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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO

GERTRUDE WILKS, et al.,)	
)	No. 275654
Contestants,)	(Consolidated Action)
)	
vs.)	FINDINGS OF FACT AND
)	CONCLUSIONS OF LAW
BARBARA A. HOUTON, et al.,)	
)	
Defendants.)	

Prior to announcing the Court's Findings of Fact and Conclusions of Law, the Court feels that it is necessary to make some preliminary observations. These cases demonstrate the unforeseen problems created by the liberalization of the absentee voter statutes.

Section 1001 of the Elections Code sets the climate in which absentee voting is to be viewed. Section 1001 of the Elections Code states:

"This division shall be liberally construed in favor of the absent voter."

It has been said that the right to vote is not a natural right, but a political right to be regulated by the Legislature. This does not mean that voting is to be left to

1 the whim and caprice of the Legislature, but must meet the
2 standards implicit in the equal protection and due process pro-
3 visions of the United States Constitution and the Constitution
4 of the State of California.

5 In his opinion in Peterson v. City of San Diego (1983)
6 34 Cal.3d 225, Justice Broussard states the following on pages
7 229 and 230:

8 "The right to vote is, of course, fundamen-
9 tal (e.g., Thompson v. Mellon (1973) 9 Cal.
10 3d 96, 99 [107 Cal.Rptr. 20, 507 P.2d 628];
11 Zeilenga v. Nelson (1971) 4 Cal.3d 716, 721
12 [94 Cal.Rptr. 602, 484 P.2d 578], and res-
13 trictions on exercise of the franchise will
14 be strictly scrutinized and invalidated un-
15 less promotive of a compelling governmental
16 interest (Dunn v. Blumstein (1972) 405 U.S.
17 330, 337 [31 L.Ed.2d 274, 281, 92 S.Ct. 995]
18 Young v. Gness (1972) 7 Cal.3d 18, 22 [101
19 Cal.Rptr. 533, 496 P.2d 442]). As pointed
20 out in Otsuka v. Hite (1966) 64 Cal.2d 596
21 [51 Cal.Rptr. 284, 414 P.2d 412], the United
22 States Supreme Court "has stressed on num-
23 erous occasions, 'The right to vote freely
24 for the candidate of one's choice is of
25 the essence of a democratic society, and
26 any restrictions on that right strike at
27 the heart of representative government.'
28 Reynolds v. Sims, 377 U.S. 533, 555 [84 S.
Ct. 1362, 1378, 12 L.Ed.2d 506, 523]. . . .'"

20 It is to be noted that the election in question was
21 highly volatile, to say the least. It is in this background,
22 the Court had to weigh and assess the evidence presented.

23 Also, an examination of the exhibits demonstrates that
24 the manner in which absentee ballots are cast leaves much to be
25 desired. The voter is presented with a 3 x 7 card with 228
26 numbered spaces. The voter also receives a sample ballot with
27 the ballot measures and the names of candidates. Next to each
28 proposition and candidate is a number to correspond with the

1 numbers on the card. This must be confusing to most voters,
2 particularly those who are less sophisticated.

3 Contestants raised many issues, many of which were found
4 to be groundless. However, a major thrust of the contestants
5 rested in the decision of Fair v. Hernandez (1982) 138 Cal.App.3d
6 578. In interpreting section 1013 of the Elections Code, the
7 Court, at page 582, sets forth the following reasoning:

8 "First of all, it is clearly the purpose of
9 the statute to preserve the secrecy, uniform-
10 ity, and integrity of the voting process.
11 (See McFarland v. Spengler (1926) 199 Cal.
12 147, 152 [248 P. 521].) Requiring personal
13 delivery of the absentee ballot by the voter
14 avoids potential problems affecting the se-
15 crecy, uniformity and integrity of the ab-
16 sent voter's franchise. As Justice Kaufman
17 pointed out when this case was last before
18 us, '[P]reservation of the integrity of the
19 election process is far more important in the
20 long run than the resolution of any one par-
21 ticular election.' (Fair v. Hernandez, supra.
22 116 Cal.App.3d 868, 881, conc. opn. of Kauf-
23 man, J.) This important policy is admirably
24 served by the interpretation we have placed
25 on the statute."

26 It is to be pointed out that the essence of the above
27 rationale is the avoidance of "potential problems affecting the
28 secrecy, uniformity and integrity of the absent voter's fran-
chise". In weighing and assessing the evidence presented, the
Court finds no fraud or collusion.

As stated in Beatie v. Davila (1982) 132 Cal.App.3d
424, the Court, at page 430 and 431:

"The problem with appellant's secrecy argu-
ment in the present case is two-fold: First,
unlike Scott v. Kenyon, supra, 16 Cal.2d 197,
there is no proof that the secrecy of any
absentee voter's ballot was intruded upon
after the ballot was taken from the voter.
The only time it could be said that the

1 voter's right to secrecy was compromised
2 was when the voter marked his ballot in
3 the presence of the campaign representa-
4 tive before placing it in the identifica-
5 tion envelope. However, if a voter wishes
6 to disclose his marked ballot to someone
7 else, be it a family member, friend or a
8 candidate's representative, he should be
9 permitted to do so. To hold otherwise
would cast a pall on absentee voting. We
suspect that many absentee voters disclose
their marked ballots to other persons be-
fore placing them in the identification
envelope for return to the elections offi-
cial or the polling place. Such a volun-
tary disclosure cannot be deemed to vio-
late the constitutional mandate."

10 It is also to be noted, the harassment of voters; the
11 reluctance of voters to come forth and testify in a court of law;
12 the lapses of memory of those who did testify, some testifying
13 as the result of the issuance of bench warrants; and the zeal of
14 the opponents to the corporation paint an appalling picture.

15 The Court is well aware that measures protecting the
16 secrecy of the ballot are easier to apply at the polling place,
17 rather than within the sanctity of the home. It is the Court's
18 feeling that this task should be directed to the Legislature and
19 is not to be legislated by the Court.

20 It should also be pointed out, that a number of the
21 contestants in this matter neither retained nor knew that they
22 were receiving legal representation. It is also of some impor-
23 tance, that these law suits were financed not by citizens of the
24 community, but landowners and that the ballots in question were
25 cast by tenants.

26 In that light, the words of the late Justice Mathew O.
27 Tobriner at pages 965 and 966 of his opinion in Curtis v. Board
28 of Supervisors (1972) 7 Cal.3d 942, are most appropriate:

1 "The ideal of maximum participation in
2 democratic decision-making particularly
3 applies to participation in the affairs
4 of the city. One of the most striking
5 and encouraging phenomena of our times
6 has been the deep and renewed interest of
7 citizens in local community matters. To
8 frustrate the endeavor of individuals to
9 fix the unit of their local governance
10 and to repose that power in land, not peo-
11 ple, would be to stifle that self-deter-
12 mination. The seeds of democracy lay in
13 the Greek city-state, we would be reluc-
14 tant to stay the fruition of that demo-
15 cratic expression in the city of today.
16 Neither the state nor federal Constitu-
17 tion sanctions such negation; each compels
18 the opposite."

19 Consistent with the above observations, the Court makes
20 the following findings of fact and conclusions of law.

21 The above-entitled cause came on regularly for trial
22 on August 2, 1983, in Department 17 of the above-entitled Court,
23 the Honorable John F. Cruikshank, Jr. presiding and the trial
24 commenced on that date and continued on August 3, 4, 5, 24, 25,
25 26, 30, 31, and September 1, 2, 6, 7, 8 and 14, 1983. Paul N.
26 McCloskey, Jr., and Patricia M. Brody appeared as counsel for
27 the contestants; Thomas R. Adams and Ann Broadwell appeared as
28 counsel for defendants City of East Palo Alto, Barbara A. Mouton,
Frank Omowale Satterwhite, Ruben Abrica and James E. Blakey,
Jr.; James P. Fox, District Attorney, by Thomas Daniel Daly,
Assistant District Attorney, appeared for defendant County of
San Mateo.

One hundred and eleven witnesses (111) testified, 207
documents were marked as exhibits, briefs were submitted and the
cause was argued and submitted for decision. The Court, having
considered the evidence, and the written briefs and oral argu-

1 ments of counsel, and being fully advised, the Court issues the
2 following Findings of Fact and Conclusions of Law and Statement
3 of Decision.

4 FINDINGS OF FACT

5 1. Pursuant to Government Code section 56440, the San
6 Mateo County Board of Supervisors scheduled an election for June
7 7, 1983, in the unincorporated area of East Palo Alto. The
8 election was to determine whether East Palo Alto should be in-
9 corporated as a city and, if so, to elect five people to the
10 city council.

11 2. The East Palo Alto Citizens' Committee on Incorpor-
12 ation ("EPACCI") organized a campaign in support of incorporation
13 and in support of a slate of four city council candidates. The
14 four candidates were Barbara A. Mouton, Frank Omowale Satterwhite,
15 Ruben Abrica and James E. Blakey, Jr.

16 3. As part of its campaign, EPACCI provided voters
17 with absentee ballot application forms. Application forms were
18 collected at EPACCI headquarters. The Chairman of EPACCI's
19 Voter Registration Committee, Onyango Bashir, personally delivered
20 completed applications to the County Clerk's office in Redwood
21 City.

22 4. Joseph Goodwill also provided people with absentee
23 ballot applications.

24 5. Upon receipt of an application for an absentee
25 ballot, the County Clerk checked the voter's signature and deter-
26 mined whether the voter was entitled to receive an absentee
27 ballot. If so, he mailed an absentee ballot, along with all of
28 the required materials, to the mailing address indicated on the

1 application.

2 6. Some voters requested that absentee ballots be
3 mailed to an address other than their residence address. The
4 County Clerk complied with such requests by mailing the absentee
5 ballot and materials to the address requested. All of the chal-
6 lenged absentee ballots reached the voters to whom they were
7 addressed.

8 7. The Clerk mailed to each absent voter all of the
9 supplies necessary for the use and return of the ballot. The
10 absentee ballots used in the election were in the form of compu-
11 ter cards with holes to be punched. The cards were approximately
12 3" wide x 7" long and were beige in color. They had 228 numbered
13 spaces which could be punched out. A voter casts a vote by punch-
14 ing the space opposite to the number, given on a key, for the
15 candidates and for "yes" or "no" on Proposition A. A metal pin,
16 shaped like the bent half of a paper clip, was provided for
17 punching out the ballot. A voted absentee ballot in this election
18 would have six holes punched in it if the voter cast a vote on
19 Proposition A and voted for five candidates. The candidates'
20 names and the text of Proposition A were not printed on the com-
21 puter card. They were numbered and printed on accompanying in-
22 structions.

23 8. Included with the absentee ballot was an instruc-
24 tion sheet prepared by the County Clerk (Exhibit 6E). It con-
25 tains no instruction about delivering the voted ballot to the
26 Clerk's office in Redwood City nor does it indicate that ballots
27 can only be delivered to Redwood City by the voter personally.
28 The instruction sheet omits any discussion of this topic.

1 9. Joseph Goodwill distributed approximately 79 absen-
2 tee ballot applications. Mr. Goodwill distributed these appli-
3 cations to his family members or friends and acquaintances of
4 long standing. When enough time had elapsed for the Clerk to have
5 processed the application and mailed an absentee ballot to the
6 voter, Mr. Goodwill got back in touch with the voter and asked
7 whether the absentee ballot had been received, and whether the
8 voter had completed and returned the absentee ballot to the
9 County Clerk.

10 10. In some instances the voter asked Mr. Goodwill for
11 instructions about the absentee ballot procedure. In some in-
12 stances, because of age, physical disability or lack of famil-
13 iarity with the computer card, the voter asked Mr. Goodwill for
14 help completing the absentee ballot. In yet other instances, the
15 voter had completed the ballot and gave it to Mr. Goodwill to
16 return to the County Clerk. In some instances the voter had
17 already completed and returned the absentee ballot to the County
18 Clerk. In those instances where Mr. Goodwill helped complete
19 the absentee ballot, he did so in privacy, in the presence of
20 the voter, with the voter's understanding and consent. Occasion-
21 ally, one or more members of the voter's family were present,
22 with the voter's consent. All the ballots were punched to reflect
23 the voter's decision on the candidates and on Proposition A.
24 After the ballot was completed, each voter signed the ballot
25 envelope.

26 11. Joseph Goodwill delivered 30 voted absentee ballots
27 from the voters to EPACCI campaign headquarters. Ten of those
28 ballots were cast by his own relatives.

1 12. The 30 voted ballots collected by Mr. Goodwill,
2 and delivered to EPACCI headquarters, were those of:

3	Sharon D. Anderson	Vernon Julian
	Ola May Augmon	Vincent Julian
4	Mary A. Brown	Faye Dell Knowles
	Stanley C. Brown	Warren Locksey
5	Christopher Cook	Eldridge Lyons
	Brenda Crum	Mary Lyons
6	Alnette Goodwill	Joe Minter
	Debra Goodwill	Robbie Lee Shepard
7	Don E. Goodwill	Aron Strong
	Thelma M. Goodwill	Clara Strong
8	Sherman J. Goodwill, Jr.	Dwan A. Strong
	Renita Haynes	Freddie D. Strong
9	Alice Julian	Kenneth Lee Strong
	Denise D. Julian	Lucille D. Strong
10	Louise Julian	Sylvester Strong

11 13. All of these ballots were delivered to the County
12 Clerk by Onyango Bashir. No one tampered with any of these
13 ballots.

14 14. Forty-nine other voters gave their voted absentee
15 ballots to Mr. Goodwill to return to the Clerk. All of those
16 ballots were mailed by Mr. Goodwill to the Clerk's office. No
17 one tampered with any of those ballots.

18 15. Mrs. Carmaleit Oakes, 77 years old, followed up
19 five absentee ballot applications. She visited those five voters
20 after enough time had elapsed for them to have received their
21 absentee ballots. She was invited into their homes. She offered
22 to help them with their absentee ballots. They all accepted her
23 offer. All five people discussed their votes with her and volun-
24 tarily showed their ballot materials to her. At their request,
25 because of lack of familiarity with the computer card, she helped
26 four voters complete their absentee ballots in the privacy of
27 their own homes. She helped complete all four ballots with the
28 voters' understanding and consent and in accordance with the

1 voters' wishes. Each completed ballot correctly reflected each
2 voter's choice of candidates and each voter's decision on Propo-
3 sition A. After the ballot was completed, each voter signed the
4 ballot envelope. The four voters were Grant White, Mary White
5 (a.k.a. Mary Owens), Matielda Dixon and Calvin Dixon. The fifth
6 voter, who completed her own absentee ballot, was Geraldine
7 Gadlin. Mrs. Oakes took the completed absentee ballots of these
8 five voters to EPACCI headquarters. No one tampered with any of
9 these ballots.

10 16. Several people who voted absentee live at Runnymede
11 Gardens in East Palo Alto. Runnymede Gardens is a federally-
12 subsidized residential facility for the elderly. Many of the
13 residents are handicapped. Brad Davis is the resident manager
14 of Runnymede Gardens.

15 17. Prior to the June 7, 1983, election, several resi-
16 dents of Runnymede Gardens asked Mr. Davis for help with their
17 absentee ballots. Mr. Davis arranged a meeting at Runnymede
18 Gardens. Any resident who wanted help could attend the meeting.
19 Mr. Frank Omowale Satterwhite came to Runnymede Gardens for the
20 meeting and helped six voters with their absentee ballots. All
21 six voters requested help. All who showed their ballots to Mr.
22 Satterwhite did so voluntarily. Four of these people asked Mr.
23 Satterwhite to complete their absentee ballots. Because of age
24 or disability, they could not punch out the holes in the absentee
25 ballot computer cards themselves. These voters were: Rosa Lee
26 Ahern, Ann Brandon, Betty Brandon and Luberta Brookter. Mr.
27 Satterwhite carefully ascertained their wishes, punched out the
28 ballots according to the voter's instructions and showed the

1 punched ballot to the voter. Mr. Satterwhite's assistance was
2 provided with the voters' understanding and consent and the
3 voters all signed the ballot envelopes. Mr. Satterwhite gave
4 these absentee ballots to Brad Davis, along with those of Consuelo
5 Barrow and Maxine Barrow, who completed their own ballots.

6 18. In addition, several voters who lived at Runnymede
7 Gardens gave their completed absentee ballots to Mr. Davis for
8 delivery. All ballots received by Mr. Davis were delivered by
9 him to EPACCI headquarters. The ballots delivered by Mr. Davis
10 were from the following voters:

11 Rosa Lee Ahern
12 Consuelo Barrow
13 Maxine Barrow
14 Ann Brandon
15 Betty Brandon
16 Luberta Brookter
17 Bobbie Heard
18 Lila Jefferson
19 Leona Walton
20 Priscilla Washington
21 Eleanor Wilson

22 No one tampered with any of these ballots.

23 19. Because of physical disabilities, two residents of
24 Runnymede Gardens, Mary Hall and James Fields, asked Mr. Davis
25 for help filling out their ballots. Mr. Davis filled out their
26 ballots in privacy, in the voter's presence, according to the
27 voter's instructions and with the voter's understanding and con-
28 sent. After the ballots were completed, the voters signed their
ballot envelopes. Mr. Davis placed these ballot envelopes in
the United States mail for delivery to the County Clerk. No one
tampered with either of these ballots.

20. The contestants also challenged Rosalind Simon's
absentee ballot. It was actually filled out by her mother,

1 Mildren Simon. The ballot was completed in privacy according to
2 Rosalind Simon's instructions and at her request. Because of
3 recent surgery, Rosalind Simon was physically unable to complete
4 the ballot herself.

5 21. The ballots delivered to EPACCI headquarters by
6 Mrs. Oakes, Mr. Goodwill and Mr. Davis were either mailed or
7 delivered by Onyango Bashir to the County Clerk's office in
8 Redwood City. Mr. Bashir delivered ballots between May 9, 1983,
9 and May 24, 1983. Mr. Bashir placed these ballots in a ballot
10 box which sat on the counter in the County Clerk's office, Room
11 B, at the Hall of Justice and Records in Redwood City, California.
12 No one tampered with any of these absentee ballots.

13 22. Deputy County Clerks are in charge of Room B. Be-
14 tween May 9, 1983 and May 24, 1983, those Deputy County Clerks
15 allowed voted absentee ballots to be deposited in the ballot box
16 by anyone. During that period, Onyango Bashir deposited approxi-
17 mately 46 ballots in the ballot box.

18 23. On May 24, 1983, Robert Kasper, Assistant County
19 Clerk, came to Room B and gave the Deputy Clerk copies of a page
20 from an Attorney General's opinion. The opinion stated that
21 absentee ballots could be delivered only by the voter. Mr.
22 Kasper was aware of this opinion prior to May 9, 1983, but did
23 not bring it to the attention of the clerks in Room B because of
24 the press of other duties related to the election. A copy of a
25 page from the Attorney General's opinion was taped onto the
26 ballot box. The page has been admitted into evidence as Exhi-
27 bit 9.

28 24. On May 24, 1983, Mr. Bashir came to Room B with

1 several absentee ballots to deliver. At that time, he was in-
2 formed by the clerks that he could not place the ballots in the
3 ballot box, but would have to mail them. He took them outside
4 of the building, put stamps on them and put them in the mailbox.

5 25. After May 24, 1983, no absentee ballots were de-
6 livered to the Clerk's office by Mr. Bashir or anyone else from
7 EPACCI. After May 24, 1983, Mr. Bashir mailed absentee ballots
8 to the County Clerk and did not return them in person.

9 26. At all relevant times, Mr. Onyango Bashir was
10 designated as a Deputy County Clerk. According to the card
11 issued to Mr. Bashir and signed by the County Clerk-Recorder,
12 Mr. Bashir "is designated as a Deputy County Clerk to assist in
13 duties in the conduct of elections authorized by law" (Exhibit
14 55). Mr. Bashir took the same oath of office that was taken by
15 the County Clerk.

16 27. Mr. Bashir was appointed a Deputy County Clerk in
17 order to register voters. He was issued instructions on the
18 procedures for registration of voters. He was not instructed in
19 the handling of absentee ballots by the County Clerk and prior
20 to May 24, 1983, did not know of any opinion that absentee ballots
21 must be delivered to the County Clerk by the voter.

22 28. Prior to the June 7, 1983 election, the County
23 Clerk had not considered whether Deputy County Clerks appointed
24 for registration were authorized to receive absentee ballots.
25 When the issue arose in this trial, the County Clerk considered
26 the issue and determined that Mr. Bashir and other Deputy County
27 Clerks were authorized to receive absentee ballots. The County
28 Clerk has not imposed any limitation on the authority of the

1 Deputy County Clerks as set forth in Exhibit 55.

2 29. Carmaleit Oakes was also a Deputy County Clerk
3 with the same authority and instruction as Mr. Bashir. Mr. Brad
4 Davis, Mr. Joseph Goodwill and Mr. Frank Omowale Satterwhite
5 were not Deputy County Clerks.

6 30. One voter, Lanette Cody, completed her absentee
7 ballot and gave it to her sister for delivery to the Clerk. The
8 evidence establishes that her ballot was either delivered to the
9 precinct board on election day or to the County Clerk's office
10 in Redwood City. No one tampered with that ballot.

11 31. Some absentee ballots received by the County Clerk
12 gave, as a return address, an address other than the voter's
13 residence address. The County Clerk compared the signature on
14 absentee ballots with the signature on the affidavit of registra-
15 tion. If the signatures matched, the ballot was counted, even
16 if the return address was not the residence address.

17 32. The election was held on June 7, 1983. On June
18 14, 1983, the Board of Supervisors declared the results as follows:

19 a. On Proposition A, the measure for incorporation,
20 the "yes" votes totaled 1,782, and the "no" votes totaled 1,767.
21 The incorporation measure passed by 15 votes. Of the total votes
22 counted, 3,277 votes were cast at the polls and 272 votes were
23 cast by absentee ballot. Of the votes cast at the precinct
24 places, incorporation was defeated (1,599 for versus 1,678
25 against) by a margin of 79 votes. Of the absentee votes, the
26 vote was 183 for incorporation versus 89 against it, a margin of
27 94 votes.

28 b. Five persons were declared elected to the City

1 Council of East Palo Alto. Those persons are: Gertrude Wilks
2 (1,607 votes), Barbara A. Mouton (1,553 votes), Frank Omowale
3 Satterwhite (1,527 votes), Ruben Abrica (1,516 votes) and James
4 E. Blakey, Jr. (1,461 votes). The candidates with the next
5 highest vote total were tied. They are Henry E. Anthony and Pat
6 Johnson, with 1,302 votes each.

7 33. On June 14, 1983, Gertrude Wilks and Arn Cenendella
8 filed Statements of Contest pursuant to Elections Code section
9 20000, et seq., challenging the approval of Proposition A and
10 the election of Barbara A. Mouton, Frank Omowale Satterwhite,
11 Ruben Abrica and James E. Blakey, Jr.

12 34. On July 1, 1983, pursuant to the election results
13 and the order of the Board of Supervisors, the City of East Palo
14 Alto was incorporated and commenced operation,

15 35. On July 14, 1983, Gertrude Wilks filed an amended
16 Statement of Contest. Statements of Contest were also filed by
17 Grant White, Mary L. Owens, Eulesley Reece, Edward Johnson,
18 Leon E. Abernathy, Joe T. Sanders, L. A. Breckenridge and Roy
19 Lee Ashford.

20 36. On July 27, 1983, the Court signed an order re-
21 quiring the joinder of the City of East Palo Alto and the County
22 of San Mateo as party defendants.

23 37. On July 29, 1983, the contestants filed an "Amended
24 List of Illegal Votes". The list contained the names of 324
25 voters.

26 38. Also on July 29, 1983, the County of San Mateo
27 submitted a list of challenged votes. The County's list con-
28 tained the names of three voters: L. A. Breckenridge, Albert

1 Nakai and Sally Nakai.

2 39. On August 2, 1983, trial commenced. Also on that
3 date, the contestants filed a "Second Amended Statement of Grounds
4 of Contest of Election of Defendants and of the Incorporation of
5 East Palo Alto". The Second Amended Statement reduced the list
6 of challenged votes to a total of 312 names.

7 40. The Court heard the testimony of witnesses on
8 August 2, 3, 4 and 5, 1983. On August 12, 1983, the contestants
9 mailed a letter to the Court eliminating 121 names from the list
10 of challenged votes. The total of challenged votes was reduced
11 to 191.

12 41. Trial was recessed until August 24, 1983, when
13 testimony resumed. Testimony continued on August 25, 26, 30 and
14 31, 1983, and on September 1, 2, 6, 7, 8 and 14, 1983. During
15 the course of the trial, contestants dropped their challenges to
16 an additional 14 voters, leaving a total of 177 votes challenged
17 by the contestants at the conclusion of the trial.

18 42. Thirty-five voters were challenged by the contest-
19 ants on the ground that they were not domiciled in East Palo
20 Alto during the 29 days preceding the election. Two votes were
21 challenged by the contestants on the ground that they had moved
22 out of East Palo Alto in the 28 days prior to the election.

23 43. Frenchia Gibsen was registered in East Palo Alto,
24 but moved out of the proposed City of East Palo Alto during the
25 28 days preceding the June 7, 1983 election. Mr. Gibson voted
26 in the June 7, 1983 election in East Palo Alto. The parties
27 have stipulated that Mr. Gibsen voted "yes" on Proposition A.

28 44. Robert Long was registered in East Palo Alto, but

1 moved out of the proposed City of East Palo Alto during the 28
2 days preceding the June 7, 1983 election. Mr. Long voted in the
3 June 7, 1983 election in East Palo Alto. The parties have stipu-
4 lated that Mr. Long voted "yes" on Proposition A.

5 45. Joe Minter was not domiciled in the precinct in
6 which he registered during the 29 days preceding the June 7, 1983
7 election. Mr. Minter voted in the June 7, 1983 election in East
8 Palo Alto. The parties have stipulated that Mr. Minter voted
9 "yes" on Proposition A.

10 46. Roy Adger resided at 2330 Palo Verde, East Palo
11 Alto, during the 29 days preceding the June 7, 1983 election.
12 Mr. Adger voted in precinct 406007 in the June 7, 1983 election.
13 Said address of 2330 Palo Verde, East Palo Alto, is not in pre-
14 cinct 406007. Mr. Adger did not have a domicile in precinct
15 406007; he was domiciled in precinct 406003 during the 29 days
16 preceding the June 7, 1983 election. The parties have stipulated
17 that Mr. Adger voted "yes" on Proposition A.

18 47. Aron Strong was domiciled at 1101 Del Norte, Menlo
19 Park, during the 29 days preceding the June 7, 1983 election.
20 Mr. Strong did not have a domicile in East Palo Alto during the
21 29 days preceding the June 7, 1983 election. Mr. Strong voted
22 in the June 7, 1983 election. The parties have stipulated that
23 Mr. Strong voted "yes" on Proposition A.

24 48. The vote of L. A. Breckenridge was challenged by
25 San Mateo County. Mr. Breckenridge was domiciled at 1090 Weeks
26 Street, East Palo Alto, during the 29 days preceding the June 7,
27 1983 election. Mr. Breckenridge voted at precinct 406002 in the
28 June 7, 1983 election. Said address of 1090 Weeks Street is not

1 in precinct 406002. Mr. Breckenridge did not have a domicile
2 within precinct 406002 during the 29 days preceding the June 7,
3 1983 election; he was domiciled in precinct 406006. The parties
4 have stipulated that Mr. Breckenridge voted "no" on Proposition A.

5 49. The votes of Sally Nakai and Albert Nakai were
6 challenged by San Mateo County. Mr. and Mrs. Nakai were domi-
7 ciled at 61 Irving Street, Atherton, during the 29 days preceding
8 the June 7, 1983 election. Sally Nakai and Albert Nakai voted
9 in the June 7, 1983 election in East Palo Alto. Neither Sally
10 Nakai nor Albert Nakai had a domicile in East Palo Alto during
11 the 29 days preceding the June 7, 1983 election. The parties
12 have stipulated that Sally Nakai and Albert Nakai both voted
13 "no" on Proposition A.

14 50. The evidence presented at the trial shows that all
15 of the voters listed on Exhibit "A" (attached hereto), were domi-
16 ciled in the precincts in which they were registered and in which
17 they voted. Several of those voters (Stephanie Clemons, Ann
18 Friauf, Shawn Patrick Ghee, Lois Middleton, Gwendolyn Parris,
19 Freddie D. Strong, Eddie Young, Jr.) had moved from one domicile
20 to another domicile in the same precinct in which they were regis-
21 tered to vote.

22 51. The evidence does not show that any of the voters
23 on Exhibit "B" (attached hereto), lost their domicile in the
24 precinct in which they were registered. Evidence was presented
25 only that these voters moved from their registered addresses.
26 The evidence did not establish their intent, their residences or
27 their domicile during the 29 days preceding the June 7, 1983
28 election.

1 52. The Court has listened to and carefully considered
2 the testimony of all the witnesses. The testimony was sometimes
3 conflicting. The Court has observed the demeanor of the witness-
4 ses and evaluated their credibility. In evaluating the credibil-
5 ity of the witnesses, the Court has considered the fact that
6 many of the witnesses had poor recollection of the events they
7 testified about. The Court has also taken into account the fact
8 that several witnesses were subjected to the pressure of repeated
9 visits after the election by opponents of incorporation. Testi-
10 mony of several witnesses was additionally affected by fear of
11 judicial proceedings. The Court has also evaluated the fact
12 that there were internal inconsistencies in some of the testi-
13 mony and the fact that some witnesses testified to facts which
14 were not true.

15 CONCLUSIONS OF LAW

- 16 1. There was no fraud as to any challenged ballot
17 cast.
- 18 2. There was no tampering with any challenged ballot
19 cast.
- 20 3. There was no forgery as to any challenged ballot
21 cast.
- 22 4. All of the absentee ballots which were delivered
23 to the County Clerk by a person other than the voter are valid
24 because:
 - 25 a. The evidence shows that there was no fraud or
26 tampering with such ballots and, therefore, the decision in
27 Fair v. Hernandez, 138 Cal.App.3d 578, 188 Cal.Rptr. 45 (1982),
28 does not apply to the particular facts of this case; and

1 b. The Equal Protection of the California Consti-
2 tution and the United States Constitution prohibit distinguishing
3 between absentee ballots mailed by third parties to the County
4 Clerk, those delivered by third parties to the precinct board
5 and those delivered by third parties to the County Clerk absent
6 a compelling state interest. There is no compelling state inter-
7 est in making such a distinction. The Due Process Clauses of the
8 United States Constitution and of the California Constitution
9 prohibit a post hoc deprivation of the franchise when qualified
10 electors cast their votes in accordance with procedures estab-
11 lished by those authorized to conduct elections. The votes
12 here were cast in accordance with the procedures established by
13 the County Clerk, who is authorized to conduct elections.

14 5. The constitutional rights to a secret ballot and
15 to privacy were not violated because the evidence shows that
16 all of the voters who showed their ballots to third parties or
17 who obtained assistance from third parties did so voluntarily
18 and waived such rights.

19 6. Six voters cast illegal votes because they were
20 not domiciled in East Palo Alto within the meaning of the Elec-
21 tions Code. They are: Roy Adger, L. A. Breckenridge, Joe
22 Minter, Albert Nakai, Sally Nakai and Aron Strong.

23 7. Two voters, Frenchia Gibsen and Robert Long, moved
24 from their registered addresses within 28 days of the June 7,
25 1983 election, but they were not entitled to vote in that election
26 because they moved outside of the city limits of the proposed
27 City of East Palo Alto.

28 8. Aside from the eight voters named in paragraphs

1 58 and 59, none of the other voters challenged on the ground of
2 residence cast illegal votes because:

3 a. The evidence shows that the voters on Exhibit
4 "A" attached hereto were domiciled within the precincts in which
5 they were registered on election day;

6 b. There is no clear and convincing evidence that
7 any of the voters on Exhibit "B" cast illegal votes.

8 9. There is no clear and convincing evidence that
9 any voter, other than the eight voters listed in paragraphs 58
10 and 59, cast an illegal vote in the June 7, 1983 election.

11 10. No precinct board or elected official committed
12 any malconduct in the June 7, 1983 election within the meaning
13 of Elections Code section 20021(a) or section 20023.

14 11. No precinct board or election official, in con-
15 ducting the election or in canvassing the returns, made errors
16 sufficient to change the result of the election as to any person
17 who has been declared elected or as to the ballot measure (Pro-
18 position A) which was passed.

19 12. Elections Code section 1006 authorized the County
20 Clerk to mail an absentee ballot to an address other than the
21 residence address of the voter. Therefore, the 16 ballots listed
22 on Exhibit "C" are legal.

23 13. Elections Code section 1015 only requires the
24 Clerk to compare the signature on the identification envelope
25 with the signature on the affidavit of registration, and does
26 not require that the residence addresses be compared. Therefore,
27 the 16 ballots listed in Exhibit "D" are legal.

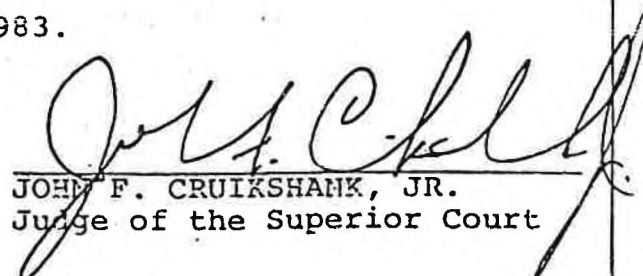
28 14. There is no evidence that any challenged ballot

1 was cast by a non-citizen. There is no evidence that Antonio
2 Sanchez is not a citizen.

3 15. Pursuant to Elections Code section 20086, the
4 Court confirms the passage of Proposition A in the June 7, 1983
5 special election in East Palo Alto by a margin of 13 votes,
6 1,777 to 1,764.

7 16. The evidence does not establish that a person who
8 was not declared elected to the City Council actually received
9 a higher number of votes than Barbara A. Mouton, Frank Omowale
10 Satterwhite, Ruben Abrica or James E. Blakey, Jr. Pursuant to
11 Elections Code section 20086, the Court thus confirms the elec-
12 tion to the City Council of Barbara A. Mouton, Frank Omowale
13 Satterwhite, Ruben Abrica and James E. Blakey, Jr.

14 Dated: October 14, 1983.

15
16 
17 JOHN F. CRUIKSHANK, JR.
18 Judge of the Superior Court
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28

1. Lowell J. Bennett, Jr.
2. Virgil Isaasc Boyd, Jr.
3. Stephanie Clemons
4. Roosevelt Cox, Jr.
5. Waheedah Dawan
6. Ann Friauf
7. Shawn Patrick Ghee
8. Warren Locksey
9. Lois Middleton
10. Schery Ruth Mitchell
11. Gwendolyn Parris
12. Carlos A. Romero
13. Kaye Smith
14. Freddie D. Strong
15. Eddie Young, Jr.

1. Marion E. Anderson
2. Denise D. Dawson
3. Judith Drew
4. Lisa Dupee
5. Gloria Y. Forbes
6. Violet Forbes
7. Spurgeon Gardner
8. Ricardo Lara
9. Eldridge Lyons
10. Archie Marshall
11. Jacqueline McKenzie
12. Ronnie McKenzie
13. Wanda Robinson
14. Shawn S. Smith
15. Kenneth Stowe
16. Johnnie L. Taylor
17. Daniel L. Zachary

1. Roy Lee Ashford
2. Leona Brown
3. Chester Fontenot
4. Anitra C. Gilbert
5. Michael Harmon
6. William R. Julian
7. Lonnie McGee
8. Joe Minter
9. Alberta Mitchell
10. Mildred M. Simon
11. Rosalind M. Simon
12. Earnest Smith
13. Ronnie Smith
14. Sullen Smith
15. Melody M. Whitefield
16. Bennie Williams

1. Roy Lee Ashford
2. Leona Brown
3. Chester Fontenot
4. Alnette Goodwill
5. William R. Julian
6. Lonnie McGee
7. Alberta Mitchell
8. Mildred M. Simon
9. Rosalind M. Simon
10. Bernice Smith
11. Earnest Smith
12. Ronnie Smith
13. Sullen Smith
14. Otelia Thomas
15. Melody M. Whitefield
16. Bennie Williams

AFFIDAVIT OF MAILING

CASE NO. 27554

Document: Findings of Fact and Conclusions of Law

I declare under penalty of perjury that on the following date I deposited in the United States Post Office mail box at Redwood City a true copy of the foregoing document, enclosed in an envelope, with the proper and necessary postage prepaid thereon, and addressed to the following:

Brobeck, Phleger & Harrison
Two Palo Alto Square, Suite 230
Palo Alto, CA 94306

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400 So. El Camino Real, Suite 370
San Mateo, CA 94402

Thomas Daniel Daly, D.D.A.
District Attorney's Office
401 Marshall Street
Redwood City, CA 94063

Executed on 10-20-83
at Redwood City, California

MARVIN CHURCH, County Clerk