



August 6, 2003

Honorable Ronald M. George, Chief Justice
and the Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, California 94102

Re: Eisenberg v. Shelley
California Supreme Court Case No. S117763

Dear Chief Justice George and Associate Justices:

This *amicus curiae* letter in support of the Petition for a Writ of Mandate by Jon Eisenberg is submitted pursuant to rule 28(f) of the California Rules of Court by the Asian Pacific American Bar Association of Los Angeles County (“APABA-LA”).

I. Nature of the Applicant’s Interest

APABA-LA is a nonprofit association of legal professionals, including lawyers and judges. It seeks to provide a vehicle and forum for the unified expression of opinions and positions upon current social, political, economic, legal or other matters or events of concern to the Asian/Pacific Islander American (“APIA”) communities in the greater Los Angeles area. APABA-LA is the only pan-Asian group of legal professionals in Los Angeles County, and its membership reflects the ethnic and cultural diversity of the APIA community in the greater Los Angeles area.

The Petition raises issues of great importance to the APIA communities, as well as to the public at large. Secretary of State Kevin Shelley seeks to place the highly controversial “Classification By Race, Ethnicity, Color, or National Origin, Initiative Constitutional Amendment,” commonly known as the “Racial Privacy Initiative” (“RPI”), on the October 7, 2003 ballot in conjunction with the recall election -- at least 56 days earlier than allowed under the California Constitution. The Secretary of State’s actions in accelerating the election date for the RPI will significantly impede the ability to educate and inform voters in the APIA communities and other similar multilingual communities regarding the RPI, and raises serious constitutional questions.

II. Why The Petition Should Be Granted

According to the United States Census Bureau, the State of California is home to more than 3.8 million APIA individuals, over 1.1 million of whom reside in Los Angeles County. (See United States Census Bureau “2000 Census of Population and Housing, Summary File 3,” issued February 2003.)¹ This translates to an APIA population in the State of California of approximately 11.3%, and an even higher 12.2% APIA population in Los Angeles County. More significantly, census data reveals that the percentage of voting-age Californians whose primary language in the home is an Asian/Pacific Islander language is approximately 10.0% and approximately 11.4% in Los Angeles County. (*Id.*) Given this empirical data, it is imperative that Californians be allowed sufficient time, as required by the California Constitution, to translate and prepare materials for its multilingual voters in order to have an informed electorate and a meaningful election. Presently, Los Angeles County provides voter registration information, election materials and oral assistance in six languages other than English (Chinese, Japanese, Korean, Spanish, Tagalog and Vietnamese).

Article II, Section 8, subdivision (c) of the California Constitution expressly requires that the Secretary of State submit an initiative for election “*at least 131 days after it qualifies.*” (Emphasis added.) On July 25, 2003, Secretary of State Shelley certified that the RPI qualified for election. Therefore, the RPI could be submitted for election, at the earliest, on December 2, 2003. Since no election is scheduled for December 2, 2003, the California Constitution requires that the RPI must await the general election on March 2, 2004.

Moreover, as discussed in the Petition, under no circumstance should the RPI be placed on the ballot at the time of the October 7, 2003 recall election, which is subject to substantially different timing requirements and deadlines. In particular, the Secretary of State is required under the Elections Code to issue certain voter materials, including press releases and voter pamphlets for review by the public under specific time frames, well in advance of the election. (See, e.g., Elec. Code §§ 9061 and 9082.) The language of these sections is mandatory, providing that the “press release *shall* be mailed at least 120 days prior to the date of the election” and “ballot pamphlets *shall* be furnished to the Office of State Printing at least 40 days prior to the date for required delivery.” (*Id.*; see also Assembly of State of Cal. v. Deukmejian (1982) 30 Cal.3d 638, 649, 180 Cal.Rptr. 297, 303 (holding that the provision in the Elections Code requiring that a referendum *shall* be designed so that each signer *shall* personally affix his residence address is mandatory and a claim of “substantial compliance” is insufficient).)

Indeed, these mandatory time frames were clearly designed to ensure that voters are thoroughly informed and apprised of the measures to be voted upon. This purpose is particularly important here where the initiative is highly controversial and requires voter education. Such education, however, cannot be accomplished in the short time frame created by the Secretary of State by his advancement of the RPI to the October 7, 2003

¹ Applicant respectfully requests that the Court take judicial notice of the statistics provided by the United States Census Bureau, pursuant to Evidence Code 452(h).

recall election, to the acute disadvantage of the largely multilingual communities in Los Angeles County such as the APIA communities. As this Court has recognized in examining the sufficiency of materials prepared for a ballot measure, the extent of pre-election activities to educate the public concerning a particular ballot measure is a key factor in determining whether the voters were prevented by the proponent's deficiencies from making informed choices:

[D]ue process mandates invalidation of a ballot measure only if “the materials, in light of other circumstances of the election, were so inaccurate or misleading as to prevent the voters from making informed choices. In conducting this inquiry courts should examine the extent of preelection publicity, canvassing and other informational activities, as well as the substance or content of such efforts. The ready availability of the text of the ordinance, or the official dissemination and content of other related materials, such as arguments for or against the measure, will also bear on whether the statutory noncompliance rendered the election unfair. Finally, courts should take into account the materiality of the omission or other informational deficiency. Flaws striking at the very nature and purpose of the legislation are more serious than other, more ancillary matters.”

(Friends of Sierra Madre v. City of Sierra Madre (2001) 25 Cal.4th 165, 180-181, 105 Cal.Rptr.2d 214, 225, quoting Horwath v. City of East Palo Alto (1989) 212 Cal.App.3d 766, 777-778, 261 Cal.Rptr. 108.) Here, the Secretary of State's failure to comply with the time requirements mandated by the Elections Code virtually eliminates the ability to conduct any meaningful pre-election publicity concerning the RPI, particularly in the multilingual APIA communities.

APABA-LA supports the principle of an informed electorate and therefore respectfully requests the Court to grant the Petition for Writ of Mandate requiring the RPI to be presented, at the earliest, on the March 2, 2004 ballot, in accordance with the mandates of the State's Constitution and Elections Code.

III. Conclusion

For these reasons, the Petition for Writ of Mandate should be granted.

Very truly yours,

Asian Pacific American Bar Association
of Los Angeles County

By: _____
Teri T. Pham, President-Elect