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CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA



BY:

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AUG 11 2003

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**Secretary of State of the State of California**

11  
12 UNITED STATES DISTRICT COURT  
13 SOUTHERN DISTRICT OF CALIFORNIA

**BY FAX**

**Filed By  
One Legal**

15 FRANK PARTNOY, an individual;  
16 LAURA ADAMS, an individual,  
17 RACHANA PATHAK, an individual,  
18 PETER STRIS, an individual, JASON  
19 WILSON, an individual; and  
20 CALIFORNIA INFORMED VOTERS  
21 GROUP, an unincorporated association,

Case No. 03 CV 1460-BTM

**KEVIN SHELLEY, SECRETARY  
OF STATE OF THE STATE OF  
CALIFORNIA'S RESPONSE TO  
MOTION FOR LEAVE TO  
INTERVENE, ETC.**

Plaintiffs,

Hearing Date: N/A

v.

Courtroom 15, 5th Floor  
The Honorable Barry T. Moskowitz

22 KEVIN SHELLEY, in his official  
23 capacity as Secretary of State for the State  
24 of California; SALLY MCPHERSON, in  
25 her official capacity as the Registrar of  
26 Voters for the County of San Diego; and  
27 CONNY MCCORMACK, in her official  
28 capacity as the Registrar-Recorder/County  
Clerk for the County of Los Angeles,

Defendants.

1 Secretary of State Kevin Shelley takes no position on the merits of the  
2 Rafferty motion to intervene, but does submit the following information for the assistance  
3 of the Court and all interested parties.

4 Rafferty's motion is based almost exclusively on the argument that this  
5 Court should have abstained from resolving plaintiffs' constitutional challenge to  
6 Elections Code section 11382. This argument is based on the pendency of the Petitions  
7 for Writ of Mandate in *Frankel v. Shelley* (Calif. Supreme Court Case No. S117770), and  
8 *Byrnes v. Bustamante* (Calif. Supreme Court Case No. S117832). In those matters, the  
9 petitioners sought a ruling from the California Supreme Court that, in the event the  
10 Governor was recalled, the Lieutenant Governor would automatically succeed to the  
11 office of Governor, and there would be no need for the recall ballot to list successor  
12 candidates. Accordingly, Rafferty argues, had the California Supreme Court resolved  
13 these matters in favor of the Frankel and Byrnes petitioners, this Court would not have  
14 been required to reach the issue of whether Elections Code section 11382 was  
15 constitutional, because there would have been no second question on the ballot. On that  
16 basis, Rafferty urged the Court to grant his motion to intervene, and entertain his request  
17 for abstention.

18 The Secretary of State points out that the California Supreme Court denied the  
19 *Frankel* and *Byrnes* petitions on August 7, 2003. Consequently, Rafferty's basis for  
20 claiming the Court should have abstained in this case – and that he should be permitted to  
21 intervene – has been rendered moot.

22 The Secretary of State also points out that immediately after receiving the  
23 court's decision in this case, the Secretary of State advised all county registrars of the  
24 Court's decision and judgment. In that regard, the Secretary of State has advised the  
25 registrars that all votes cast on the successor candidates must be counted, whether or not  
26 the voter voted on whether the Governor should be recalled. It is the Secretary of State's  
27 understanding that the county registrars throughout California are in the process of  
28 preparing informational materials for their voters and, where appropriate, programming

1 their elections software to be consistent with the Court's order. Any changes imposed  
2 next week would pose a serious risk of disrupting an election process in which the  
3 counties are already facing significant challenges.

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5 Dated: August 10, 2003

Respectfully submitted,

6 BILL LOCKYER, Attorney General  
of the State of California

7 KENNETH R. WILLIAMS, Supervising  
8 Deputy Attorney General Attorney General

9 

10 LESLIE R. LOPEZ  
11 Deputy Attorney General

12 **Attorneys for Defendant Kevin Shelley,**  
13 **Secretary of State of the State of California**