



Office of the Secretary of State
March Fong Eu

1230 J Street
Sacramento, California 95814

Elections Division
(916) 445-0820

August 9, 1979

Carroll

TO: ALL COUNTY CLERKS/ REGISTRARS OF VOTERS
FROM: EDWARD ARNOLD JR., Elections Assistant

A number of individual counties have called and requested copies of the matter of Norris v. Seibly (Item 5 on the Notice of Meeting for our next meeting). Enclosed is a copy of the decision for your information.

The discussion will probably focus on the recount and the allegations in the suit, and the opinion rendered by the court.

FILED

77 FEB 7 PM 3:37

BY *Patricia Podes*
DEPUTY

1
2
3
4
5
6
7

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

9

--oOo--

10 In the Matter of the Contested Election
11 of J. THOMAS SEIBLY, for the office of
12 Judge of the Lodi Municipal Court,

NO. 129464

DECISION

12

ALVAN E. NORRIS,

DEPT. NO. 4

13

Contestant,

14

vs.

15

J. THOMAS SEIBLY,

16

Respondent.

17

18

The 1976 electoral contest for the office of Lodi

19

Municipal Judge was remarkably close. At the close of the regular

20

vote count Norris led by 40 votes. An avalanche of pro-Seibly absen-

21

tee votes put seibly ahead by three.

22

Norris instituted an election contest which, if nothing

23

else, has illustrated how efficiently the law of averages works when

24

sufficiently large numbers are involved.

25

The first step was a complete recount of the votes by

26

the County Clerk's Office with observers from both sides present.

27

Thirty-two votes were added to the total. Sixteen for each side so

28

the recount had no effect on the relative position of the parties.

1 reversed, or reversed and upside down is agonizingly difficult it too
2 one hour and 15 minutes to decide that the ballot was probably put
3 in the machine upside down but not reversed.

4 Although ascertainment of the intent of the voter is
5 the prime guiding star in ballot interpretation, the cases also indi-
6 cate a subordinate principle of the public interest in the economy and
7 efficiency of the voting process and the voting counting is of some
8 importance.

9 A voting process that countenanced the consideration of
10 votes in the wrong squares but from which the officials might be able
11 to ascertain the intent of the voter if they first figured out in what
12 improper manner the card had been put in the Votomatic would obviously
13 be impracticably time consuming and unmanageable.

14 The upside down ballot was thus not counted.

15 Similarly, there were votes claimed by Seibly in which
16 the punched holes were not in his square but in nearby squares. Such
17 a result is possible if the ballot punch card is not pushed far enough
18 into the machine or is pushed in too far. The obvious difficulty is
19 that it is impossible to ascertain what was the intent of the voter
20 unless it is known how far the punch card was misplaced and in which
21 direction.

22 Such ballots were not counted.

23 Fourth, the most significant practical problem that
24 arises in the use of the Votomatic is how to count ballots in which
25 the "chad" (a small oblong plug of paper on the ballot punch card de-
26 signed to be pushed out by the marking device when it is pushed into a
27 ballot properly positioned in the voting machine) is not completely
28 pushed out and disconnected from the ballot.

1 and 3 were counted.

2 Chad positions 4 and 5 were not counted as it was consi
3 ered impossible to determine whether the voter intended to complete
4 his vote or just rested the marking device on the "chad" and then
5 changed his mind about voting.

6 Furthermore, there were indications from a close inspec
7 tion of ballots under four power magnification that some chad positio
8 4 and 5 result from manufacturing defects in the ballots.

9 Counting of "hanging chad" ballots according to these
10 principles was not excessively time consuming except in the four or fi
11 instances where the ballot fell close to the dividing line between
12 3 and 4 above.

13 Elections Code 15415 requires the counting of such ball
14 in the absence of any code section detailing the manner and extent
15 to which chads must be displaced.

16 "This chapter shall be liberally con-
17 strued so that the real will of the electors
18 will not be defeated by any informality or fail-
19 ure to comply with all of the provisions of the
20 law."

21 Fifth, due to an oversight by voting officials, one
22 voting booth out of six in the Woodbridge Fire Station precinct had a
23 defective ballot in the voting machine from 8:00 a.m. to 8:30 a.m.

24 Thirty-two voters voted in the precinct during that
25 half-hour. If they used voting booth number 5, the ballot in the
26 Votomatic machine did not have the names of Norris and Seibly but
27 those of Sayres and Ferguson from a different judicial race.

28 It was necessary to call these 32 voters into court to
29 ascertain (a) whether they cast illegal votes (votes for Sayres or
30 Ferguson would have been, unknown to the voters, registered for Norris

1 State ex rel Blake v Morris 44 P. 266 (Wash. 1896)). This authority,
2 whether based on a specific statute or general equity jurisdiction,
3 carries with it all means to carry (the authority) into effect (Foulkes
4 supra 537 P. 2d at 730).

5 Other cases have held that persons deprived of the
6 right to vote because of failure to provide adequate voting facilities
7 are deprived of a right secured by the Constitution and are denied the
8 right to equal protection of the law. These cases hold that citizens
9 have the constitutional right to a reasonable opportunity to vote in
10 local elections. It is not necessary to allege or prove that there was
11 wilful, purposeful, or conspiratorial attempt to deprive voters of the
12 right to vote; the denial of the right need only be a natural consequen
13 of actions of officials under color of law (Ury v Santee 303 F. Supp. 1
14 126 (N.D. Ill. 1969); Perkins v Matthews 336 F. Supp. 6 (S.D. Miss.
15 1971)). These cases annulled elections and ordered new elections under
16 constitutional right to vote laws, i.e., 42 U.S.C.A. Section 1983.
17 Specific statutes regarding election contests were not mentioned.

18 Under California statutes, the court may confirm, annul,
19 or set aside an election (Elections Code Section 20086). If another
20 person than defendant is found to have the highest number of legal
21 votes, the court shall declare that person elected (Elections Code
22 Section 20087). Whenever an election is annulled or set aside, and no
23 appeal has been taken within ten days, the commission is void and the
24 office vacant (Elections Code Section 20116).

25 The Code does not specifically provide for a new secret
26 ballot procedure (for voters whose vote, through no fault of their own,
27 was not counted in the original contest) or for the holding of a new
28 election.

1 deprive careless or ignorant voters of their franchise) judicial
2 decisions will continue to be necessary on such matters as (1) the
3 purpose of extraneous marks the voter put on the ballot; (2) the
4 circumstances under which holes were punched in the ballot outside
5 the "chad" area and (3) the extent of the displacement of "chads" by
6 the voter.

7 In the course of the contest two possible beneficial
8 modifications of the Votomatic method of voting came to light.

9 First, it was apparent that the voter with a ballot in-
10 sserted in the slot slightly too far or not far enough can "fish
11 around" with his marking device and punch holes in the ballot that do
12 not go through the chad. Such holes are often also in the wrong
13 squares. They are quite distinguishable from ballots punched while
14 held in the hand because they show vertical displacement of holes
15 but never any horizontal displacement.

16 If small dams or metal blocks were put just above and
17 below the holes in the Votomatic device (under its surface) the voter
18 would not be able to "fish around" by inserting his marking device
19 semi-horizontally and "catching a hole" and would not be able to punc
20 any holes unless the ballot was in the proper insertion position.

21 Second, it is obvious that many voters are failing to
22 exercise their franchise because they are not pushing their marking
23 device decisively into the hole provided and thus are not dislodging
24 the chads.

25 Either the machines should be provided with an electroni
26 light that flashes when they have pushed out the chad or there should
27 be posters in each voting booth to the effect "IF YOU HAVEN'T FELT THE
28 "THUNK", YOU HAVEN'T VOTED."

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The petition of Alvan Morris is denied, and the election of Thomas Seibly to the position of Judge of the Lodi Municipal District is confirmed.

DATED this 7th day of February, 1977.



BILL DOZIER
JUDGE OF THE SUPERIOR COURT