

ELECTIONS COMMISSION
City and County of San Francisco



Gerard Gleason, President
Richard P. Matthews
Joseph B. Phair
Rosabella Safont
Arnold Townsend
Winnie Yu

John Arntz
Director of Elections

Shirley Rodriques
Commission Secretary

City and County of San Francisco
Elections Commission

Approved:

Minutes of the Meeting held
City Hall, Room 408
September 17, 2008

1. President Gleason called the meeting to order at 6:04 pm.
2. **COMMISSION MEMBERS PRESENT:** Commissioners, Gerard Gleason, Richard P. Matthews, Winnie Yu, Rosabella Safont, Commissioner Arnold Townsend arrived at 6:20 pm, Deputy City Attorney Andrew Shen and Director John Arntz. **EXCUSED:** Commissioner Joseph P. Phair.
3. **Public Comment.** *Brent Turner* said that he represents the San Francisco Election Integrity League, and thanked Commissioners Matthews and Gleason for attending the Linux World Exhibition held at the Moscone Center, that demonstrated the open source code paper ballot printing systems. He also said he is looking forward to the formation of a San Francisco Open Source Task Force.
4. **DIRECTOR'S REPORT**

Preparations for November 4, 2008 General Election. Director Arntz reported that the 44 ballots types for this November's election have been formatted and printing has begun, the Voter Information Pamphlet (VIP) is expected to be at the printer next week, and test ballots for the voting equipment are coming in. The phone bank began Monday and the Department is experiencing a large increase in calls and emails about the election. The Ranked Choice Voting (RCV) mailer will go out when early voting begins on October 6, 2008. All of the required polling sites were located until recently when two cancelled, they will be reassigned; and 70 percent of the needed pollworkers and 65 percent of the Field Election Deputies have been recruited. Routes have been set up for delivery of equipment to the sites, and over 5000 ballots have been mailed to overseas voters – the number is increasing due to interest in this November's election. Registration numbers have increase by 3000 in just the last few days, bringing the current number to approximately 435,000 registered voters in San Francisco.

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Preparations for early voting have begun and registration cards are being placed at post offices, libraries and other public locations. Representatives of registration drives are coming to our offices to obtain forms. Audio instructions for the touch screen equipment (the Edge) have been completed and Canvass procedures are being reviewed.

President Gleason told the Director that the addition of the "New Procedures" section of the Election Plan was very helpful.

Status of the Voting System Certification. Director Arntz reported that the hearing will be next Friday at the Secretary of State's Office at 1:00 pm, followed by seven days for public comment. This means that a decision cannot be made before October 3, 2008. The Director explained that the issue is not the touch screen voting machines, as is described in the media, the issue is RCV. The current tabulation software has not been reviewed and approved for tabulating the RCV contest ballots.

The Sequoia Voting System has completed testing at the federal level of the software that can tabulate RCV votes, but the Elections Assistance Commission (EAC) will not complete its review of the testing results until after the November election. California elections law requires all uses of touch screens to be approved by the EAC, but does not require optical scan systems to have received EAC approval. Thus, the Secretary of State can conditionally approve the use of the optical scan equipment to tally RCV votes without EAC approval, but cannot conditionally certify touch screen equipment to tally RCV votes.

Plans for safeguards for mailing of absentee ballots outsourced to Sequoia Voting Systems. There have been several meetings with the vendor regarding their process and the Department's requirements. DoE Staff will be on site where ballots are assembled, inserted into envelopes and prepared for mailing – this will be new for the November election. The problem in June arose because a file of about 1600 voters was not coded properly, and now that portion of the mailing has been resolved.

Director Arntz advised the Commission that the Department's website can be accessed by voters to determine when their ballot was mailed to them and when the Department received their cast ballot.

President Gleason asked if it was possible to have the Department of Motor Vehicles check their office for voter registration and change of address requests before the deadline for these requests to be submitted to the Elections Department. Director Arntz responded that he will look into this.

Public Comment. *Brent Turner* asked that background checks be done on employees of Sequoia Voting Systems who will be handling the mailing of ballots.

7.a.2

Katie Hickcock said that Sequoia Voting Systems have been found to have problems in other states and that she wants to bring this to Director's attention, as well as a movie called "Stealing America", which will have it's last showing tomorrow night, that the Director should see.

5. **NEW BUSINESS**

a. **Discussion and possible action to approve the Minutes of the September 3, 2008, Commission Meeting.** Commissioner Safont MOVED and Commissioner Yu SECONDED approval of the minutes. The Roll Call Vote (Commissioner Matthews had left the meeting) was UNANIMOUS to approve the minutes.

b. **Discussion and possible action to commend the Ballot Simplification Committee and Deputy City Attorney Mollie Lee for their work on the upcoming November 4, General Election.** President Gleason MOVED to have Commissioner Matthews prepare a resolution to commend the BSC and Deputy City Attorney Lee. Commissioner Safont SECONDED this proposal. The Roll Call Vote was UNANIMOUS.

c. **Discussion and possible action to approve The Election Plan for the November 4, 2008 General Election.** Commissioner Townsend MOVED and Commissioner Safont SECONDED this item. President Gleason thanked the Director for the report and said that the new procedures were well spelled out. He asked that the Commission approve the plan with an amendment that procedures may change should the voting system be certified.

Public Comment. *Brent Turner* said that the process for certification of the equipment should not be taken lightly because it "is currently broken" because there is no "ability to obtain oversight over the proprietary systems". *Katie Hickcock* said that any computer can be "hacked" regardless of certification.

The Roll Call Vote on the amendment to conditionally approve the plan was: Townsend – no; Safont – yes; Yu – yes; Gleason – yes. The vote FAILED.

Commissioner Townsend explained that he voted "no" because he felt the amendment was not necessary, because if the Commission votes to approve the plan as presented tonight, and if the system is not certified, the approval will not take effect and therefore it is unnecessary at this time.

The Roll Call Vote to approve the Election Plan, as presented, was UNANIMOUS.

d. **Discussion and possible action regarding preparations for the November 4, 2008 General Election.** TABLED to the next meeting.

7.a.3

e. **Discussion and possible action regarding Commission member activities and observations regarding the November 4, 2008 General Election.** President Gleason reviewed the discussion from the last meeting and referred members who had been absent to refer to those minutes. TABLED to the next meeting.

f. **Discussion and possible action regarding criteria for Commission post-election evaluation of election plans and conduct of election.** President Gleason explained that this item was to have been forwarded to the Commission by the Ballot and Oversight of Public Elections Committee (BOPEC) by Commissioner Phair, who is not present at tonight's meeting. The President said that the item is TABLED to the next meeting when all of the BOPEC members would be present.

g. **Discussion and possible action regarding Commission outreach activities and re-establishing a Commission outreach committee.** President Gleason stated that due to discussions he has had with the City Attorney's Office, he was TABLING this item. Commissioner Townsend said that he wanted to talk about it in the future.

6. **Discussion regarding items for future agendas.** President Gleason reminded the Commission that there will possibly be three more meetings before the November General Election: October 1, 15 and 29, 2008. The meeting for October 29, 2008 is tentative depending on need. Commissioner Townsend asked if outreach is continuing to the jails and if brochures and registration forms are going to the probation department as well. Director Arntz said that he would check to be sure that this is done.

ADJOURNMENT was at 6:50 pm.

7.a.4

FOR DISCUSSION OF ITEM 7.B
COMMUNICATIONS FROM THE PUBLIC
SEE ITEMS FOLLOWING THIS COVER PAGE
THAT ARE LISTED BELOW:

- #1. 07/12/2008 – First Email from info@localparty.org
It refers to a communication that the Elections Commission did not receive.
- #2. 07/24/2008 – Elections Commission Secretary's response to 07/12/2008 info@localparty.org communication.
- #3. 07/24/2008 - info@localparty.org response to Secretary's communication.
- #4. 07/31/2008 – Elections Commission Secretary's response to info@localparty.org informing them that the original letter never was received and that the Elections Commission would be discussing the letter at its August 20 meeting.
- #5. 08/07/2008 - info@localparty.org response to the 07/31/2008 communication.
- #6. 09/14/2008 - info@localparty.org response to the discussion of their letter in the minutes of the August 20, 2008 meeting.
- #7. 09/17/2008 – President Gerard Gleason's letter to info@localparty.org .
- #8. 09/17/2008 - info@localparty.org 's response to President Gleason's letter.
- #9. 09/20/2008 - info@localparty.org 's email with subject: "The new issue between LocalParty.Org and the Elections Commission".



<info@localparty.org>

07/12/2008 11:54 AM


Please respond to
<info@localparty.org>

To elections.commission@sfgov.org

cc

bcc

Subject We sent a request to the Commission. When should we be hearing a reply?

History:  This message has been replied to.

Dear Elections Commission,

A couple of weeks ago, LocalParty.Org sent you a letter in which ordinary San Francisco citizens request you to change the local elections from district to proportional elections. A copy of this letter can be found at <http://LocalParty.Org/June15.html>

Proportional elections are elections in which voters each get a single vote for a single candidate in a single election for the entire board.

We claim that the Constitution requires local governments to have proportional elections in place. The Constitution provides equality before the law, and only allows (by specifically mentioning this) the Federal and State governments to hold elections that are not based on equality before the law.

Though we can understand local governments to follow the Federal and State examples in how to hold elections, we believe the Constitution actually does not allow them to do that. And even though ordinary citizens are requesting this change, it is the Constitution itself that requires it.

Our web page <http://LocalParty.Org/June15.html> provides you more information plus a link to an example how proportional elections function.

Our question right now is how much time it will most likely take before we receive a reply from you.

If you have any further questions, please email us at info@localparty.org.

With high regards,

Fredrick Schermer
<http://LocalParty.Org>

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> -----Original Message-----
> From: Elections Commission <Elections.Commission@sfgov.org>
> Subject: Re: We sent a request to the Commission. When should we be hearing
a reply?
> Sent: 21 Jul '08 15:11
>
> The Elections Commission's powers do not extend to making new laws.
>
> Shirley Rodriques
> Executive Secretary
> Elections Commission
>
>
>
>

#2



<info@localparty.org>

07/24/2008 06:01 AM


Please respond to
<info@localparty.org>

To "Elections Commission" <Elections.Commission@sfgov.org>

cc

bcc

Subject Re: We sent a request to the Commission. When should we
be hearing a reply?

History:  This message has been replied to.

Dear Ms. Rodrigues,

Thank you for replying, but it seems your reply does not answer the question before you. We request implementation of a Constitutional right, and the question therefore is whether you are complying with this Constitutional Right or not. There is no issue about making new laws.

If needed, LocalParty.Org will bring this issue before the court at a later point in our communications, and as you can understand a qualified reply to the question itself is therefore very important.

If we do not hear from you, the assumption can only be that you are saying 'no' to our request to implement the Constitutional right we pointed out to you. We state you must comply with rules that are in place.

Naturally, we understand the followed path in the past of copying the Federal and State examples on how to organize elections, or even to leave it up to the discretion of local governments, yet with our pointing out the information as delivered in the Constitution, you are now aware of the rules to follow. We are not asking for anything new; we are asking you to implement the rules as described in the Constitution.

With utmost respect, and signing for LocalParty.Org,

Fredrick Schermer

<http://localparty.org/June15.html> this web page contains a visual on what is described in the Constitution and what is found in place instead.

#3.

> -----Original Message-----
> From: Elections Commission <Elections.Commission@sfgov.org>
> Subject: Re: We sent a request to the Commission. When should we be hearing
> a reply?
> Sent: 31 Jul '08 19:04
>
> Dear Mr. Fredrick Schermer
>
> We apparently never got a hard copy of your original letter in the mail, and
> your e-mail to the Commission had a "link", which all commissioners may not
> see or view. It is best if you can send a hard copy of the letter again,
> and we will distribute it to all commission members. The Commission may
> discuss the letter at their Aug 20 Meeting under item: "Communications from
> the Public to the Commission".
>
> That meeting's agenda will be on line the Friday before that meeting
> (August 15) for your review.
>
> Shirley Rodriques
>
>
>
>

4



<info@localparty.org>

08/07/2008 06:00 PM

Please respond to
<info@localparty.org>

To "Elections Commission" <Elections.Commission@sfgov.org>

cc

bcc

Subject Re: We sent a request to the Commission. When should we
be hearing a reply?

Dear Ms. Rodriques,

Thank you very much for informing us that the Elections Commission may take a closer look at our request during the August 20 meeting. Though visually tiny, there is a link next to the letter on the web page that creates a pdf document of the letter involved. I attached the pdf to this email together with another pdf that contains the visual we also use on our web page <http://localparty.org/June15.html> That specific visual displays our understanding, hopefully as clearly as possible, of the difference between how the regulations are set up in the Constitution for our entire nation and what we find in reality.

Best regards,

Fredrick Schermer
LocalParty.Org

#5



<info@localparty.org>

09/14/2008 09:25 PM


Please respond to
<info@localparty.org>

To "Elections Commission" <Elections.Commission@sfgov.org>

"Paul Platt" <djplatus@gmail.com>, Austin Petersen
cc <austin.petersen@lp.org>, contact@sfgop.org, CC
<cc@sfgreens.org>

bcc

Subject Re: We sent a request to the Elections Commission. When
should we be hearing a reply?

History:  This message has been replied to.

Dear Ms. Shirley Rodrigues,

We were able to read the nr. 7 minutes of the Elections Commission August 20, 2008 meeting in regards to our request of having the San Francisco elections comply with the United States Constitution. We read that the commission decided to sent us a reply. We have not received a reply, and, while this may be due to various reasons unknown to us, I hope you do not mind our creating an email reply to the commission members themselves in regards to the questions mentioned in the minutes. Will you please forward our email to them?

Thank you.

Best regards,

Fredrick Schermer

Dear Elections Commission members,

With your permission, LocalParty.Org is taking the freedom to address various issues you mentioned; we were able to read about them from the minutes of the August 20, 2008 meeting. Though we did not receive an address to our request as of yet, it may be prudent to answer some of your questions:

1/ President Gleason referred to the letter sent in an email from info@localparty.org which deserves a response. He said that our issue was not one to be handled by the Elections Commission.

* Our reply is that the Elections Commission must follow the City Charter which authorizes the Elections Commission to supervise the City's Department of Elections. Because of this authorization it is the Commission that sets general policies for the Department. The Elections Commission also selects and supervises the Director of the Department of Elections. As such, the Elections Commission is or is part of that governmental organization that reviews whether the San Francisco Board of Supervisor elections comply with the Constitution of the United States and would give directions to those involved to comply with the United States Constitution when it learns about a lack thereof.

2/ Commissioner Phair said that he read the letter and doesn't understand the complaint.

* It is not uncommon to misinterpret the request before you, but after placement of our request - and with further explanation of the grounds on which we make this request - there is no reason for the Elections Commission to not follow the United States Constitution.

#6.0

District elections are commonly known as winner-takes-all, and while each district has a set number of eligible voters and each has one representative per district, this still only amounts to 'equal but separate.' It also leaves many who came out to vote unrepresented until at least the next elections, while for some this certainly means remaining unrepresented forever despite casting a vote in all appropriate elections.

To address the latter point first, from our calculations of the United States Senate of 2005/2006, we can mention that only 59.03% of the voters could point to the person they voted for <http://localparty.org/SenatorMinority.html> while 40.97% had voted for the losers and were not represented by their choice. On top of this, and addressing the former point, the selection procedure does in no way ensure representation of the voters, but delivers only a winner per district. We all know from the basketball game that tall people are not selected by the audience or by their personal desire to be good at this game, rather these tall people fit the ten foot high basket best; while the game did not pick them personally, it ensured a blanketed lack of people shorter than 6 feet in professional basketball. Unnatural selection is incorporated in the district form of democracy. Not the people, but the system selects first. The people select from an already established limited group of options when a geographical dictate is in place. If a voter selects a candidate on geographical grounds, then that should be up to the voter and not to the Elections Commission and those its directs.

As an example, with San Francisco having an average of 15% of the voters voting for a Republican presidential candidate, one should expect the Board of Supervisors to be different than 10 Democratic and 1 Green Supervisor. Also, the number of female Supervisors is unnaturally low (with only 1 female Supervisor directly elected, and 2 other female Supervisors appointed - with them as incumbents in good positions to get reelected).

Just like equal but separate was found to be unconstitutional, electing local representatives through district elections cannot be anything other than unconstitutional. To have voters remain unrepresented at such a high level is according to LocalParty.Org incorrect, not serving the voters nor is it in concordance of what the Framers put in place for us. It is important to understand that the United States Constitution describes in specific how the Federal electoral process may be conducted, and how the States' electoral process is linked to these more specifically pronounced proceedings. As such, district elections are allowed in the U.S. Constitution. Yet for local elections the U.S. Constitution is almost mute, except for equality before the law. The 14th Amendment states that no State shall "deny to any person within its jurisdiction the equal protection of the laws." Local Elections therefore need and must follow only one directive described in the U.S. Constitution: equality before the law.

Many of us have little knowledge of the Constitution nor the exact meaning of the 'fine print.' Yet representative John Stuart Mill already mentioned in 1861 that "two very different ideas are usually confounded under the name democracy. The pure idea of democracy, according to its definition, is the government of the whole people by the whole people, equally represented. Democracy as commonly conceived and hitherto practised is the government of the whole people by a mere majority of the people, exclusively represented. The former is synonymous with the equality of all citizens; the latter, strangely confounded with it, is a government of privilege, in favour of the numerical majority, who alone possess practically any voice in the State. This is the inevitable consequence of the manner in which the votes are now taken, to the complete disfranchisement of minorities."

A system of proportional elections was not developed until lawyer, professor,

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and mathematician D'Hondt created a proportional representation political election system in 1878. As a side note, the D'Hondt method is equivalent to the Jefferson method (named after Thomas Jefferson) in that these two methods always give the same results, but the method of calculating the apportionment is different. The Jefferson method was invented in 1792 for U.S. congressional apportionment rather than elections. We therefore have two dates on which proportional local elections 'should have' been put in place, with the first date being July 9, 1868 when the 14th Amendment was ratified. The second date being 1878 when a mathematical system became available for electoral uses. Though possibly late, our request asks from the San Francisco Elections Commission to comply with the United States Constitution that is known to not allow 'equal but separate' on any governmental level. We would like to add that the word representation is not the same as winner. People either select an ambassador or a representative; the former occurs in our current district system, the latter occurs in proportional elections.

3/ Commissioner Matthews asked if it appears that the letter is requesting the abolition of RCV.

* Proportional elections has nothing to do with RCV, district elections; not even city-wide elections. Proportional elections give a single voter a single vote for a single candidate in a single election for the entire board. No other form of selection can be considered fair. There are various forms known of proportional elections, and if need be LocalParty.org is willing to advise the Elections Commission on the various options.

4/ President Gleason replied that he was not certain, but it appears the concern is regarding how members of the Board of Supervisors are set up.

* Correct! Basketball players are tall, horse jockeys are small, and sumo wrestlers have much gravity. Some selection procedures are slanted and they discriminate (such as district elections, with or without RCV), while others are set up to deliver a fair outcome (such as proportional elections). For your consideration: only the Federal political outcome provides a competitive outcome with the Democratic and Republican parties in virtual dead heats for decades. At the State level only one-third of the States have one Republican and one Democratic Senator, the other States have two Senators of the same party. The local level is worst, where we find many political monopolies all across the United States. The voter is short changed in local elections with no true competition allowed. District elections are based on a 50% threshold (basketball), proportional elections slice up the cake in proportional parts based on the voters' actual wishes. In San Francisco, we should have a single cake that gets divvied up in eleven slices based on the prescription of the United States Constitution.

We estimate that, today in San Francisco, there would be 3 Green Supervisors, at least 1 Republican Supervisor (probably 2 - or also 1 Libertarian Supervisor), and only 6 Democratic Supervisors if we had proportional elections. Once voters smell that they can vote in fair elections and not in basketball elections, we predict that the outcome will actually be even more slanted towards the Green Party. We can understand it - with the national elections in the background - that some want to see a Democratic stronghold in San Francisco, but that is not what the Framers had in mind. The Framers had a Federal government in mind in opposition to State/local governments, and not one side in some biased kind of concurrence. Today, the local governmental elections do not provide any real competition nor deliver substantial voter freedoms, and we think it is time the Elections Commission gives us our Constitutional right.

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We are not requesting the Federal nor the State governments to put proportional elections in place; the United States Constitution may actually not even give us grounds to request this other than for the local elections. For local elections, however, we are quite certain that the U.S. Constitution provides a very clear direction: equality before the law.

We are looking forward to receiving a response from the Elections Commission. Especially in light of possible further legal recourse, we appreciate an articulated response.

Thank you for your time.

With the highest regards,

For localParty.Org
Fredrick Schermer

#6.3

ELECTIONS COMMISSION
City and County of San Francisco



Gerard Gleason, President
Richard P. Matthews
Joseph B. Phair
Rosabella Safont
Arnold Townsend
Winnie Yu

John Arntz
Director of Elections

Shirley Rodriques
Commission Secretary

September 17, 2008

Mr. Fredrick Schermer
LocalParty.org

Dear Mr. Schermer,

I apologize for the delay in response to your communication to the San Francisco Elections Commission. I wanted to provide you with the courtesy of a reply sooner. I brought your letter addressed to the Elections Commission to the attention of all members before the August 20th regular meeting of the Commission. At that meeting, no member of the Commission brought forth a motion to act on the particular issues your letter addressed. The Commission directed me to communicate to you that the issues you mention in your letter are not within scope of the duties which the Elections Commission is empowered to address.

I certainly understand you have researched the issues you brought up. I can only encourage you to conduct further research regarding public agencies, legislative bodies or other authorities that might provide the remedies you seek. Because I cannot address each point you brought up in your communication, I can only reiterate that the scope of the issues are not within an area the Election Commission is empowered to address.

Sincerely,

Gerard Gleason
President, Elections Commission

#7.



<info@localparty.org>

09/17/2008 08:59 PM

Please respond to
<info@localparty.org>

To "Elections Commission" <Elections.Commission@sfgov.org>

Paul Platt <djplatus@gmail.com>, Austin Petersen
cc <austin.petersen@lp.org>, contact@sfgop.org, CC
<cc@sfgreens.org>

bcc

Subject Re: We sent a request to the Elections Commission. When
should we be hearing a reply?

Dear Ms. Rodriques,

Thank you for that response, though we believe the response does not address what we requested. Apologies therefore for our failure to communicate our request better. We believe the Elections Commission – according to its own information – is the correct organization, and also that there are no two ways around it. We therefore kindly request a response whether the following is true or not, for that will indicate for both parties whether the Elections Commission is indeed the authority to address the issue we asked it to address:

According to the information provided by the Election Commission itself, we are given the information that the Elections Commission must follow the City Charter which authorizes the Elections Commission to supervise the City's Department of Elections. We believe that this authorization can only come with the responsibility to fulfill all supervising duties as described, including communications about the legal correctness how elections are executed. Because of this authorization it is the Commission that sets the general policies for the Department. The Elections Commission also selects and supervises the Director of the Department of Elections. As such, the Elections Commission is or is part of that governmental organization that reviews whether the elections for the San Francisco Board of Supervisor are in compliance with the Constitution of the United States, and this commission would therefore give directions to those involved, including – when so needed – those that authorized the Elections Commission in the first place, to inform and address others involved with the electoral procedure with the request to comply with the United States Constitution when it learns about a lack thereof.

In our own words: we believe no governmental organization can function outside the United States Constitution.

When any such organization learns about a function of the government that is performed outside the United States Constitution it must either address that functioning itself or address this with the appropriate organization. We mention with respect that we could have gone to the police to have this issue addressed, but given their full agenda we believe the commission is the more appropriate governmental organization. Whether very closely involved or only closely involved, we know that the Elections Commission is indeed nvolved with the Supervisor Elections in San Francisco and therefore requesting the commission is a more logical step to have these elections follow the United States Constitution. We expect no member will shy away from addressing issues stated in the United States Constitution.

We believe it is common knowledge that all members of the commission have signed a paper when accepting their position to uphold the United States Constitution or consider this a natural aspect of that position.

We hope to receive a reply from you that either indicates the Commission does not need to uphold the United States Constitution or that its members believe

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they do not need to uphold the United States Constitution, directly or indirectly. The reply we received thus far is unarticulated in light of our request. Again, our apologies for not communicating more clearly. The issue of fair elections at local levels is a complex issue, but we are certain the Constitution leaves no doubt about what should be in place today. If needed, we can present the commission with more information about the difference between district elections, city-wide elections, and proportional elections, but it is paramount to hear from the commission first whether they acknowledge their duty to – directly or indirectly – uphold the United States Constitution or not. Without that information, we consider it a fact that we have not heard back from the Elections Commission on our request.

With the highest respect,

For Localparty.Org
Fredrick Schermer

8.1



<info@localparty.org>

09/20/2008 01:00 PM

Please respond to
<info@localparty.org>

To "Elections Commission" <Elections.Commission@sfgov.org>

aul Platt <djplatus@gmail.com>, Austin Petersen
cc <austin.petersen@lp.org>, contact@sfgop.org, CC
<cc@sfgreens.org>

bcc

Subject The new issue between LocalParty.Org and the Elections
Commission.

Dear Ms. Rodrigues,

After our entire team met, we decided to email you once more with our current position and action plan. We hope you can provide this information to the Elections Commission. We will contact you in a few weeks time to hear the response (or to hear if there is a response) from the Elections Commission. Thank you for your time.

Best regards,

Fredrick Schermer
LocalParty.Org

Dear Elections Commission members,

Thank you for your reply of September 17, 2008. We are happy to have received that communication from you, but it leaves us with a new issue with the Elections Commission.

Issue:

After receiving notification of a possible discrepancy between the United States Constitution and the San Francisco Board of Supervisors' electoral system, the San Francisco Elections Commission decided to take no action towards addressing or at a minimum investigating the mentioned possible discrepancy. From the minutes of the August 20, 2008 meeting, one can tell that LocalParty.Org had addressed an issue that the Commission did not fully understand but knew it involved a possible discrepancy with the United States Constitution, yet no inquiry or any other kind of investigation was instigated.

The legal recourse that this issue prompts us to view as our next step is captured in the following question:

Must a governmental organization act and investigate if not address when it learns that it or another governmental agency is not in full compliance with the United States Constitution, and if in general this is not the case, must a governmental organization in a specific field act and investigate if not address when it learns that another governmental agency from within that specific field is not in full compliance with the United States Constitution?

We hope you realize that this legal recourse does not contain our request itself, rather it pertains to the nature of our request with it being a notification to you of a possible discrepancy with the United States Constitution, and this notification itself already requires an action.

Where our initially mentioned legal recourse involved an issue on which the Supreme Court has not yet ruled, the legal recourse mentioned in this email

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has already been decided by the Supreme Court: a job or function is more than what is mentioned in a contract or the specifically described authorization. Next to that, when in function for the government one must sign a contract that is either directly a vow to uphold the United States Constitution or indirectly so, when vowing to uphold the California Constitution. On top of that, upholding the United States Constitution can be considered a natural aspect of your authority and functioning, and one that is not based on whether or not it is convenient for you to uphold. As we believe you know, 'upholding' points to a pro-active function that goes beyond merely 'holding' something. Though we feel uncomfortable pointing out to you what your functioning is, we consider it common understanding that the Elections Commission did not receive its authorization in a vacuum nor does this authority exist in a current state of a vacuum in light of San Francisco's elections.

The action we expected as a natural part of your functioning was at a minimum to notify the appropriate governmental organization or investigate the reasoning we brought before you yourselves. Naturally, we desire more than that, but we believe that this minimum must at least be met. Not our action, but your knowledge of a possible discrepancy of the existing local electoral system with the United States Constitution should have been followed by an action of some kind.

Since our request was not understood nor seen as important by the Elections Commission, we fear this second issue will also not be understood or seen as important by the Elections Commission. We therefore provide you an example of the current issue: Must a police officer, when receiving notification of a possible fire, act to notify the fire department, or not? And must the fire department, when receiving notification of a possible fire, act and at minimum investigate the situation, or not? To complete the police officer's duty in question: must the police officer act until he or she knows the issue is acted upon (with at a minimum an investigation into the situation) by either him- or herself, or the fire department?

We believe that there exists a must-must situation here; if the second governmental organization (the fire department) must act with at a minimum an investigation into a possible situation, then the first governmental organization (the police officer) becoming aware of the possible situation must also act and notify that second organization, and if needed repeatedly. There may be reasoning to not have this demand in place at all times, yet when occurring at the highest level (of emergency or of law) as is the case with our issue, such demand (of at a minimum an investigation in the possible situation) always exists.

Naturally, LocalParty.Org will assist you in understanding why the San Francisco Board of Supervisors' electoral system is in conflict with the United States Constitution if you would request our help. We look forward to a dialog in which you can learn about the particulars of fairness as contained within proportional elections that does not exist in district nor so called city-wide elections, and we can also show you where the United States Constitution is clear on this issue for local elections.

We will wait a reasonable amount of time to hear a reply from you whether you agree or disagree with our reasoning that you must comply with the Constitution of the United States and that your functioning includes upholding that most important institution.

As a final remark, Fair Vote may be bringing proportional elections to North America soon. A legal recourse the Quebec chapter initiated to having first-part-the-post (district elections) be declared unconstitutional is currently before the Quebec Superior Court. Naturally, the Quebecois have a

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different Constitution, and our Supreme Court already ruled in general that proportional elections do not need to be put in place (the Supreme Court did not yet rule in specific about proportional requirements at the local level). Meanwhile, the British Columbian chapter of Fair Vote is bringing this issue to the voters in that province for the second time. With a threshold of 60%, the request was previously defeated with just 2% short of that threshold. On May 12, 2009, the citizens of British Columbia are expected to vote a proportional voting system into place.

Knowing the nature of San Francisco to be at the front lines of new developments, and given the nature of fairness that only proportional elections is capable of delivering, we hope you are aware of the historical opportunity that you can currently fulfill as vanguards in establishing of what is an unavoidable future for the citizens of the United States at their local levels. As should be clear by now, the reason to act is found in the United States Constitution.

With the highest regards,

For LocalParty.Org
Fredrick Schermer

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