

SONOMA COUNTY REPUBLICAN PARTY and RAYLENE D. WIESNER v. BRUCE  
McPHERSON, SECRETARY OF STATE OF THE STATE OF CALIFORNIA

Case No. 06CS01078

August 9, 2006

9:00 a.m.

Department 11

Judge Gail Ohanesian

(1) Application for Leave to Intervene

(2) Petition for Writ of Mandate

**TENTATIVE RULING**

(1) Application for Leave to Intervene

In this action, petitioners Sonoma County Republican Party and Raylene D. Wiesner seek a writ compelling respondent Bruce McPherson, Secretary of State of the State of California, to certify the name of Raylene D. Wiesner for placement on the general election ballot for November 2006 as the Republican candidate for State Assembly, 7th Assembly District.

An application for leave to intervene has been filed by the Democratic State Central Committee. Proposed intervenor wishes to intervene to assert its rights under Article 2, Section 5(b) of the California Constitution, and under its By-laws, to place Mark Hull-Richter, Barbara Mead, and Judith Jones on the ballot for the November 7, 2006 general election as candidates for the 42nd Congressional District, the 38th State Senate District, and the 73rd Assembly District, respectively.

Respondent opposes the application to intervene.

The application states that it is brought pursuant to Code of Civil Procedure section 387, subdivision (a), which requires a party seeking leave to intervene to show a direct and immediate interest in the litigation. This interest must be of such a character that the proposed intervenor would either gain or lose by the direct operation and effect of the judgment. (*Jersey Maid Milk Products Co. v. Brock* (1939) 13 Cal.2d 661, 663; see also *Simpson Redwood Co. v. California* (1987) 196 Cal.App.3d 1192, 1200.) The court finds the proposed intervenor does not have such an interest. The petitioners in this action have not sought relief for any candidates other than Ms. Wiesner or regarding any other offices. The court's judgment in this matter will have no direct legal operation on the Democratic State Central Committee. It will have no direct effect on any person other than the parties to the action, and it will be binding only as to the parties in this action as originally brought. Further, intervention pursuant to section 387, subdivision (a) is not appropriate where it would enlarge the issues. (*Fireman's Fund Ins. Co. v. Gerlach* (1976) 56 Cal.App.3d 299, 303.) The intervention proposed would enlarge the factual and legal issues in the case.

Proposed intervenors also contend that their interests would not be adequately represented by the existing parties. Such an argument is more appropriate when relief is sought pursuant to subdivision (b) of section 387. Proposed intervenors have not shown they meet the other criteria for intervention pursuant to subdivision (b). And their arguments as to why petitioners in the other action will not adequately represent their rights confirms that they do not have a sufficiently direct interest for intervention pursuant to subdivision (a) of section 387.

The motion for leave to intervene is denied.

(2) Petition for Writ of Mandate

Petitioners Sonoma County Republican Party and Raylene D. Wiesner seek a writ compelling respondent Bruce McPherson, Secretary of State of the State of California, to certify the name of Raylene D. Wiesner for placement on the general election ballot for November 2006 as the Republican candidate for Assemblywoman, 7th Assembly District.

Ms. Wiesner was a write-in candidate for the Republican Party nomination in the June 6, 2006 primary election. Thereafter the Sonoma County Republican Central Committee resolved to direct the Sonoma County Clerk to notify respondent that Ms. Wiesner's name appear upon the ballot for the general election as the Republican Party candidate for the Seventh Assembly District. (Petition, Exhibit C.) Respondent refused to do so, stating that Ms. Wiesner had not met the requirements of Elections Code section 8506(a) in that she had not received at least one percent of all votes cast for the office at the last preceding general election at which the office was filled, and, further, that she was not an independent candidate as the resolution stated. (Petition, Exhibit D.)

Petitioners contend that respondent has the power and duty under Election Code section 13314 to place Wiesner's name on the general election ballot. They contend that respondent's refusal violates Section 5(b) of Article II of the Constitution of the State of California.

Petitioners contend that the constitution is superior over contradictory legislation, citing *Wallace v. Superior Court* (1956) 141 Cal.App.2d 771, 781-82. However, the court finds that there is no conflict between the constitutional provision and Election Code section 8506 and that respondent properly applied Elections Code section 8506. Elections Code, section 8506, provides as follows:

“No person whose name has been written in upon a ballot for an office at the direct primary may have his or her name placed upon the ballot as a candidate for that office for the ensuing general election unless one of the following is applicable:

(a) At that direct primary he or she received for that office votes equal in number to 1 percent of all votes cast for the office at the last preceding general election at which the office was filled. In the case of an office that has not appeared on the ballot since its creation, the requisite number of votes shall equal 1 percent of the number of all votes cast for the office that had the least number of votes in the most recent general election in the jurisdiction in which the write-in candidate is seeking office.

(b) He or she is an independent nominee pursuant to Part 2 (commencing with Section 8300).

(c) He or she has been designated by a party central committee to fill a vacancy on the ballot for the general election.”

Section 5(b) of Article II of the Constitution of the State of California was added to the Constitution in 2004 by Proposition 60 and provides as follows:

“A political party that participated in a primary election for a partisan office has the right to participate in the general election for that office and shall not be denied the ability to place on the general election ballot the candidate who received, at the primary election, the highest vote among that party’s candidates.”

There is nothing in the language of the constitutional provision that suggests that it applies to the procedures for write-in candidates. Further, the documentation respondent has provided concerning the history of Proposition 60 contains nothing which suggests it was intended to alter the procedures for write-in candidates. (See Declaration of Judith Carlson and Exhibit 2 thereto.) Instead, it shows that Proposition 60 was an attempt to preempt Proposition 62 on the same ballot which would have created a different type of primary system in which the two candidates who received the highest number of votes at the primary election would have been the only two candidates to appear on the general election ballot, regardless of their political party affiliations. The Analysis by the Legislative Analyst clearly stated that Proposition 60 would not require any changes to election procedures. (*Id.*)

The court concludes that there is no conflict between Elections Code section 8605 and the constitutional provision. Petitioners’ argument that the constitutional provision “trumps” the Elections Code section 8605 is without merit.

Petitioners have not alleged or shown that respondent failed to comply with Elections Code section 8605. She received less than 700 write-in votes. (See Declaration of Judith Carlson and Exhibit 1 thereto.) Respondent contends that this does not meet the

requirements of section 8605, subdivision (a). Respondent further contends that she is not an independent nominee within the meaning of section 8605, subdivision (b), or a candidate designated by a party central committee to fill a general election ballot vacancy within the meaning of section 8605, subdivision (c). Petitioners have made no showing to the contrary.

Petitioners' other contentions are without merit.

The petition for writ of mandate is denied.

Petitioners' request for sanctions pursuant to Elections Code section 18002 is denied.

Their request for costs and attorney fees pursuant to Code of Civil Procedure section 1021.5 is denied.

Respondent shall prepare a judgment consistent with this ruling.

Each party shall bear its own fees and costs incurred herein.