130 l. 21-26)
16	Ex. 85	(R.T. p.1135 l. 2-15)
17	Ex. 86	(R.T. p.1137 l. 24-25)
18	Ex. 87	(R.T. p.1139 l. 19-26)
19	Ex. 92	(R.T. p.1252 l. 24-25)
20	Ex. 93	(R.T. p.1255 l.21-23)
21	Ex. 94	(R.T. p.1258 l.23 - p.1259 l.2)
22		
23	Ex. 95	(R.T. p.1261 l.22 - p.1262 l.5)
24		
25	Ex. 96	(R.T. p.1264 l. 11-22)
26	Ex. 97	(R.T. p.1266 l.25- p.1267 l.16)
27		
28	Ex. 99	(R.T. p.1270 l. 19-25)

1	Juanita Todd	Ex. 100	(R.T. p.1273 l.29-23)
2	Nathan A. Bland	Ex. 101	(R.T. p.1275 l.21-23)
3	Brenda Crum	Ex. 104	(R.T. p.1285 l.1-5)
4	Alnette Goodwill	Ex. 116	(R.T. p.1328 l.19-20)
5	Debra Goodwill	Ex. 117	(R.T. p.1331 l. 3-4)
6	Eldridge Lyons	Ex. 106	(R.T. p.1288 L. 26-
7			p.1289 l.1)
8	Mary Lyons	Ex. 107	(R.T. p.1290 l.13-14)
9	Don Goodwill	Ex. 109	(R.T. p.1298 l. 16-22)
10	Sherman Goodwill, Jr.	Ex. 110	(R.T. p.1360 l. 23-24)
11	Thelma Goodwill	Ex. 111	(R.T. p.1302 l. 19-21)
12	Alice Marie Julian	Ex. 112	(R.T. p.1304 l. 11-16)
13	Vernon Julian	Ex. 113	(R.T. p.1321 l. 14-16)
14	Vincent Julian	Ex. 114	(R.T. p.1324 l. 7-15)
15	Warren Locksey	Ex. 118	(R.T. p.1332 l. 17-24)
16	Stanley Brown	Ex. 119	(R.T. p.1334 l. 17 -
17			p.1335 l. 9)
18	M.C. Cherry	Ex. 20	(R.T. p.1345 l. 3-8)
19	Willie Pearl Cherry	Ex. 22	(R.T. p.1367 l. 5-22)
20	Sullen Smith	Ex. 25	(R.T. p.1377 l. 10-12)
21	Ronnie Smith	Ex. 26	(R.T. p.1380 l. 17-26)
22	Sharon Anderson	Ex. 120	(R.T. p.1386 l. 19-21)
23	Ola Mae Augmon	Ex. 121	(R.T. p. 1388 l. 4-16)
24	Kenneth Lee Strong	Ex. 123	(R.T. p.1391 l.3-
25			p. 1392 l.17)
26	Freddie Strong	Ex. 115	(R.T. p.1326 l. 6-19)
27	Matielda Dixon	Ex. 14	(R.T. p.642 l. 17-23)
28	Calvin Dixon	Ex. 13	(R.T. p.642 l. 17-23)

1	Geraldine Gadlin	Ex. 27	(R.T. p.642 l. 17-23)
2	Grant White	Ex. 18	(R.T. p.642 l. 17-23)
3	Mary White	Exs. 17, 19	(R.T. p.642 l. 17-23)
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Appendix D

<u>Voter</u>	<u>Exhibit</u>	<u>Transcript</u>
1		
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3	Lucille Strong	Ex. 125 (R.T. p.1403 ll. 2-7)
4	Freddie Strong	Ex. 115 (R.T. p.1411 l. 13)
5	Calvin Dixon	Ex. 13 (R.T. p.163 ll. 16-26)
6	Sharon Anderson	Ex. 157 (R.T. p.1311 ll. 3-8)
7	Kenneth Lee Strong	Ex. 123 (R.T. p.1357 ll. 18-21)
8	Alice Marie Julian	Ex. 112 (R.T. p.148 ll. 6-7)
9	Willie Pearl Cherry	Ex. 22 (R.T. p.320 l. 21-
10		p.321 l. 14)
11	M. C. Cherry	Ex. 20 (R.T. p.345 ll. 6-12)
12	Chester Fontenot	Ex. 16 (R.T. p.264 ll. 12-18)
13	Aron Strong	Ex. 105 (R.T. p.1440 l. 4-
14		p.1445 l. 16)
15	Lillie Howard	Ex. 65 (R.T. p.1089 ll. 21-26)
16	James Howard	Ex. 66 (R.T. p.1092 ll. 23-25)
17		p.1093 ll. 6-7)
18	Roy Lee Ashford	Ex. 70 (R.T. p.1104 ll. 6-7)
19	Alice Harvey	Ex. 148 (R.T. p.1550 l. 12-
20		p.1441 l. 2)
21	Robbie Lee Shephard	Ex. 131 (R.T. p.1778 ll. 3-26;
22		p.1779 ll. 12-18)
23	Anitra Gilbert	Ex. 10 (R.T. p.125 ll. 12-13)
24	Mary Owens White	Ex. 17 (R.T. p.650 ll. 9-24)
25	Grant White	Ex. 18 (R.T. p.651 ll. 23-25)
26	Geraldine Gadlin	Ex. 27 (R.T. p.651 ll. 17-22;
27		p.550 l. 17)
28	Matielda Dixon	Ex. 14 (R.T. p.651 ll. 15-16)

1	Rosa Lee Ahern	Ex. 45	(R.T. p.871 ll. 21-22)
2	Ann Brandon	Ex. 50	(R.T. p.871 ll. 21-22)
3	Betty Brandon	Ex. 51	(R.T. p.871 ll. 21-22)
4	Luberta Brookter	Ex. 49	(R.T. p.871 ll. 21-22)
5	Mary Hall	Ex. 35	(R.T. p.688 ll. 20-23)
6	James Fields	Ex. 34	(R.T. p.687, ll. 11-24)

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DECLARATION OF SERVICE

BY MAIL

I am a citizen of the United States, over 18 years of age, and not a party to the within action. My business address is One Market Plaza, Spear Street Tower, San Francisco, California, 94105. On December 23, 1983, I served _____

APPELLANTS' OPENING BRIEF

on the parties to said action by placing a true copy thereof in a sealed envelope, with postage fully prepaid thereon, in the United States mail at San Francisco, California, addressed as follows:

Thomas Daniel Daly, Esq.
Assistant District Attorney
Hall of Justice and Records
Redwood City, CA 94063

Thomas R. Adams, Esq.
Adams, Broadwell & Russell
400 South El Camino Real
Suite 370
San Mateo, California 94402

Clerk of the Court
San Mateo Superior Court
Hall of Justice
Redwood City, CA 94063
Attn: Honorable John F. Cruikshank, Jr.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at San Francisco, California on December 23, 1983.



Debra A. Mailey

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DECLARATION OF SERVICE

Hand Delivered

I am a citizen of the United States, over 18 years of age, and not a party to the within action. My business address is One Market Plaza, Spear Street Tower, San Francisco, California 94105. On December 23 , 1983, I served _____

APPELLANTS' OPENING BRIEF

_____ on the parties to said action by causing it to be hand-delivered in a sealed envelope, addressed as follows:

California Supreme Court
Room 4250 (7 copies)
State Building
San Francisco, CA 94102

I declare under penalty of perjury that the foregoing is true and correct.

Executed at San Francisco, California on December 23, 1983

Debra A. Mailey
Debra A. Mailey