

ENDORSED  
FILED  
San Francisco County Superior Court

AUG - 7 2019

CLERK OF THE COURT  
DORA LOUIE

BY: \_\_\_\_\_ Deputy Clerk

1 Michael Denny  
2 IN PRO PER  
3 3329 Cabrillo St  
4 San Francisco, California  
5 Telephone: 415-608-0269  
6 E-mail: mike@Dennz.com

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 FOR THE COUNTY OF SAN FRANCISCO

9 Michael Denny;  
10 Contestant.

11 vs.

12 John Arntz,  
13 Director of Elections;  
14 Dennis Herrera,  
15 City Attorney;  
16 Defendants.

17 Case No.: CGC-19-575070  
18 CONTESTANT/APPELLANT REPLY  
19 OPPOSING RESPONDENTS' MOTION  
20 TO DISMISS APPEAL  
21 Appellate Court Case No.: TBD  
22 Date Action Filed: April 5, 2019  
23 Hearing Date: Not set

24 I. BACKGROUND

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

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

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

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

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

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

8 The Appellant (Contestant below) requests that the court take judicial notice of all  
9 the filings of the argumentatively labeled "San Francisco Affordable Housing Bonds"  
10 currently being placed on the November 5, 2019 ballot under Evidence Code sections  
11 451(f), 452(g), 452(h), and 453.

12  
13 **SAN FRANCISCO AFFORDABLE HOUSING BONDS.** To finance the construction,  
14 development, acquisition, and preservation of housing affordable to extremely-low,  
15 low and middle-income households through programs that will prioritize vulnerable  
16 populations such as San Francisco's working families, veterans, seniors, and  
17 persons with disabilities; to assist in the acquisition, rehabilitation, and preservation  
18 of existing affordable housing to prevent the displacement of residents; to repair  
19 and reconstruct distressed and dilapidated public housing developments and their  
20 underlying infrastructure; to assist the City's middle-income residents or workers in  
21 obtaining affordable rental or home ownership opportunities including down  
22 payment assistance and support for new construction of affordable housing for San  
23 Francisco Unified School District and City College of San Francisco employees;  
24 and to pay related costs; shall the City and County of San Francisco issue  
25 \$600,000,000 in general obligation bonds with a duration of up to 30 years from the  
26 time of issuance, an estimated average tax rate of \$0.019/\$100 of assessed  
27 property value, and projected average annual revenues of \$50,000,000, subject to  
28 independent citizen oversight and regular audits?

[http://sfelections.sfgov.org/sites/default/files/Documents/candidates/Nov2019\\_AffordableHousingBond\\_Legislative%20Digest.pdf](http://sfelections.sfgov.org/sites/default/files/Documents/candidates/Nov2019_AffordableHousingBond_Legislative%20Digest.pdf)

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

26 The court and the Defendants clearly either do not know the procedures for election  
27 contests or refuse to abide by them in favor of comfortable procedural technicalities. The  
28

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

## 6 7 II. INTRODUCTION

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

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

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

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

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

## 24 25 **Generalia Specialibus Non Deroqant**

26  
27 Perhaps one of the most recognized maxims of law involving the construction of  
28

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

3  
4 It is a canon of statutory construction that a later statute, general in its terms and  
5 not expressly repealing a prior special statute, will ordinarily not affect the special  
6 provisions of such earlier statute. In other words, where there are two statutes, the  
7 earlier special and the later general — the terms of the general broad enough to  
8 include the matter provided for in the special — the fact that the one is special and  
9 the other is general creates a presumption that the special is to be considered as  
10 remaining an exception to the general, and the general will not be understood as  
11 repealing the special, unless a repeal is expressly named, or unless the provisions  
12 of the general are manifestly inconsistent with those of the special.  
13 *Rodgers v. United States* (1902) 185 U.S. 83, 87-88

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

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

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

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

III. ELECTION CONTESTS (Division 16)

20  
1 The current Elections Code was repealed and reenacted in 1994 (Stats. 1994, Ch.  
2 920, Sec. 2.) as a single, integrated body of law.

3 In Section 3 of the reenactment, the legislature indicated its intent "that the changes  
4 made to the Elections Code, as reorganized by this act, have only technical and  
5 nonsubstantive effect." With respect to the reorganized Division 16, the rules for election  
6 contests had been unchanged from the previous reorganization of the Elections more than  
7 30 years earlier.

8 This should not come as a surprise. The law of election contests in every state has  
9 remained virtually unchanged from the time California was admitted to the union in 1850.  
10 *Cf. The Resolution of Election Disputes* (2008) Barry H. Weinberg, [http://www.ifes.org](http://www.ifes.org/sites/default/files/ifes_2008_resolution_of_election_disputes_2nd_edition.pdf)  
11 [/sites/default/files/ifes\\_2008\\_resolution\\_of\\_election\\_disputes\\_2nd\\_edition.pdf](http://www.ifes.org/sites/default/files/ifes_2008_resolution_of_election_disputes_2nd_edition.pdf).

12 In the succeeding 25 years, the original 62 sections of Division 16 have remained  
13 virtually intact. One section (16001) was repealed. Two sections (16204, 16402.5) were  
14 added in 2003. Sixteen sections (16400, 16464, 16500, 16501, 16502, 16503, 16520,  
15 16521, 16540, 16700, and 16741 in 1996; 16100, 16101, and 16603 in 2003; and 16401  
16 and 16421 in 2010) were amended.

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

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

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

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

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

40  
1 dilatory procedures applicable to election contests.

2 Division 16 sets out the rules for an election contest. Rules are set out for the  
3 parties, the court clerks, and the judges. Through incorporation by reference, Division 18  
4 (Penal Provisions), referenced as "offenses against the elective franchise," the parties  
5 could be anyone, circumscribed only by their acts. When the legislature has set the rules,  
6 it is not for Counsel or any court to expand the rules to turn an election contest into a  
7 general-purpose civil action. Cf. *Enterprise Residents Etc. Committee v. Brennan* (1978)  
8 22 Cal.3d 767 ("no 'nicety of pleading' is required").

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

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

14 The Appellant deserves a trial on this election contest. Hundreds of billions of local  
15 taxpayer dollars are stake in every county, city, and special district in California. For more  
16 than 40 years, despite existing statutes prohibiting it (Cf. Section 10403 and Section  
17 9051.), local governing bodies have funded their existence and their pet projects by  
18 flouting the law and hoodwinking the unsuspecting voting public trained to believe that its  
19 public officials follow the law. Cf. California Election Data Archive (CEDA) at California  
20 State University, Sacramento. The People of California have a right to fair and impartial  
21 elections. The powers-that-be have the power to thwart that right in ways that sales-pitch-  
22 battered voters have little understanding of.

#### 23 IV. CONCLUSION

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

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

20  
1  
2  
3  
4  
5  
6  
7  
8

The motion to dismiss should be denied.

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

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

Dated: August 7, 2019

Respectfully submitted,

By:   
Michael Denny - Pro-Per