

January 23, 2008

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Dear Mr. Floyd:

I understand that the following is the policy of the County of San Diego with regard to the rights of citizens to document the conduct of elections:

Videotaping or Photography

Voters are not allowed to take a picture of their ballot.

Photography and videotaping are not allowed by the public or voters during voting hours. However, if someone would like to photograph the seals on voting equipment prior to the opening of the polls or after the polls close they may be permitted to do so.

(San Diego County Poll Workers Manual)

On a number of occasions, I have raised the issue of how the Registrar of Voters intends to address the ability of citizens to document elections. The usual response is to cite Elections Code section 18541 to justify a prohibition against documentation of elections by photography or other like means. As I always point out, section 18541 is narrowly drawn to protect the right of voters to cast their vote at a polling place without being subject to intimidation or undue influence. That section does not prohibit documentation of elections through photography.

At a meeting with citizens on December 27, 2007, Registrar of Voters Deborah Seiler was asked to explain how section 18541, which requires evidence of intent to intimidate, is authority for her photography ban. Apparently conceding that section 18541 does not authorize elections officials to prohibit documentation of elections by photography, Ms. Seiler stated that she had the authority to restrict the ability of citizens to document elections based on "case law." On January 2, 2008, I sent to your office a written request for the authority on which Ms. Seiler is basing her attempt to regulate citizen conduct beyond that set forth by the legislature. I received no response from you or Mr. Barry.

Recognizing the importance of transparency in elections, the California legislature provided a Voter Bill of Rights. Section 2300 of the Elections Code states in part:

- (9)(A) You have the right to ask questions about election procedures and observe the elections process.
- (B) You have the right to ask questions of the precinct board and election officials

regarding election procedures and to receive an answer or be directed to the appropriate official for an answer. However, if persistent questioning disrupts the execution of their duties, the board or election officials may discontinue responding to questions.

(10) You have the right to report any illegal or fraudulent activity to a local elections official or to the Secretary of State's Office.

(b) Beneath the Voter Bill of Rights there shall be listed a toll-free telephone number to call if a person has been denied a voting right or to report election fraud or misconduct.

The right to observe is consistent with recording what one has a right to observe. In order that observation of elections be meaningful, voters must be able to make copies of documents at the scene and record other relevant events. No conflict exists between the act of documenting elections and the right to vote without intimidation. Therefore, the extra-legislative action taken by the Registrar of Voters as described herein is in conflict with voters' rights.

Based on the foregoing, I must conclude that Registrar of Voters' prohibition against documenting the election throughout the day with photography and videography is without authority. I expect to be free to photograph documents such as poll books, notices, reports, seals, seal logs, audit logs, voting machines, public communications and other tangible items. I also intend to use a camera to document illegal activity if I observe it and use the documentation to make reports to the Registrar of Voters and other election and law enforcement officials. All documentation will be performed to the extent that those activities do not create a continuing disruption of the voting process or interfere with the privacy rights of voters while they are voting. As long as the legitimate interests involved in carrying out the election are respected, interference by the Registrar of Voters or her staff, including poll workers, of attempts to observe and record appropriate aspects of the election could be construed as a civil rights violation.

Placing the burden of enforcing such a policy on the shoulders of poll workers who may be violating the law themselves is unreasonable. Doing so could result in miscommunication between voters, poll workers, and election observers that could lead to unnecessary confrontations. If your instructions to poll workers are to notify law enforcement personnel that a law is being violated, and that report leads to the arrest of a voter exercising his or her rights, civil liability could attach.

Having informed you of what I believe is an unlawful exercise of police power by the Registrar of Voters, and my intention to document the election based on my understanding of the law, you have a duty to inform me of the authority on which the

exercise of such police power is based before subjecting me or any citizen to enforcement action. I request that you provide to me any and all authority on which the above stated policy of the Registrar of Voters is based, the authority on which you believe that policy can be enforced, and how the authority will be enforced, if at all.

As I have stated to the Registrar of Voters, a uniform understanding of what are appropriate means of documentation must be established in order to facilitate a process that recognizes the roles of citizens as the owners of elections and administrators who are the stewards of elections. That process must, and can, be achieved without infringing on the ability of officials to administer election and the right of voters to be free from intimidation while voting. My intention is only to ensure that our elections are transparent. A goal I believe you share.

I look forward to receiving your response by January 28, 2008.

Sincerely,

A handwritten signature in black ink that reads "Ken Karan". The signature is written in a cursive, slightly slanted style.

Ken I. Karan, Esq.