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NEWS ADVISORY

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FRYE SUPPORTERS DISMISS APPEAL IN MAYORAL ELECTION CONTEST

LAWSUIT'S GOALS WERE ACHIEVED WITH MURPHY'S RESIGNATION AND NEW ELECTION

Three voters who supported Donna Frye's write-in candidacy for Mayor in the November 2, 2004, election today withdrew their appeal from the Superior Court's ruling disqualifying 5,551 "unbubbled" write-in votes cast for Frye in that election. The voters' voluntary dismissal of their appeal follows the recent resignation of San Diego Mayor Dick Murphy, whose election had been upheld in the controversial court ruling, and the scheduling of a special election to fill the office of Mayor on July 26, 2005.

"Recent events have essentially provided us with the relief we were seeking in this lawsuit," declared Fredric Woocher of Strumwasser & Woocher, the attorney representing the three Frye supporters. "From the beginning, our objective was to make sure that the voters' will is being implemented and that the person who will be sitting in the Mayor's seat for the next four years is the person who truly has the support of San Diego's voters. The trial proved to the whole world that Donna Frye received more votes in the November 2004 election than Dick Murphy. We are pleased that Mayor Murphy has recognized that he was holding office illegitimately and that he will soon be stepping down. The people of San Diego will now have the opportunity to express their preference for Mayor in the special election, and either Donna Frye will win their support once again or another candidate will be chosen to lead this city. Under either outcome, the people's voice will be given effect and democracy will have prevailed."

Woocher noted that, as a practical matter, a new Mayor would be elected before the Court of Appeal could issue a ruling on the pending appeal. The court recently ordered that the case be

placed on its September hearing calendar, making it extremely unlikely that a decision could be rendered before the special election and any run-off election were completed. “If Donna Frye wins the special election, then any decision from the Court of Appeal in our favor would have no impact,” Woocher explained. “On the other hand, if another candidate defeats Donna Frye in the special election, we would not want the court to install her in office based upon the events that occurred last November, even if that would be the legal effect of a ruling in our favor. The whole point of our lawsuit was to uphold the principle that the candidate receiving the most votes in a fair election should be declared the winner.”

Woocher pointed out that another factor in his clients’ decision to withdraw their appeal was that the underlying legal issue — whether write-in votes should be counted in a manual tally or recount where the voter’s intent is clear, even if the voter did not fill in the oval preceding the write-in candidate’s name — is likely to be resolved through legislation now winding its way through the Capitol. “We are confident that the pending legislation, which is supported by county registrars and clerks throughout the state, will prevent the disenfranchisement of voters in future elections. Thus, even as a legal precedent on the ‘unbubbled’ ballots issue, any decision by the Court of Appeal in this case would not likely have much impact.”

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