



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: *Request that City Join Amicus Brief in Citizens Against New Local Taxes v. City of Agoura Hills (Court of Appeal, 2d. Dist. No. B094342)*

MEETING DATE: September 20, 1995

PREPARED BY: Deputy City Attorney

RECOMMENDATION: That the city join the amicus brief for Citizens Against New Local Taxes v. City of Agoura Hills (Court of Appeal, 2d. Dist. No. B094342)

BACKGROUND: For purposes of information, *amicus curiae* briefs are filed in various actions which involve matters of wide ranging concern to provide information and additional argument to the court.

This Election Law case addresses two issues of statewide importance:

1. Whether an Elections Official has a duty to count as valid signatures on a recall petition the signatures of persons who are not registered voters in the County on the date the petitions are filed with the Elections Official, but who become registered voters after the deadline for submission of petitions, where the recall proponents had the voter registration affidavits in their possession for a number of days but allegedly were prevented from timely filing them with the County Registrar of Voters by reason of a "medical emergency" on the last day?

2. Whether an Elections Official abuses his or her discretion by refusing to count as valid signatures on a recall petition those signatures where the printed name and address were obviously filled out in a different handwriting, by someone other than the voter?

This case arose out of a drive to recall the Agoura Hills City Council. After the necessary petitions were delivered to the City Clerk, the County Registrar/Recorder determined numerous signatures did not qualify because these persons had not registered to vote prior to the filing of the petitions.

APPROVED: _____


THOMAS A. PETERSON
City Manager

The voter registration affidavits for these persons were delivered to the Registrar one day after the petition was filed.

The trial court ordered that the late-registered voters be counted as valid signatures. The court held that the late delivery of the petitions constituted “substantial compliance” with the Election Code because the affidavits were allegedly not filed on time due to a “medical emergency” involving the leader of the recall campaign.

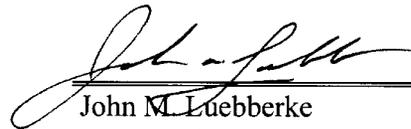
Although the facts of this case are unique, the trial court’s decision to allow unregistered voters to be counted invites all manner of excuses and explanations for what would otherwise be a clear-cut determination of voter eligibility. Presumably any excuse would be admissible to explain a non-compliance with the Election Code. The difficulty comes due to the fact that City Clerks must perform their duties with absolute impartiality, and the rendering of a subjective decision to accept or reject an excuse for non-compliance would undoubtedly please one faction and outrage another.

The main purpose of the election code is to set ground rules that both sides must comply with. The court’s ruling in this case invites all manner of after-the-fact rationalizations, explanations and excuses and places the City Clerk squarely in the middle.

The City of Agoura Hills is seeking to overturn the trial court’s decision in favor of a ruling which will require strict enforcement of the Elections Code.

FUNDING: Not applicable.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John M. Luebberke", written over a horizontal line.

John M. Luebberke
Deputy City Attorney