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105TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
105–416

DISMISSING THE ELECTION CONTEST AGAINST LORETTA SANCHEZ

REPORT

OF THE

COMMITTEE ON HOUSE OVERSIGHT

ON

H.R. 355

TOGETHER WITH

MINORITY VIEWS



FEBRUARY 12, 1998.—Referred to the House Calendar and ordered to be printed

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U.S. GOVERNMENT PRINTING OFFICE

46–426 WASHINGTON : 1998

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TASK FORCE FOR THE CONTESTED ELECTION IN THE 46TH CONGRESSIONAL DISTRICT OF CALIFORNIA

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Contents

	Page
1. Majority Report	1
2. Appendices:	
A. Chronology of Events	17
B. Investigation by the Task Force	29
C. Field Hearing	88
D. Interrogatories Issued by the Committee	93
E. Subpoenas Issued by the Committee	237
F. Investigations by State and Local Authorities	337
G. Contestant's Criminal Complaint Against Hermandad Mexicana Nacional	425
H. Federal Court Decisions	508
I. INS Production	594
J. Quashing and Modifying Subpoenas	777
K. Filings of the Parties	918
L. The Federal Contested Election Act	1000
M. Critique of Proportional Reduction	1022
3. Supplemental Views:	
A. Minority Views of the Honorable Sam Gejdenson, the Honorable Steny Hoyer, and the Honorable Carolyn Kilpatrick	1025
B. Minority Views of the Honorable Steny Hoyer and the Honorable Carolyn Kilpatrick	1063
C. Minority Views of the Honorable Carolyn Kilpatrick	1065

105TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
105–416

DISMISSING THE ELECTION CONTEST AGAINST LORETTA SANCHEZ

FEBRUARY 11, 1998.—Referred to the House Calendar and ordered to be printed

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Mr. THOMAS, from the Committee on House Oversight, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany H. Res. 355]

The Committee on House Oversight, having had under consideration the resolution (H. Res. 355), dismissing the election contest against Loretta Sanchez, reports the same to the House with the recommendation that the resolution be agreed to.

DISMISSING THE ELECTION CONTEST AGAINST LORETTA SANCHEZ

The Committee on House Oversight, having had under consideration the resolution H. Res. 355, dismissing the election contest against Loretta Sanchez, reports the same to the House with the recommendation that the resolution be agreed to.

COMMITTEE ACTION

On February 4, 1998, by a vote of 8–1, a quorum being present, the Committee agreed to a motion to report the resolution favorably to the House. Yeas: Mr. Thomas, Mr. Ney, Mr. Ehlers, Mr. Boehner, Ms. Granger, Mr. Gejdenson, Mr. Hoyer, Ms. Kilpatrick. Nay: Mr. Mica.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee states that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Rep-

resentatives, are incorporated in the descriptive portions of this report.

STATEMENT ON BUDGET AUTHORITY AND RELATED ITEMS

The resolution accompanying this report does not provide new budget authority, new spending authority, new credit authority, or an increase or decrease in revenues of tax expenditures and a statement under clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives and section 308(a)(1) of the Congressional Budget Act of 1974 is not required.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee states, with respect to the resolution, that the Director of the Congressional Budget Office did not submit a cost estimate and comparison under section 403 of the Congressional Budget Act of 1974.

OVERSIGHT FINDINGS OF COMMITTEE ON GOVERNMENT OPERATIONS

The Committee states, with respect to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, that the Committee on Government Reform and Operations did not submit findings or recommendations based on investigations under clause 4(c)(2) of rule X of the Rules of the House of Representatives.

TASK FORCE ON THE CONTESTED ELECTION

Pursuant to rule 16(b) of the Rules of Procedure of the Committee on House Oversight, the Honorable William M. Thomas, Chairman of the Committee, established a Task Force on January 8, 1997, to examine the documentary record, to receive oral arguments, and to recommend to the Committee, the disposition of an election contest filed pursuant to the Federal Contested Elections Act (FCEA), 2 U.S.C. §§ 381–396 (1969), by Robert Dornan against Loretta Sanchez.

STATEMENT OF FACTS

Introduction

This report relates to the election contest filed concerning the 1996 election for the House of Representatives seat for the 46th Congressional District of California ("District"). As discussed below, this election contest arises under the United States Constitution, Article V, § 1, and the FCEA, 2 U.S.C. §§ 381–396.

1996 Election for the 46th Congressional District of California

The principal candidates for the seat in the House of Representatives in the election for the Forty-sixth Congressional District of California on November 5, 1996 were incumbent Representative Robert K. Dornan and challenger Loretta Sanchez. On November 22, 1996 the Orange County Registrar of Voters, Rosalyn Lever, certified Ms. Sanchez the winner by 984 votes. Mr. Dornan requested a recount. On December 9, 1997, as a result of the recount, Ms. Sanchez's margin of victory was reduced to 979 votes.

Proceedings involving California agencies

Less than a month after the election, on December 4, 1997, the California Secretary of State, Bill Jones, announced the opening of an investigation of vote fraud during the 1996 election in the Forty-sixth Congressional District of California. Orange County District Attorney, Michael Capizzi, also announced that his office was undertaking a similar investigation. On January 14, 1997, the Orange County District Attorney conducted a search, under warrant, of the offices of Hermandad Mexicana Nacional, a Latino community service organization, alleged to be at the center of an effort to register and encourage non-citizens to vote in the 1996 elections. At that time the Los Angeles District Office of the Immigration and Naturalization Service assisted Secretary of State Jones in identifying non-citizens who may have voted.[1]

Proceeding before the Committee on House Oversight

On December 26, 1997, Mr. Dornan filed a Notice of Contest with the Committee ("Dornan's Notice") under jurisdiction granted by the U.S. Constitution[2] and the FCEA.[3] On January 7, 1997, Ms. Sanchez was sworn in as a Member of the 105th Congress.[4] On January 8, 1997 the Committee met and formed a Task Force to handle this contest. Committee Chairman William M. Thomas appointed two of the three Task Force members, the Honorable Vernon Ehlers (R–MI, Chairman of the Task Force) and the Honorable Robert Ney (R–OH). After more than a month of delay, on February 11, 1997, the Committee appointed the Democratic member to the Task Force, the Honorable Steny Hoyer (D–MD).

On January 31, 1997, Ms. Sanchez filed a Motion to Dismiss Notice of Election Contest or, in the Alternative, for a More Definite Statement ("Sanchez's Motion"). On February 10, 1997, Mr. Dornan submitted an Opposition to Motion to Dismiss or, in the Alternative, Response to Motion for a More Definite Statement detailing his allegations of voter fraud. On February 12, 1997, the Task Force received a letter from Ms. Sanchez requesting that the Task Force "withhold consideration of [her] motion" until the Task Force conducted a hearing in Orange County, California.[5]

On February 26, 1997, the Task Force met for the first time. At the meeting, Task Force Chairman Ehlers acknowledged Ms. Sanchez's request for a hearing in the District and recommended that the request be granted. The Task Force voted to postpone the disposition of Ms. Sanchez's Motion to Dismiss until a hearing on

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[1] See Appendix F.

[2] U.S. Const. art I, § 5 ("Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members * * * ").

[3] U.S.C. §§ 381–396 (providing procedural framework in the House of Representatives for a candidate to contest the election of a Member of the House of Representatives).

[4] This is in keeping with the traditions of the House. See, 105 Cong. Rec. 14 (195(); 77 Cong. Rec. 74 (1933). See also *Young* v. *Mikva,* H.R. Rep. No. 244, 95th Cong., 1st Sess. 5 (1977); *Ziebarth* v. *Smith,* H.R. Rep. No. 763, 94th Cong., 1st Sess. 15 (1975). Under those precedents, a certificate of election must be afforded a strong presumption of legality and correctness. *Ziebarth* v. *Smith,* H.R. Rep. No 763, 94th Cong., 1st Sess., 15 (1975); *Gormley* v. *Goss,* H.R. Rep. No. 839, 73d Cong., 2d Sess. (1934). In contrast, *McCloskey* v. *McIntyre,* H.R. No. 58 99th Cong. 1st Sess. 91985) represents a gross departure from the precedents of the House.

[5] See Appendix C: April 19th Hearing.

the merits.[6] The hearing was scheduled in Orange County to allow voters, election workers, and local officials access to the hearing.

On April 19, 1997, in Orange County, California, the Task Force held a hearing on the merits. During the hearing, the Task Force heard presentations from Mr. Dornan and Ms. Sanchez and their counsel, as well as testimony from several witnesses, including Secretary Jones, District Attorney Capizzi, Orange County Registrar of Voters Rosalyn Lever, Director of the Los Angeles Region of the INS, Richard Rogers, and former, acting California Secretary of State, Tony Miller. After each presentation, Task Force members questioned the witness.[7]

DORNAN'S ALLEGATIONS

In his Notice, Mr. Dornan alleged the following grounds for contesting the election: (a) that there were approximately 1,985 more ballots counted than voters voting who were accounted for in county records; (b) that illegal votes were cast in that persons cast multiple votes or voted from business addresses; (c) that absentee ballots were cast improperly; (d) that under-age voters and non-citizens voted; (e) that convicted felons may have voted; (f) that the precinct board made errors sufficient to change the result of the election; and (g) that there was an error in the vote-counting programs or summation of ballot counts.

At the April 19, 1997 hearing, Mr. Dornan narrowed the allegations upon which his Notice was based to the following:

> Non-citizens voting; and
>
> Voting irregularities such as improper delivery of absentee ballots, double voting and phantom voting.

In support of these allegations, Mr. Dornan submitted, among other things, affidavits and witness statements, statistical charts, newspaper accounts, and correspondence.[8]

SANCHEZ'S RESPONSE

Ms. Sanchez's Motion argued for dismissal of the election contest on the following procedural grounds:[9] (a) failure to exhaust state level remedies; (b) failure to plead claim with particularity; (c) failure to make an actual claim for the contested seat and; (d) failure to file Notice of Contest within the time[10] prescribed by 2 U.S.C. § 382 (a).

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[6] Postponement of disposition on the Motion to Dismiss triggered the FCEA's discovery provisions. 2 U.S.C § 392– . As contemplated by the statute, Ms. Sanchez's answer was due ten days after the postponement of her Motion to Dismiss, or March 10, 1997. *Id.* On the same date, Mr. Dornan's discovery period began, lasting until April 9, 1997. Ms. Sanchez's discovery period began on April 9, 1997 and lasted until May 8, 1997.

[7] See Appendix C.

[8] Task Force for the Contested Election in the 46th Congressional District of California: Hearings on the Merits, Contestant's Brief pp. 88–133.

[9] On March 12, 1997, Ms. Sanchez filed a Renewed Motion to Dismiss Notice of Election Contest. Because the Committee had postponed the disposition of Ms. Sanchez's original Motion, there was no need for a Committee ruling on the Renewed Motion.

[10] Ms. Sanchez alleges that the Notice of Contest was not timely filed with the Clerk of the House on December 26, 1996. The Notice was served on Ms. Sanchez on December 26, 1996 and a copy was provided to the Clerk of the House on that same date. This filing is sufficient to satisfy the notice requirements of 2 U.S.C. § 382 (a).

Ms. Sanchez also argued that Mr. Dornan failed to make "credible allegations of irregularities of fraud which, if subsequently proven true, would likely change the result of the election." [11]

Ms. Sanchez further argued that, where there is no allegation how any illegal vote was actually cast, those "votes [determined to actually be illegal] presumably would be deducted proportionally from both candidates, according to the entire vote returned for each." [12]

DISCOVERY PROVISIONS OF THE FEDERAL CONTESTED ELECTIONS ACT

At its first meeting on Wednesday, February 26, 1997, the Task Force had before it the pleadings filed by Mr. Dornan, his Notice of Election Contest and Ms. Sanchez's Motion to Dismiss and In The Alternative For A More Definite Statement. In addition, the Task Force had received from Ms. Sanchez a request that it withhold consideration of her motion and conduct a hearing in Orange County "as soon as practicable." In response to Ms. Sanchez's request and pursuant to FCEA § 383(d), a disposition of Ms. Sanchez's Motion to Dismiss was postponed until a hearing on the merits could be conducted.

This represents the first time that the House has moved forward with a hearing on the merits of an election contest under the FCEA. This decision was based on the substantial and credible allegations of fraud contained in Mr. Dornan's Notice. These allegations were supported by independent investigations being conducted by the California Secretary of State and the Orange County District Attorney. As contemplated by the express language of the statute, the postponement of decision on Ms. Sanchez's Motion to Dismiss triggered the beginning of discovery by Mr. Dornan.[13]

A careful review of the legislative history of the Act and a comparison of the Act with other federal law supports the decisions of the Task Force to permit discovery in this election contest.

The House of Representatives passed the current FCEA in 1969 by an overwhelming bipartisan vote—only 12 Members voted "no." [14] That Act, and prior laws upon which it was based, dating back to 1851, specifically authorize parties in an election contest to conduct discovery using subpoenas.[15] Subpoenas have long been

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[11] *Anderson* v. *Rose,* H. Rep. 104–852, 104th Cong., 2d Sess. 6 (1996) See also: (General arguments in pleadings are not sufficient) (*Duffy* v. *Mason*, 48th Congress (1880), Hinds' 942). (Allegations that are vague and uncertain as to particulars do not meet the requirement) (see *Gormley* v. *Goss*, 73d Congress, 5th District of Connecticut, H. Rep. 7–893 (1934); *Chandler* v. *Burnham*, 73 Congress 20th District of California, H. Rept. 73–1278 (1934)). Allegation of fraud etc. in the pleadings, sufficient to change the result of the election, should disclose with particularity, what, when, where, how much and by whom (see, *Duffy* v. *Mason*, supra; Public Law 91–138, section 3(b)) *Wilson* v. *Hinshaw*, H. Rep. 94–761 94th Cong., 1st Sess. 3–4 (1975); *Saunders* v. *Kelly*, H. Rep. 95–242, 95th Cong. 1st Sess. 3; *Hendon* v. *Clarke*, Comm. H. Rep. No. 98–453, 98th Cong. 1st Sess. 4 (1983).

[12] See, e.g., *Macy* v. *Greenwood*, H. Rep. 1599, 82nd Cong., 2d Sess. (1952) reported in 2 Deschler's Precedents, Ch. 9, ¶ 56.4 (1977)). In her Motion to Dismiss (Appendix The Contestee suggests that any invalid votes ought to be reduced in proportion to the vote tallies of the candidates and thus that it would require 97,900 illegal votes to render the true outcome of the election uncertain. However, it is possible that all of the illegal votes may have been cast for the Contestee and thus, if the number of illegal ballots is greater than the margin, the true outcome of the election may be uncertain. It is disturbing that an election in which over 90,000 illegal ballots have been cast could be accepted as a legitimate measure of the will of the people. See Appendix M.

[13] 2 U.S.C. § 383(d); § 386.

[14] Congressional Record, October 20, 1969; 30513–14.

[15] See Appendix H.

used by parties in election contests for this purpose. Hence, the issuance of subpoenas pursuant to the FCEA is not an "unprecedented" step.

The manner in which Mr. Dornan proceeded, in obtaining subpoenas from the federal district court and serving them upon the respondents, is precisely the process contemplated by the Act. The legislative history of the Act reveals that it was enacted to revise the "cumbersome, antiquated procedures" of the 1851 Act, its predecessor. The drafters of the Act intended that its discovery provisions mirror more closely the Federal Rules of Civil Procedure. One of the inadequacies of the 1851 Act cited by Congressman Kyl was that it gave "no clear authority for [a] contestant to take testimony if contestee fails to answer the notice of contest." Congressman Ryan opined that enactment of the FCEA would grant a contestant, acting in accordance with the provisions of the Act, the "right" to initiate an election contest with the power of subpoena.

Other laws contemplate the same type of delegation. For instance, a law dealing with Congressional Task Force procedure and investigations provides that a private party may request a master in chancery, a judicial officer, to issue subpoenas for any private claim against the United States that is pending before a Congressional Task Force.[16]

The Task Force record shows that the Democratic Minority opposed holding a "hearing on the merits" because the hearing would trigger the subpoena power authorized in the Act. The Minority objected to the scheduling of a hearing on the merits, even though Ms. Sanchez requested the hearing in Orange County. The Minority sought immediate dismissal without any investigation or hearing. This position comports with the traditional Democratic reluctance to investigate vote fraud. Since the passage of the Act in 1969, the House, under Democratic control, did not permit a single contestant to conduct discovery as contemplated in the Act.[17]

A contested election Task Force should not allow a losing candidate to proceed to discovery in a contest based on general or disproven claims of fraud or irregularities. A contestant must provide specific, credible allegations which would either invalidate sufficient ballots to affect the result of the election or would show the validity of the vote count to be seriously suspect because certain precincts were contaminated by fraud or other improper influences. In judging whether a particular allegation is credible, a Task Force should consider not only the Contestant's view and any supporting evidence, but any countervailing arguments and evidence available from the Contestee or other sources. Thus, the standard balances the need of the House to allow for meaningful discovery while recognizing that mere notice pleading is insufficient in the face of credible contrary evidence.

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[16] 2 U.S.C. § 190(l).

[17] This position was maintained even in the face of egregious vote fraud such as in *Wilson* v. *Leach*, H. Rep. 96–784, 96th Cong., 2nd Sess. (1980) (margin of 266 votes: 22 persons plead guilty to vote buying; 58 persons admitted that they were paid to vote; the Contestant produced ledger allegedly recording over 400 persons who sold their vote in single precinct; press reported endemic system of massive vote buying; the Contestee indicted for and acquitted of vote fraud—Motion to Dismiss contest approved by the Democratic Majority of the Committee on House Administration without any discovery or investigation.)

For the Democratic Minority to question the value of discovery in this case reveals their insensitivity to the threat of voter fraud. The criminal investigations of voter fraud by the California Secretary of State and the District Attorney of Orange County revealed that hundreds of individuals registered to vote before becoming U.S. citizens and cast illegal ballots. Proper subpoenas were necessary to help determine whether these votes were an isolated instance of fraud or part of a larger pattern. Unfortunately, the Task Force investigation indicates a larger pattern of non-citizens on the registration roles, a pattern the Minority's immediate dismissal would have left undiscovered.

While the Democrats controlled Congress for forty years, there was a consistent denial of access to facts, which frustrated efforts to uncover possible vote fraud or malfeasance in our electoral system. Citizens of the United States have the right to be assured that their representatives have been elected by lawful votes. The discovery procedures provided for in the FCEA are similar in form to those provided to civil litigants in virtually all courts across our nation.

The standard for judging a Motion to Dismiss that was intended at the time of passage of the FCEA was applied to this contest. A contestant must make credible allegations of irregularities of fraud which, if subsequently proven true, would likely change the outcome of the election. The credibility element of the test allows for consideration of evidence confirming or refuting allegations of election errors or fraud, if such evidence is available. This Task Force also recognized however, that the proof of election irregularities or fraud may not be obtainable by a contestant who has not had access to discovery. Contestants who cannot fully support their credible allegations because the proof of their claims is in the hands or minds of those who have committed the errors or violations at issue [18] should not be penalized.

Republicans have consistently rejected the Democratic position that the Contestant must be able to provide specific preliminary proof of his or her case at the time of the filing of the Notice of Contest in order to survive a Motion to Dismiss [19] before any discovery can begin or before a hearing on the merits can be set. The Democratic standard incorrectly elevated the Motion to Dismiss stage to an insurmountable barrier to all election contestants.

As stated previously to be allowed discovery, a contestant must make, at a minimum, credible allegations which show either that:

(1) more ballots were improperly cast than the margin of victory; or

(2) because of contaminating factors such as bribery, harassment of voters, corruption of officials, etc., in certain precinct(s), the credibility of the vote total is irreparably damaged.

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[18] The standard also recognizes the fact that Contestants may not have had sufficient time to review election materials such as registration lists, poll sheets, absentee ballot forms, etc. which might form the basis of allegations of irregularities by the deadline for filing a contest. In some cases, this problem might be due to the unavailability of the materials, or their sheer volume.

[19] See, e.g., 11 Rep. 244, 95th Cong., 1st Sess. *Young* v. *Mikua* (1977). This standard was advocated by Democrats filing motions to dismiss in 1995. See Contestee (Roses') Motion to Dismiss Contestant's Notice of Election Contest, at 10 (filed Feb. 8, 1995); Contestee Gejdenson's Motion to Dismiss the Election Contest, at 5 (filed Feb. 3, 1995).

If a Contestant is eventually successful in establishing convincing evidence of irregularities or fraud, the Task Force could order remedies, including proportional deduction of improper ballots,[20] exclusion of contaminated precincts,[21] or ordering a new election.[22] The appropriate remedy depends upon two tests whether the allegations are proven and how crucial they were to the apparent victory.

The language regarding the Motion to Dismiss in the FCEA and the statute's legislative history clearly indicate that the legislation was meant to install a procedural framework without changing substantive precedent of the House. In the past, the House had normally reviewed the pleadings and available evidence to determine whether there were sufficient grounds to allow further investigation. As a comparison with normal civil litigation, therefore, the House utilized a standard blending of Rules 12(b)(6) and 56 of the Federal Rules of Civil Procedure.

In fact, the FCEA rule allowing a Motion to Dismiss itself was designed and modeled on rule 12(b)(6) of the Federal Rules of Civil Procedure which govern actions in federal court. This rule allows for dismissal of a case before discovery where the plaintiff cannot sustain a legal claim even if every factual allegation and inference, contended by the plaintiff, were true: the claimant is not required to provide convincing evidence in the form of documents and/or affidavits. The legislative history indicates the FCEA's supporters believed the language establishing the Motion to Dismiss was meant to give the defending party a procedural right similar to the demurrer, the common law equivalent of Rule 12(b)(6). Since the FCEA was only a procedural reform, it did not alter the ability of

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[20] The House's precedents allow for deletion of improper ballots by proportional deduction. This "general rule in the House for deduction of illegal votes where it is impossible to determine for which candidate they were counted" requires reducing the total vote count in affected precincts in proportion to the percentage of votes received by each candidate in each precinct to eliminate the improper ballots from the vote count. See H. Rep. 513, 87th Cong. 1st Sess. Roush or Chambers, at 56 (1961); see also Deschler's Precedents § 57 (H. Rep. 2482, 85th Cong. 1st Sess., *Oliver* v. *Hale* (1958), § 564 (H. Rep. 1599, 82nd Cong., 2nd Sess., *Macy* v. *Greenwood* (1952), Ch 9 App. Deschler's Precedents § 54 at 828 (H. Rep. 1450, 69th Cong., 1st Sess. *Bailey* v. *Walters* (1926), § 32 (H. Rep. 224, 68th Cong., 1st Sess. *Chandler* v. *Bloom* (1924)), § 36 at 770–71 (H. Rep. 1101, 67th Cong., 4th Sess. *Paul* v. *Harrison* (1922)), § 27 at 744–45 (H. Rep. 1325, 66th Cong. 3d Sess, *Farr* v. *McLane* (1921)), § 14 at 681 (H. Reo. 839, 65th Cong., 3rd Sess. *Wickersham* v. *Salzere* (1919)), at § 26 at 74 (H. Rep. 1319, 66th Cong., 1st Sess., *Wickersham c. Salzer and Grugsby* (1919), Chester H. Rowell, A. Historical and Legal Digest of all the Contested Election Cases of the House of Representatives from the First to the Fifty Sixth Congress (1901), at 368 (47th Cong., *Bisbee* v. *Finley* (1881)), at 318 (44th Cong., *Platt* v. *Goode* (1875)), at 305 (44th Cong., *Finley* v. *Walls* (1875)).

[21] See, e.g. Ch. 9 App. Deschler's Precedents § 74 at 877 (H. Rep. 1901 Part 2, 71st Cong., 2d Sess., *Hill* v. *Palmosano* (1930)), § 54 at 820 (H. Rep. 1450, 69th Cong., 1st Sess. *Bailey* v. *Walters* (1926)), § 42 at 784 (H. Rep. 224, 68th Cong., 1st Sess., *Chandler* v. *Bloom* (1924)); id. § 3.6 at 770 (H. Reo. 1101, 67th Cong., 4th Sess. *Paul* v. *Harrison* (1922)), § 2.7 at 744 (H. Rep. 1325, 66th Cong., 3d Sess., *Farr* v. *McLasne* (1921)); § 2.4 at 717 (H. Rep. 9612, 66th Cong., 2d Sess., Safts or Major (1920)), at § 21 at 696 (H. Reo. 375, 66th Cong., 1st Sess., *Tague* v. *Fitzgerald* (1919) (Citing *Gill* v. *Catlin*, 62nd Cong., *Connell* v. *Howell*, 58th Cong., *Horton* v. *Butler*, 57th Cong., *Wagner* v. *Butler*, 57th Cong., and *Easton* v. *Scott*, 14th Cong.)), H. Rep. 626, 92nd Cong, 1st Sess. *Tunno* v. *Veysey* (1971) at 4 (internal citation deleted).

[22] An entirely new election is proper if the contamination of votes makes the winner of the election impossible to determine. "Declaring a vacancy in the seat is one of the options available to the House of Representatives and is generally exercised when the House decides that the contestant, while has failed to justify his claim to the seat, has succeeded in so impeaching the returns that the House believes that the only alternative available to determine the will of the electorate is to hold a new election." H. Rep. 626, 92nd Cong., 1st Sess., *Tunno* v. *Veysey* at 11 (internal citations omitted), see also Deschler's Precedents Ch. 9 § 49.1 at 509 H. Reo. 2255, 83rd Cong., 3d Sess. *Ray* v. *Jenks* (1938)), § 4714 at 495 (H. Rep. 334 73rd Cong., 2nd Sess. Kemp, Sanders Investigation (1934)).

the Committee to consider available evidence in deciding whether a contest deserved further consideration.

The FCEA's legislative history proves that the Act was not designed to alter the substantive grounds which a contestant must prove to overturn the certified results of a congressional election, a burden which has been and remains extremely high. Rather, as noted by then Chairman, Subcommittee on Elections, Democratic Rep. Abbitt:

> * * * [T]his bill does not set out any substantive grounds for upsetting an election such as fraud or other irregularities. It is strictly limited to prescribing a procedural framework for the prosecution, defense and disposition of contested-election cases patterned upon the Federal rules of civil procedure used for more than 20 years in our U.S. district courts.[23]

Rep. Kyl echoed these sentiments: "The procedures [the Act] contains for pleadings, taking testimony and briefing a case are patterned roughly after the Federal Rules of Civil Procedure." Id. This conclusion was also reflected in the House report on the Act:

> The purpose of these changes is to bring the procedure into closer conformity with the Federal Rules of Civil Procedure upon which the contested election procedures prescribed in H.R. 14195 are based * * * Historical experience with the existing law has demonstrated its inadequacies, among which are the following: * * * There is no procedure for challenging the legal sufficiency of the notice of contest by a motion in the nature of a demurrer.[24]

The reasons why the Committee has and should demand more than mere allegations as a court would require at summary judgment, are more complex. Normally a claim in federal or state court would be dismissed on summary judgment only after the party against whom dismissal was sought had an opportunity to gather evidence through the discovery process. However, under the FCEA, for a contestant to reach such discovery, a Motion to Dismiss must be rejected or postponed to a Hearing on the Merits. In order to keep frivolous cases from reaching discovery, the Committee standard incorporates the component of credibility into the review of a contestant's allegations similar to the standard a judge would utilize in viewing the evidence at issue in a Rule 56 motion for summary judgment.[25] Thus, because of the peculiarities of the con-

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[23] 115 part 22 Cong. Rec. 30510 (1969).

[24] H. Rep. 569, Federal Contested Election Act, 91st Cong., 1st Sess., at 3 (1969) See also id. at 4 ("the bill is patterned upon the Federal Rules of Civil Procedure used for more than 20 years in the Federal Courts."); 115 part 22 Cong. Rec. 30510 (1969) (remarks of Rep. Kyl) (remarking on need for procedure similar to demurrer). In affording a contestee the opportunity to present a "failure to state a claim" defense before serving an answer, the FCEA mirrors Rule 12(b)(6) which allows a defendant to assert "failure to state a claim upon which relief can be granted[.]" This similarity is not surprising because the language and structure of 2 U.S.C. §83 are copied directly from Rule 12 of the federal rules. For purposes of a Rule 12(b)(6) motion, all well-pleaded allegations are presumed true, all doubts and inferences are resolved in the pleader's favor, and the pleading is viewed in the light most favorable to the pleader. See, e.g., *Albright* v. *Oliver*, 114 S. Ct. 807, 810 (1994); *Markowitz* v. *Northeast Land Co.*, 906 F.2d 100, 103, (3d Cir. 1990).

[25] Also, the federal rules provide that a judge may deny or continue a motion for summary judgment if the party facing the motion certifies that certain evidence is not obtainable. Fed.

Continued

tested election process and the important concern that only substantive challenges be permitted discovery, the proper standard is a blend of Rules 12(b)(6) and 56.

In comparison, when evidence was reviewed under the standard used by Democrats for the FCEA Motion to Dismiss, such consideration amounted to a Trial on the Merits without any fact finding. Using this summary judgment standard when the contestant had not been allowed discovery made winning contests virtually impossible.

CONSISTENT WITH THE REPUBLICAN POSITION SINCE THE ENACTMENT OF THE FCEA

In every case under the FCEA where a Contestant made credible allegations of election irregularities or fraud which could have affected the result of the election, Republicans have urged use of this standard. For example, in the 1977 case of *Paul* v. *Gammage*, the Republicans noted:

> [T]he only burden cast upon the contestant is to "state" with particularity the grounds of his contest, not to "prove" them. * * * It would be the grossest of discretion to deprive a contestant of the opportunity to present evidence in support of his claim for the only reason that he failed to plead his case with particularity.
>
> * * * Our statute is new. Early precedents will set the tone for disposition of later cases. It is essential, therefore, that the misapplication of the burden in deciding Motions to Dismiss be corrected now.[26]

Similarly, in *Young* v. *Mikva,* a dissenting Republican recommended that a "motion to dismiss a contest will be granted unless the contestant has made allegations sufficient to justify the Committee's conclusion that grounds have been presented which if proven would change the result of the election."[27] The same standard was proposed by Republicans in the case of *Wilson* v. *Leach* in 1980: "if the contestant has stated grounds sufficient to change the results of the election, the Committee must deny the motion to dismiss and proceed with the case. The contestant does not have to prove those allegations beyond a reasonable doubt to quash the motion."[28] Republicans also dissented against the dismissal of the cases of *Hendon* v. *Clarke* in 1983 and *Hansen* v. *Stallings* in 1985 where persuasive allegations of irregular vote countings were plead properly.[29]

The Republicans consistently rejected the Democratic standard which shifted the burden of proof to the contestant, even before the contestant had an opportunity for discovery. They remarked in *Paul* v. *Gammage*:

R. Civ. P. 56(f). Of course, normally by this stage in litigation a party would have an opportunity to take discovery. In the contested election context, recognition that evidence may be beyond the grasp of a contestant is even more appropriate.

[26] H. Rep. 243, 95th Cong., 1st Sess. at 7, 9 (dissenting views).

[27] H. Rep., 244, 95th Cong., 1st Sess., at 9 (1977) (minority views of Rep. Dave Stockman).

[28] H. Rep. 784, 96th Cong., 2d Sess., at 5 (minority views).

[29] H. Rep. 453, 98th Cong., 1st Sess. at 9 (dissenting views); H. Rep. 290, 99th Cong., 1st Sess., at 10 (minority views).

> The panel concluded that the mere filing of a motion to dismiss casts upon the respondent the burden of proving his case at the time the motion is heard.
>
> Such a unique shifting of the burden not only reverses completely the established burden cast upon the moving party in the analogous situation of a motion for summary judgment, but is particularly inappropriate under our contested election statute.[30]

The reason why such burden-shifting is inappropriate was explained in Republican views filed in *Young* v. *Mikva* in 1977. Since irregularities and fraudulent activity may be difficult to uncover through private investigation especially in cases where those committing the mistakes or violations are in control of the probative evidence and information, contestees need access to the FCEA's discovery mechanisms to uncover the evidence supporting credible allegations of irregularities or fraud:

> The contestant should be allowed the opportunity to have access to the material he needs to present his case either through action of the courts or this Committee pursuant to the Federal Contested Election Act. To do otherwise renders the Procedures of the Federal Contested Election Act a mockery and establishes a veritable "Catch 22" precedent.[31]

Republicans have been unwavering in their advocacy of this standard. Thus, in the case of *Saunders* v. *Kelly* in 1977, where a Republican winner was challenged by a defeated Democratic candidate, the separate views of the minority Republicans rejected the Democratic position that Saunders' contest should be dismissed because she failed to provide documentary proof of her allegations.[32]

Of course, on numerous occasions where the allegations made in a contest were either vague, improbable on their face, or insufficient even if true to place the election result in doubt, Republicans have supported dismissals. In *Pierce* v. *Pursell,* the Republicans noted:

> In the instant case, Mr. Pierce is unable to allege any specific irregularities justifying the conclusion that the result of the election was in error * * *
>
> The present case is to be distinguished from *Young* v. *Mikva* where specific ballot errors in an amount sufficient to change the result of the election were affirmatively alleged by the contestant.[33]

In conclusion, the standard for setting a hearing on the merits thus permitting discovery under the FCEA applied in this case is consistent with the language of the statute, the FCEA's legislative history, analogy to court practice, the House's precedents, and common sense. Just as importantly, it will bolster the integrity of our electoral system by allowing illegal and improper acts to be pub-

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[30] H. Rep. 243, 95th Cong., 1st Sess., at 8 (dissenting views).
[31] H. Rep. 244, 95th Cong., 1st Sess., at 9 (1977) (minority views of Rep. Dave Stockman).
[32] H. Rep. 242, 95th Cong., 1st Sess., at 5 (separate views).
[33] H. Rep. 245, 95th Cong., 1st Sess., at 4 (supplemental views).

licized and deterred, and by ensuring that elections are decided only by legal votes.

DISCOVERY UNDER THE FEDERAL CONTESTED ELECTIONS ACT

While the discovery provisions of the FCEA are sound in theory, in practice the provisions created an unworkable structure. Due to obstructionist behavior on the part of various persons and entities subpoenaed, a failure on the part of the Department of Justice to enforce the subpoenas as contemplated under the FCEA,[34] and the inability of the Contestant to subpoena the INS, discovery by the Contestant was generally ineffective in providing useful information to this Task Force.

On February 13, 1997, Mr. Dornan issued over 50 subpoenas, signed by U.S. Magistrate Elgin Edwards in the U.S. District Court in Santa Ana, California. On February 28, 1997 U.S. Magistrate Edwards denied the Contestee's challenge to the validity of the subpoenas issued on February 13, 1997. On March 9, 1997, U.S. District Court Judge Gary L. Taylor, Central District of California, recalled the subpoenas issued by the Magistrate because they were irregular on their face in several respects and thus not as authorized by the FCEA.[35] Judge Taylor ordered that any future FCEA subpoenas would be issued by the District Court.[36]

On March 10, 1997, Mr. Dornan's period for discovery officially began under the FCEA. He was granted subpoena power as part of his discovery process. On March 18, 1997, Mr. Dornan issued 24 subpoenas signed by Judge Gary L. Taylor. On March 28, 1997, Mr. Dornan issued seven more subpoenas, including one to Ms. Sanchez. Finally, on May 20, 1997 the Contestant issued 13 additional subpoenas signed by Judge Gary L. Taylor.

On April 9, 1997, Mr. Dornan's discovery period ended and Ms. Sanchez's period began. On April 16, 1997, the Committee met to consider motions to quash or modify subpoenas filed by entities to which Mr. Dornan issued subpoenas.[37] The Committee held in abeyance 16 subpoenas pending a further showing of relevance by Mr. Dornan.[38] The Committee also voted to issue letters to five entities stating that the documents subpoenaed must be produced within 15 days.[39] The Committee also approved the text of three protective orders that specify the terms of production and custody of documents produced under subpoena.[40] These strict protective orders were designed to protect the legitimate privacy interests of those organizations and individuals subpoenaed by the Contestant. On May 9, 1997 the discovery period ended for the Contestee.

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[34] See Appendix G

[35] In the Matter of the Contested Election of Loretta Sanchez to the House of Representatives of the United States Congress; Robert K. Dornan, Contestant, vs. Loretta Sanchez, Contestee, 955 F. Supp. 1210, 1212 (1997).

[36] Id. at 1212.

[37] See Appendix K.

[38] These entities were the U.S. District Court Naturalization Division, Immigration and Naturalization Service, Laborers Union 652, Carpenters Union 803, Carpenters Union 2361, the Guttenberg Group, Citizen's Forum, Lou Correa for State Assembly, Active Citizenship Campaign, Communication Workers Local 9510, Hermandad Mexicana Nacional Sales and Marketing, Rancho Santiago College Orange Campus, Centennial Education Center, Orange Adult Learning Center, and Garden Grove Center.

[39] These five entities were Catholic Charities, Dump Dornan Committee, Sanchez for Congress, Hermandad Mexicana Nacional, Hermandad Mexicana Nacional Legal Center.

[40] See Appendix K.

Throughout her time for discovery, the Contestee issued no subpoenas.

On May 21, 1997 the Committee met to decide on outstanding motions to quash or modify subpoenas initiated by the Contestant.[41] The Committee voted to hold two subpoenas in abeyance.[42] The Committee denied motions to quash from Lou Correa for State Assembly, Dump Dornan, Guttenberg Group, Southwest Voter Registration Project, and One Stop Immigration and Education Center.

On September 24, 1997 the Committee met to vote on three CA 46 issues. First the Committee voted on motions to quash or modify subpoenas issued by the Contestant. The Committee voted to quash subpoenas issued to Loretta Sanchez, Rancho Santiago College, Naturalization Assistance Service, Carpenters Local 803/2361, and R. Scott Moxley.[43] The Committee voted to modify and enforce subpoenas issued to Nativo Lopez, Michael Farber, and Active Citizenship Campaign.[44] The Committee voted to pass a House Resolution urging the Office of the United States Attorney for the Central District of California to file criminal charges against Hermandad Mexicana Nacional for failure to comply with a valid subpoena under the Federal Contested Elections Act. Finally, the Committee voted to authorize the issuance of interrogatories. On October 1, 1997 the Committee issued interrogatories to Robert K. Dornan, Michael Farber, Loretta Sanchez, Wylie Aitken, John Shallman, Benny Hernandez, Nativo Lopez, CA Secretary of State Bill Jones, and Orange County District Attorney Michael Capizzi.[45]

Because of the refusal of numerous witnesses and entities to comply with subpoenas issued by Mr. Dornan and the refusal of the INS to comply with numerous requests from the Committee and California election officials to provide citizenship data on individuals, the Committee was required to issue its own subpoenas and undertake a larger role in the investigation.[46] On May 14, 1997 the Committee issued two subpoenas to the INS.[47] The first subpoena requested that the INS perform a match of documented aliens in their databases with the list of individuals who registered to vote in Orange County prior to the November 1996 election. The second subpoena requested that the INS provide to the Committee copies of relevant INS databases.[48]

The refusal of many witnesses to comply also caused Mr. Dornan to seek relief by way of a criminal complaint, as is contemplated by the FCEA.[49] On May 19, 1997 the Contestant filed a criminal complaint against Hermandad Mexicana Nacional with the U.S.

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[41] The Committee voted to quash seven subpoenas. The quashed subpoenas were Southern California Edison, Southern California Gas, Garden Grove Water Department, Communications Workers of America, Labor Union Local 652, United States District Court, and the INS.

[42] The subpoenas were Carpenters Local 803/2361 and Rancho Santiago Community College.

[43] The Contestant had applied for and served the subpoena to Mr. Moxley outside of the 30 day discovery period. A Contestant or Contestee must initiate their discovery with respect to a particular party within the initial periods prescribed by the FCEA.

[44] In contrast to the subpoena directed to Mr. Moxley, the subpoenas to Mr. Farber, Mr. Lopez and Active Citizenship Campaign were applied for within the initial discovery window and a good-faith effort at service was attempted although not perfected until after the passing of the initial discovery period.

[45] See Appendix D.

[46] See Appendix I.

[47] See Appendix E.

[48] The INS eventually complied with the Committee's subpoena, providing numerous databases, which were compared to Orange County voter registration records.

[49] See Appendix G.

Attorney in Los Angeles. The criminal complaint requested that the U.S. attorney prosecute Hermandad Mexicana Nacional for failure to comply with FCEA subpoenas. On June 23, 1997 the Committee wrote a letter to the U.S. Attorney's office requesting that they act on a criminal complaint filed by the Contestant. On June 30, 1997 the Committee again wrote to the Deputy Attorney General of the United States to request that the Department of Justice advise the Committee of the status of the criminal complaint filed by the Contestant. On September 30, 1997 the House of Representatives passed House Resolution 244, Demanding that the Office of the United States Attorney for the Central District of California file criminal charges against Hermandad Mexicana Nacional for failure to comply with a valid subpoena under the Federal Contested Elections Act.[50] Despite the Committee's efforts, the Department of Justice refused to enforce the subpoenas.

THE INVESTIGATION CONDUCTED BY THE TASK FORCE

Throughout this election contest, the Task Force has sought to allow the Contestant and the Contestee to exercise the discovery process provided for in the Federal Contested Elections Act. However, the Contestee and third-parties, such as Hermandad Mexicana Nacional, have not only refused to comply with the provisions of the statute, but have also engaged in lengthy litigation challenging the Constitutionality of the statute. Although the Majority's position in this litigation has ultimately been vindicated,[51] the delays and obstruction of the Contestee and third-parties forced the Task Force to pursue its own investigation of voting irregularities.[52]

In addition, the credible allegation by the Contestant that aliens voted in the election created a conflict with the privacy rights of persons in the INS's databases. As the Department of Justice wrote in their motion to quash the Contestant's FCEA subpoena: "Under the Privacy Act of 1974, 5 U.S.C. § 552a(b), as amended, no agency shall disclose any record which is contained in a system of records by any means of communication to any person except by the prior written consent of the individual to whom the records pertains, unless one of a series of exceptions applies.[53] The Act applies to records maintained in a system of records by a federal agency that are retrieved by 'the name or other identifying information' of the individual.[54] An individual, for purposes of the act, is defined as 'a citizen of the United States or an alien lawfully admitted for permanent residence.'[55] By specifically requesting 'identifying information' the Contestant seeks the production of that which is specifically prohibited."[56]

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[50] See Appendix H.
[51] In the Matter of the Contested Election of Loretta Sanchez to the House of Representatives of the United States Congress; *Robert K. Dornan, Contestant,* v. *Loretta Sanchez, Contestee,* 978 F. Supp. 1315 (1997). See Appendix I.
[52] See Appendix B.
[53] 5 U.S.C. § 522(b)(1–12).
[54] 5 U.S.C. § 522a(a) & 522(f).
[55] 5 U.S.C. § 522a(a)(2).
[56] Motion of the Immigration and Naturalization Service and the Custodian of Records, United States District Court for the Central District of California, To Quash Contestant's Subpoena. April 16, 1997. Page 3.

The Justice Department's analysis of the Privacy Act is correct. Accordingly, the Committee quashed the Contestant's subpoena to the Immigration and Naturalization Service at the Committee Meeting of May 21, 1997.

However, the Task Force could not ignore the credible allegations proffered by the Contestant. Therefore, the Task Force undertook its own investigation, utilizing data subpoenaed from the INS. The Privacy Act specifically exempts "either House of Congress, or to the extent of matter within its jurisdiction [57] any Task Force or subcommittee thereof * * *." [58] Throughout this investigation the Task Force has been conscious of its responsibility to respect the privacy of every individual related to this investigation and has scrupulously guarded the information in its possession.[59]

After a careful comparison between the Orange County voter registration files and INS databases the Task Force was able to clearly and convincingly document that 624 persons had illegally registered and thus were not eligible to cast ballots in the November 1996 election.[60] In addition, the Task Force discovered 196 instances where there is a circumstantial indication that a voter registered illegally.[61] Further, the Orange County Registrar of voters voided 124 improper absentee ballots.[62] In total, the Task Force found clear and convincing evidence that 748 invalid votes were cast in this election.

The question of how many aliens are registered and voting in the Forty-sixth Congressional District has not been resolved by this Task Force investigation. The investigation of this contest has confirmed that there is a significant number of aliens who appear within the INS data bases and are on the voter registration rolls of Orange County. This fact leads logically to a serious question and a troubling hypothesis: if there is a significant number of "documented aliens", aliens in INS records, on the Orange County voter registration rolls, how many illegal or undocumented aliens may be registered to vote in Orange County? The Task Force can make no conclusion based on the materials before it as to the number of illegal aliens who may be on Orange County registration rolls. The Task Force does not have available to it clear and convincing evidence on the number of undocumented aliens who may be registered voters in Orange County.

Only clear and convincing evidence can provide the basis to overcome the presumption of the legitimacy of the electoral process. Absent such evidence, the California certification of the election results in the 46th Congressional District must be confirmed by this House. However, the confirmation of this election result by the House is not an unequivocal validation of the voting process in Orange County.

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[57] Committee on House Oversight jurisdiction is defined by House Rule X(1)(b).

[58] 5 U.S.C. § 522(b)(9).

[59] The Contestee has not shared this commitment to privacy rights. In a letter dated November 11, 1997 the Contestee's attorneys attempted to compel the Orange County Registrar of Voters to publicly disclose, pursuant to the California Public Records Act, Cal. Govt. Code § 6250 et seq, a preliminary list of potential matches. Such a disclosure would have irreparably violated the privacy of hundreds of innocent people. Fortunately, the Committee intervened to protect the privacy of the persons affected.

[60] See Appendix C.

[61] See Appendix C.

[62] See Appendix C.

In conclusion, had the Task Force and Committee not acted to consider the merits of this contest, significant vote fraud and vote irregularities would have gone undetected. However, the number of ballots for which the Task Force and Committee has clear and convincing evidence that they were cast improperly by individuals not eligible to vote in the November 1996 election is substantially less than the 979 vote margin in this election.

For the foregoing reasons, the Committee concludes that this contest should be dismissed.

APPENDIX A: CHRONOLOGY

CONTESTED ELECTION IN THE 46TH CONGRESSIONAL DISTRICT OF CALIFORNIA

CHRONOLOGY

November, 1996

5th—Federal, state and local elections were held nationwide. In the 46th Congressional District of California incumbent Robert K. Dornan (R) was challenged by Loretta Sanchez (D).

6th—Bob Dornan was ahead by 233 votes but 12,000 absentee and provisional ballots were still uncounted.

9th—The Committee on House Oversight (hereafter "the Committee") sent observers to the Orange County Registrar of Voters to monitor the counting of the outstanding votes.

13th—The Associated Press called Loretta Sanchez the winner when she moved ahead by 929 votes with 3,000 ballots left outstanding. The following day Robert Dornan called for a recount of all votes.

22nd—All votes were counted once and the Registrar of Voters declared Sanchez the winner by 984 votes.

December, 1996

4th—The California Secretary of State announced that his office was opening an investigation of possible voter fraud in the 46th Congressional District. The Orange County District Attorney also announced that he would similarly investigate the results of the election based on allegations of voter fraud.

9th—The Committee sent additional observers to Orange County to observe the recount procedures. The recount resulted in a five vote pick-up for Robert Dornan, leaving the final margin of defeat at 979 votes.

26th—Robert Dornan (hereafter "the Contestant") filed a Notice of Contest with the Committee announcing his intention to contest the results of the election.

January, 1997

7th—Loretta Sanchez (hereafter "the Contestee") was sworn in as a Member of the 105th Congress.

8th—The Committee met and formed the Task Force for the Contested Election in the 46th Congressional District of California (hereafter "the Task Force"). Two of the three Task Force members were appointed. The Honorable Vernon Ehlers (R–MI, Chairman), and the Honorable Bob Ney (R–OH) were appointed by Committee Chairman Bill Thomas. At this time the Ranking Minority Member on the Committee did not have a recommendation to fill the third (Democratic) position on the Task Force.

14th—The Orange County District Attorney and the CA Secretary of State conducted a raid, under search warrant, of Hermandad Mexicana Nacional, a Latino community service organization. The Contestant alleged to both the District Attorney and the Secretary of State that Hermandad Mexicana Nacional was at the center of an effort to register and encourage non-citizens to vote in the 1996 elections. The Los Angeles District Office of the Immigration and Naturalization Service agreed to assist the California Secretary of State in identifying non-citizens who may have voted.

31st—The Contestee filed a Motion to Dismiss Notice of Election Contest or, in the Alternative, For a More Definite Statement.

February, 1997

10th—The Contestant submitted an Opposition to Motion to Dismiss or, in the Alternative, Response to Motion for a More Definite Statement detailing his allegations of voter fraud.

11th—The Committee met and appointed the third member to the Task Force, the Honorable Steny Hoyer (D–MD).

12th—The Task Force received a letter from the Contestee requesting that the Task Force "withhold consideration of my motion" until the Task Force conducts a field hearing in Orange County, CA.

13th—The Contestant issued over 50 subpoenas, signed by U.S. Magistrate Elgin Edwards in the U.S. District Court in Santa Ana.

26th—The Task Force met and voted to postpone the disposition of the Contestee's Motion to Dismiss until after a Hearing on the Merits. At the meeting, Chairman Ehlers acknowledged the request from the Contestee regarding a field hearing and recommended that the request be granted.

28th—U.S. Magistrate Edwards ruled that subpoenas issued by the Contestant are legitimate.

March 1997

9th—U.S. District Court Judge Gary L. Taylor, Central District of California, revoked some subpoenas issued by the Contestant citing that the subpoenas may be issued for depositions but not documents exclusively.

10th—The Contestant's period for discovery officially began under the Federal Contested Elections Act. He was granted subpoena power as part of his discovery process.

12th—The Contestee filed a Renewed Motion to Dismiss Notice of Election Contest with the Committee.

14th—California Secretary of State Bill Jones requested that the INS analyze the entire Orange County voter registration list.

17th—Richard Rogers, INS Los Angeles District Director agreed to analyze the information requested by the Secretary of State.

18th—The Contestant issued 24 subpoenas signed by Judge Gary L. Taylor.

28th—The Contestant issued seven more subpoenas, including one to the Contestee.

April 1997

9th—The Contestant's discovery period ended and the Contestee's began.

9th—The California Secretary of State announced that an INS analysis of 1,100 persons enrolled in Hermandad citizenship classes had discovered 490 documented non-citizens who registered to vote in CA 46. Of these, 303 actually voted illegally in CA 46, and 69 individuals had no record in INS files.

10th—The Contestant filed a Motion to Enlarge Time to Take Testimony and for Production of Documents.

15th—The Contestant filed a Motion to Compel Compliance With Subpoenas Regarding Depositions to Release Documents Submitted Under Seal.

16th—The full Committee met to consider motions to quash or modify subpoenas filed by entities to which the Contestant issued subpoenas. The Committee held in abeyance 16 subpoenas pending a further showing of relevance by the Contestant. These entities were the U.S. District Court Naturalization Division, Immigration and Naturalization Service, Laborers Union 652, Carpenters Union 803, Carpenters Union 2361, the Guttenberg Group, Citizen's Forum, Lou Correa for State Assembly, Active Citizenship Campaign, Communication Workers Local 9510, Hermandad Mexicana Nacional Sales and Marketing, Rancho Santiago College Orange Campus, Centennial Education Center, Orange Adult Learning Center, and Garden Grove Center. The Committee also voted to issue letters to five entities stating that the documents subpoenaed must be produced within 15 days. These five entities were Catholic Charities, Dump Dornan Committee, Sanchez for Congress, Hermandad Mexicana Nacional, Hermandad Mexicana Nacional Legal Center. The Committee also approved the text of three protective orders that specify the terms of production and custody of documents produced under subpoena.

18th—The Committee issued letters to all parties whose motions were resolved at the April 16, 1997 Committee meeting.

17th—The Contestant submitted Field Hearing Testimony in Support of Notice of Contest to the Committee.

19th—The Task Force held a field hearing in Santa Ana, CA. At the hearing, the Task Force heard testimony from the CA Secretary of State, the Orange County District Attorney, the Orange County Registrar of Voters, and the INS Los Angeles District Director. The Contestant and the Contestee also testified and called witnesses to testify before the Task Force.

24th—The Committee sent a request to the INS headquarters in Washington, D.C. asking that they perform a comparison of the Orange County voter list and several INS databases.

28th—The Contestant filed an Application for Extension of Time within Which to Respond to the Committee's Request for Further Information.

29th—The Orange County Registrar of Voters notified the Committee that she had identified 98 improper absentee ballots.

30th—The Contestee submitted Closing Field Hearing Testimony in Support of Motion to Dismiss to the Committee.

May 1997

1st—Hermandad Mexicana Nacional and the Committee for Loretta Sanchez failed to produce documents as required by the Contestant's subpoenas that were upheld by the Committee.

1st—The Contestant submitted Response to the Committee on House Oversight's Request For Further Information Regarding Subpoenas.

1st—The INS writes to CHO requesting two additional weeks to determine the extent to which the INS will be able to comply with the Committee's April 24, 1997 request.

2nd—The Contestant filed a Response to the Committee's Request for Further Information Regarding Subpoenas.

5th—Chairman Bill Thomas held a press conference to announce that the INS had failed to cooperate with numerous requests for assistance in reviewing the citizenship status of CA 46 voters.

9th—The discovery period ended for the Contestee. Throughout her time for discovery, the Contestee issued no subpoenas.

14th—The Committee issued two subpoenas to the INS. The first subpoena requested that the INS perform a match of documented aliens in their databases with the list of individuals who registered to vote in Orange County prior to the November 1996 election. The second subpoena requested that the INS provide to the Committee copies of relevant INS databases.

19th—The Contestant filed a criminal complaint against Hermandad Mexicana Nacional with the U.S. Attorney in Los Angeles. The criminal complaint requested that the U.S. attorney prosecute Hermandad Mexicana Nacional for failure to comply with FCEA subpoenas.

20th—The Contestant issued 13 additional subpoenas signed by judge Gary L. Taylor.

21st—The Committee received the results of the matches of last name and date-of-birth between INS records and the Orange County voter registration list. The match identified over 500,000 individuals registered in Orange County and approximately 136,000 individuals in the 46th Congressional District. This constituted partial compliance with the Committee's subpoena.

21st—The Committee met to decide on outstanding motions to quash or modify subpoenas initiated by the Contestant. The Committee voted to quash seven subpoenas. The quashed subpoenas were Southern California Edison, Southern California Gas, Garden Grove Water Department, Communications Workers of America, Labor Union Local 652, United States District court, and the INS. The Committee voted to hold two subpoenas in abeyance. The subpoenas were Carpenters Local 803/2361 and Rancho Santiago Community College. The Committee denied motions to quash from Lou Correa for State Assembly, Dump Dornan, Guttenburg Group, Southwest Voter Registration Project, and One Stop Immigration and Education Center. The Committee set a production deadline of June 5, 1997.

22nd—The Committee issued letters to all parties whose motions were resolved at the May 21, 1997 Committee meeting.

29th—The INS informed the Committee that 19,000 individuals in INS databases matched the first name, last name, and date-of-birth of individuals registered to vote in CA 46. Of those 19,000 ap-

proximately 4,023 were registered to vote in the 46th Congressional District.

June 1997

3rd—Committee staff met with INS staff to discuss compliance with Congressional subpoenas and future cooperation on projects such as paper file reviews.

5th—Lou Correa for State Assembly, Dump Dornan, Guttenburg Group, Southwest Voter Registration Project, and One Stop Immigration and Education Center failed to produce subpoenaed documents.

9th—The INS delivered five additional data tapes containing a total of 19,554 names matching the first name, last name, and date of birth as individuals on the Orange County voter registration tape.

12th—Committee Chairman Bill Thomas and Task Force Chairman Vernon Ehlers wrote to Ranking Minority Member Sam Gejdenson and Task Force Member Steny Hoyer to explain the timeline for Contestant and Contestee discovery.

13th—The INS wrote to the Committee to explain that a list of 4,023 names had been forwarded to its Los Angeles District Office and that they had began to gather the physical alien files in order to complete the data sheets requested by the Committee.

16th—The California Secretary of State issued a legal opinion stating that a person who has unlawfully registered to vote prior to becoming a U.S. citizen is not entitled to vote, even if that person is naturalized prior to the election.

19th—The Orange County Registrar informed the Committee that the new number of invalid absentee votes is 124.

23rd—The Committee wrote a letter to the U.S. Attorney's office requesting that they act on a criminal complaint filed by the Contestant.

23rd—The Committee requested that the INS provide data sheets for an additional 1,349 individuals.

25th—The Committee received the first installment of 3,875 INS data worksheets detailing the immigration status of individuals registered to vote in CA 46. These worksheets contained information compiled by the INS including date of naturalization, date of birth, date of registration to vote, alien number, and voter affidavit number. The information contained on these worksheets was used by the Committee to verify the immigration status of registered voters and the legality of their votes. These worksheets were requested by Committee letters between June 25, 1997 and October 20, 1997. The requested worksheets arrived at the Committee periodically between June 25 and February 6, 1998. While most of the information requested by the Committee was produced between these dates, there remained some data sheets that were never produced.

30th—The Committee again wrote to the Deputy Attorney General of the United States to request that the Department of Justice advise the Committee of the status of the criminal complaint filed by the Contestant.

30th—The Orange County Registrar of Voters wrote to inform the Committee that a certain group of individuals had registered

to vote on a date different than had been originally stated by the Registrar of Voters. These new, later dates would then make their registrations valid under California law.

July 1997

16th—The Contestant wrote to the U.S. Attorney to provide information regarding the District Court's rulings and the procedures employed by the Contestant to encourage subpoena enforcement.

18th—The INS delivered an additional 260 data worksheets to the Committee. On July 23, 1997 the INS delivered an additional 85 data worksheets to the Committee.

21st—Assistant U.S. Attorney Jonathon Shapiro wrote to the Contestant to inform him that the Office of the U.S. Attorney "does not generally use criminal prosecution to enforce civil subpoenas."

25th—Assistant Attorney General Andrew Fois wrote to the Committee in response to repeated requests for information regarding the Contestant's criminal complaint against Hermandad Mexicana Nacional, to explain that the Central District "does not generally use criminal prosecution to enforce civil subpoenas."

29th—The INS delivered an additional 314 data worksheets to the Committee.

29th—The Ranking Minority Member Sam Gejdenson and Task Force Member Steny Hoyer wrote to the INS to make three requests for information.

30th—The INS delivered three data tapes containing the results of a match analysis of three INS databases and the Orange County registered voter list.

August 1997

8th—The Committee wrote to the INS requesting that the INS review an additional 153 alien files recommended by the Committee.

8th—The INS delivered an additional 253 data worksheets to the Committee.

15th—The Committee wrote to the Orange County District Attorney to request copies of certain computer files seized from Hermanad Mexicana Nacional during a January raid on that organization.

18th—The Committee wrote to the Orange County Superior Court Clerk to request a list of all individuals who claimed that they were not citizens when called for jury duty.

19th—The Committee wrote to the INS requesting that the INS review additional alien files recommended by the Committee.

19th—The INS delivered an additional 608 data worksheets to the Committee.

21st—The Orange County District Attorney delivered certain computer files requested by the Committee that were seized from Hermanad Mexicana Nacional during a January raid.

25th—The Committee wrote to the INS requesting that the INS review additional alien files recommended by the Committee.

25th—The Ranking Minority Member Sam Gejdenson and Task Force Member Steny Hoyer wrote to Committee Chairman Bill Thomas requesting his assistance in transmitting their request for information to the INS.

29th—The INS delivered an additional 340 data worksheets to the Committee.

September 1997

2nd—The Orange County Superior Court delivered the electronic list of all individuals who claimed that they were not citizens when called for jury duty, as requested by the Committee.

3rd—The Committee wrote three letters to the INS requesting that the INS review additional alien files recommended by the Committee.

4th—The Bipartisan Legal Advisory Group of the U.S. House of Representatives filed an amicus brief with the U.S. District Court, Central District of California, in support of the constitutionality of the discovery provisions of the Federal Contested Elections Act.

5th—The Committee wrote to the INS requesting that the INS review additional alien files recommended by the Committee.

8th—The Committee wrote to the INS requesting that the INS review additional alien files recommended by the Committee.

9th—Committee Chairman Bill Thomas forwarded the Minority Member's request to the INS as requested in their August 25, 1997 letter.

11th—The Minority Counsel to the Committee requested copies of registration affidavits from the Orange County Registrar of Voters for approximately 200 individuals.

12th—The INS responded to the Committee's request forwarded by Chairman Thomas in behalf of Minority Members Gejdenson and Hoyer including documents and information pertaining to the citizenship status of certain individuals.

12th—The INS delivered an additional 418 data worksheets to the Committee.

15th—The Committee wrote to the California Secretary of State, in his capacity as the chief election officer of the State of California, to request that he review and verify the results of the Committee's voter analysis.

17th—The Orange County Registrar of Voters produced the minority requested registration affidavits.

18th—The House of Representatives Office of the General Counsel issued a legal memorandum to Chairman Thomas on the subject of sharing information received by the Committee. Specifically, the memorandum stated that the Committee could share information received from the INS with a state government agency in the process of conducting an investigation.

22nd—The INS delivered an additional 237 data worksheets to the Committee.

23rd—The Committee wrote to the INS requesting that the INS review additional alien files recommended by the Committee.

23rd—U.S. District Court Judge Gary Taylor held that the subpoena provisions of the Federal Contested Elections Act are constitutional.

24th—The Committee met to vote on three CA 46 issues. First the Committee voted on motions to quash or modify subpoenas issued by the Contestant. The Committee voted to quash subpoenas issued to Loretta Sanchez, Rancho Santiago College, Naturalization Assistance Service, Carpenters Local 803/2361, and R. Scott

Moxley. The Committee voted to modify and enforce subpoenas issued to Nativo Lopez, Michael Farber, and Active Citizenship Campaign. The Committee voted to pass a House Resolution urging the Office of the United States Attorney for the Central District of California to file criminal charges against Hermandad Mexicana Nacional for failure to comply with a valid subpoena under the Federal Contested Elections Act. Finally, the Committee voted to issue interrogatories to Robert K. Dornan, Michael Farber, Loretta Sanchez, Wylie Aitken, John Shallman, Benny Hernandez, Nativo Lopez, CA Secretary of State Bill Jones, and Orange County District Attorney Michael Capizzi. The interrogatories were issued on September 25, 1997.

25th—The Committee issued letters to all parties whose motions were resolved at the September 24, 1997 Committee meeting.

25th—The California Secretary of State wrote to the Committee to explain that he would be completing the verification process requested by the Committee on September 15, 1997.

26th—The INS delivered an additional 37 data worksheets to the Committee.

29th—Hermandad Mexicana Nacional filed a Petition For Permission to Appeal From an Order of the United States District Court for the Central District of California.

30th—The House of Representatives passed House Resolution 244, demanding that the Office of the United States Attorney for the Central District of California file criminal charges against Hermandad Mexicana Nacional for failure to comply with a valid subpoena under the Federal Contested Elections Act. There were 219 votes cast in the favor of the resolution and 203 against it.

October 1997

1st–14th—Loretta Sanchez, Robert Dornan, Sanchez Campaign Chair Wylie Aitken, Sanchez Campaign Manager John Shallman and Sanchez Field Director Bennie Hernandez responded to Committee interrogatories. Orange County District Attorney Michael Capizzi and California Secretary of State Bill Jones answered interrogatories posed by minority members of the Committee. Nativo Lopez and Michael Farber refused to answer the questions posed by the Committee.

2nd—The INS delivered an additional 324 data worksheets to the Committee.

6th—The Contestant filed an Answer to the Petition of Hermandad Mexicana Nacional For Permission to Appeal From an Order of the United States District Court for the Central District of California.

10th—The INS delivered an additional 214 data worksheets to the Committee. On October 14, 1997 the California Secretary of State wrote to the Committee to transmit federal elections reform proposals.

16th—The Committee wrote to the Orange County Superior Court to request a list of persons who failed to respond to jury summons.

17th—The INS delivered an additional 203 data worksheets to the Committee.

20th—The Committee wrote to the INS requesting that the INS review additional alien files recommended by the Committee.

22nd—The INS delivered an additional 230 data worksheets to the Committee.

23rd—Mr. Gephardt introduced a privileged resolution that required the Committee to conclude its investigation. The resolution was voted down 222–204.

24th—Ninth Circuit Court of Appeals denied Hermandad Mexicana Nacional's request to appeal Federal District Court Judge Taylor's ruling on the constitutionality of the FCEA discovery process.

24th—The Task Force met and voted on two issues related to the contested election in CA 46. First, the Task Force voted to issue and enter into a "Memorandum of Understanding" between the Task Force and the California Secretary of State. The "Memorandum of Understanding" specified in detail the procedures by which the CA Secretary of State was to conduct citizenship status verification of individuals whom the Committee had identified as illegitimate. Second, the Task Force passed a resolution requesting that the Chairman of the Committee on House Oversight issue Committee subpoenas to Nativo Lopez, Hermandad Mexicana Nacional, and Michael Farber. This resolution related to information that those entities had which the Task Force felt may be of value to their investigation.

27th—The Chairman of the Committee and the California Secretary of State signed the "Memorandum of Understanding".

28th—The Committee released the lists of possible illegal voters to both the CA Secretary of State and the Los Angeles District Director of the INS as stipulated in the Memorandum of Understanding.

28th—The following members each introduced privileged resolutions that required the Committee to conclude its investigation: Mr. Menendez (tabled), Mr. Becerra (tabled), Ms. Norton (tabled), Mr. Condit (tabled), Ms. Roybal-Allard (tabled), Ms. Hooley (tabled), Ms. Waters (tabled), and Mr. Dooley (tabled).

29th—The following members each introduced privileged resolutions that required the Committee to conclude its investigation: Mr. Gephardt (vote to table passed 218–200).

30th—The INS delivered an additional 148 data worksheets to the Committee.

30th—The Orange County Superior Court delivered an electronic list of all individuals who failed to appear in response to jury summons issued by the Orange County Jury Commissioner for the period June 1, 1997 to October 29, 1997.

30th—The following members each introduced privileged resolutions that required the Committee to conclude its investigation: Mr. Hefley (vote to table passed 212–198), Ms. Roybal-Allard (vote to table passed 216–200), Ms. Norton (vote to table passed 214–187), Mr. Condit (vote to table passed 212–190), Mr. Becerra (vote to table passed 217–193), Ms. Hooley (vote to table passed 212–197), Ms. Waters (vote to table passed 214–196), and Mr. Dooley (vote to table passed 208–192).

31st—The Los Angeles District Director of the INS wrote to the Committee to explain that his office would not perform the verification process requested by the Committee on October 28, 1997.

31st—The following members each introduced privileged resolutions that required the Committee to conclude its investigation: Ms. Harman (tabled), Ms. McKinney (tabled), Ms. McCarthy (tabled), Ms. DeLauro (tabled), Ms. Furse (tabled), Mrs. Mink (tabled), Mrs. Maloney (tabled), Ms. Slaughter (tabled), Ms. DeLauro (tabled), Ms. Velazquez (tabled), Ms. Jackson-Lee (tabled), Ms. Danner (tabled), Ms. Carson (tabled), Ms. Lofgren (tabled), Ms. Woolsey (tabled), Ms. Eddie Bernice Johnson (tabled), Mrs. Kennelly (tabled), Ms. Kilpatrick (tabled), Mrs. Thurman (tabled), Ms. Stabenow (tabled), Ms. Hooley (tabled), Mrs. Meek (tabled), and Ms. Roybal-Allard (tabled).

November 1997

4th—The following members each introduced privileged resolutions that required the Committee to conclude its investigation: Mrs. Lowey (tabled), Mrs. Clayton (tabled), Ms. Brown (tabled), Ms. Kaptur (tabled), Mrs. McCarthy (tabled), Ms. Millender-McDonald (tabled), and Ms. Eddie Bernice Johnson (tabled).

5th—The following members each introduced privileged resolutions that required the Committee to conclude its investigation: Mr. Becerra (tabled), Ms. Velazquez (tabled), Mr. Menendez (tabled), Mr. Martinez (tabled), Mr. Ortiz (tabled), Mr. Serrano (tabled), Mr. Gutierrez (tabled), Mr. Underwood (tabled), Mr. Reyes (tabled), Mr. Torres (tabled), Ms. Roybal-Allard (tabled), Mr. Hinojosa (tabled), Mr. Romero-Barcelo (tabled), Mr. Rodriguez (tabled), and Ms. Furse (voted down 217–194).

1st–14th—The Committee sent representatives to the Orange County Registrar of Voters to make copies of voter registration affidavits for over 4,000 individuals. This process took approximately two weeks to complete.

3rd—The Committee wrote to the INS to request copies of signatures for approximately 1,200 individuals. On the same day, the Committee also requested birthplace information for the same individuals.

12th—The Committee issued subpoenas to Nativo Lopez, Hermandad Mexicana Nacional and Michael Farber. The subpoenas requested various materials related to voter registration in the 1996 election. The subpoenas had a return date of December 1 1997.

14th—The INS delivered an additional 121 data worksheets to the Committee.

21st—Nativo Lopez, Hermandad Mexicana Nacional and Michael Farber complied with the Congressional subpoenas by producing requested documents.

21st—The INS delivered an additional 124 data worksheets to the Committee.

December, 1997

1st–31st—Throughout the month of December, the Committee spent considerable time comparing the signatures of individuals identified as ineligible voters by the Committee and individuals

identified in INS databases. This was accomplished by comparing the signatures on the registration affidavits acquired from the Orange County Registrar of Voters and the signatures on naturalization applications acquired from the INS. The Committee also compared birthplace information for the same individuals.

1st—The Committee wrote to the Contestant to confirm that all filings had been completed and that the Contestant did not have any further submissions to the Committee.

1st—The INS delivered an additional 97 data worksheets to the Committee.

2nd—The INS delivered a list of birthplace information for individuals identified in a November 3, 1997 Committee request.

2nd—The contestant filed a Response to Appellant's Showing of Good Cause Why Its Appeal Should Not Be Dismissed.

8th—The Contestant wrote to the Committee to confirm that he had completed his submissions to the Committee.

12th—The United States Court of Appeals for the Ninth Circuit dismissed the Contestee's appeal of Judge Taylor's September 23, 1997 decision as moot.

12th—The Committee requested that the INS produce additional photocopies of signatures.

15th—The INS delivered an additional 116 data worksheets to the Committee.

16th—The Committee wrote to the Contestee to inform her that the Contestant had completed his submissions to the Committee and that she had 30 days to submit a closing brief.

16th—The INS delivered an additional 234 signature sheets to the Committee.

17th—The INS delivered a list of birthplace information for 722 individuals.

19th—The INS delivered an additional 181 data worksheets to the Committee.

29th—The INS delivered an additional 569 signature sheets to the Committee.

January 1998

7th—The INS delivered an additional 655 signature sheets to the Committee.

13th—The INS delivered an additional 121 data worksheets to the Committee.

16th—Hermandad Mexicana Nacional filed a Notice of Motion For Return of Items Seized Pursuant to Search Warrant with the Superior Court of the State of California for the County of Orange.

18th—Mr. Gephardt introduced a privileged resolution calling for the dismissal of the contested election in CA 46. The resolution was tabled by a vote of 214–189.

February 1998

4th—The Task Force for the Contested Election in the 46th Congressional District of California met and voted to dismiss the contested election.

4th—The Committee met and voted 8–1 to dismiss the contested election.

6th—The INS delivered an additional 378 signature sheets to the Committee.

12th—The House of Representatives considered the motion to dismiss the contested election in California's 46th Congressional District.

APPENDIX B: INVESTIGATION BY THE TASK FORCE

THE INVESTIGATION CONDUCTED BY THE TASK FORCE

In the absence of a countervailing constitutional privilege or a self-imposed statutory restriction upon its authority, Congress and its committees have virtually plenary power to compel information needed to discharge its legislative function from executive agencies, private persons, and organizations and, within certain constraints, the information so obtained may be made public.

Although there is no express provision of the Constitution which specifically authorizes Congress to conduct investigations and take testimony for the purposes of performing its legitimate functions, numerous decisions of the Supreme Court have firmly established that the investigatory power of Congress is so essential to the legislative function as to be implicit in the general vesting of legitimate power in Congress.[63] Thus, in *Eastland* v. *United States Servicemen Fund* the Court explained that "the scope of its power of inquiry * * * is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution."[64] In *Watkins* v. *United States* the Court further described the breadth of power of inquiry: "The power of the Congress to conduct investigations is inherent in the legislative process. That power is broad. It encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes."[65]

THE SUBPOENA POWER

The power of inquiry, with the accompanying process to enforce it, has been deemed "an essential and appropriate auxiliary to the legislative function." A properly authorized subpoena issued by a committee or subcommittee has the same force or effect as a subpoena issued by the parent House itself.[66] To validly issue a subpoena, individual committees or subcommittees must be delegated this authority. Both Senate[67] and House[68] rules presently empower all standing committees and subcommittees to require the attendance and testimony of witnesses and the production of documents. Special or select committees must be specifically delegated that authority by Senate or House resolution.[69] The rules or practices of standing committees may restrict the issuance of subpoenas

[63] E.g., *McGrain* v. *Daugherty,* 272 U.S. 135 (1927); *Watkins* v. *United States,* 354 U.S. 178 (1957); *Barenblatt* v. *United States,* 360 U.S. 109 (1950); *Eastland* v. *United States Servicemen Fund,* 421 U.S. 491 (1975); *Nixon* v. *Administrator of General Services,* 433 U.S. 425 (1977); see also, *United States* v. *A.T.T.,* 551 F.2d 384 (D.C. Cir. 1976) and F.2d 1212 (D.C. Cir. 1977).

[64] 421 U.S. at 504, n. 15 (quoting *Barenblatt,* supra, 360 U.S. at 111).

[65] 354 U.S. at 187.

[66] *McGrain* v. *Daugherty,* supra, 273 U.S. at 158.

[67] Senate Rule XXVI(1).

[68] House Rule XI(2)(m)(1).

[69] See, e.g., S.Res.23, 100th Cong. (Iran-Contra); Sen. Res. 495, 96th Cong. (Billy Carter/Libya).

only to full committees or in certain instances allow issuance by a committee chairman alone, with or without the concurrence of the rankingminority member.

As previously indicated, committees may issue subpoenas in furtherance of an investigation within their subject matter jurisdiction as defined by Senate [70] and House [71] rules which confer both legislative and oversight jurisdiction. Subpoenas may be issued on the basis of either source of authority.[72]

The efforts of the Task Force with regard to this case are warranted because the jurisdiction of the Committee includes: "Measures relating to the election of the President, Vice President, or Members of Congress; corrupt practices; contested elections; credentials and qualifications; and Federal elections generally" [73]

In the Course of this investigation the Committee issued subpoenas to the Immigration and Naturalization Service, the Orange County District Attorney, Hermandad Mexicana Nacional, Nativo Lopez, and Michael Farber. The subpoena directed to the Immigration and Naturalization Service provided the Task Force with the information central to the Task Force's analysis of alien voting in the 46th District of California. The subpoena directed to the Orange County District Attorney also provided important information to the Task Force.

CONGRESSIONAL SUBPOENA FOR RECORDS FROM THE IMMIGRATION AND NATURALIZATION SERVICE

On April 19, 1997 the Committee requested that the INS compare its databases to the Orange County Voter Registration in order to determine if aliens in the INS database were registered in Orange County. On May 1st, the day that the Committee had requested that the INS provide the results of its comparison, the agency wrote that within two weeks, the INS would inform the Committee "* * * whether, when, and in what form INS will be able to retrieve and provide you such information."

The Committee could not accept the INS's dilatory and obstructionist response. Therefore, on May 14th, the Committee issued two subpoenas to the INS. The first subpoena requested the INS to match its database against the Orange County Voter Registration list in order to determine if any non-citizens registered to vote. The second subpoena requested that the INS provide the Committee with copies of their relevant databases. On May 21st, in partial compliance with the subpoenas, the INS provided to the Committee the results of a last name and date-of-birth match [74] between the INS's Central Index System and Naturalization Casework System and the Orange County voter registration list. This computer run

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[70] Senate Rule XXV.

[71] House Rule X.

[72] The standard to be applied in determining whether the congressional investigating power has been properly asserted was articulated in *Wilkinson* v. *United States:* (1) the committee's investigation of the broad subject matter area must be authorized by Congress; (2) the investigation must be pursuant to "a valid legislative purpose"; and (3) the specific inquiries must be pertinent to the broad subject matter areas which have been authorized by the Congress. 365 U.S. 399, 408–09 (1961).

[73] House Rule X(1)(h)(12)

[74] Any data error in the data in either field in either the INS or the OC Registration databases would preclude a match. Further, any change of last name either due to marriage or Anglicization would preclude a match.

identified over 368,520 matches in Orange County and approximately 136,052 matches in the 46th District. All matches are limited to INS files that indicate that a person is not naturalized or that they naturalized after the date on which they registered to vote.

On April 29th the INS provided the Task Force with a refined computer run that identified 19,554 first name/last name/date-of-birth matches between an INS file, with either no evidence of naturalization or a date of naturalization after registration, and the Orange County Voter list. The INS indicated that 4,119 of these persons were registered in the 46th District. An analysis of the 136,052 last name matches by the Task Force identified 210 exact first name matches not included in the refined run conducted by the INS. These additional matches brings the total exact first name matches in the 46th District to 4,329.

The Task Force also manually reviewed the 136,052 individual list identifying possible additional first name matches. This list of 136,052 matches runs to over 2,000 pages. This manual review was necessary to capture typographical errors and common variations on first names. The Task Force discovered an additional 1,502 matches where the first name was very similar but was missed by the computer check. These additional matches are very narrowly confined to common name variations and typographical errors.[75]

In addition to the CIS and NACS databases the Task Force requested last name/date-of-birth matches with the Deportable Alien Control System (DACS), the Refugee, Asylee and Parolee System (RAPS) and the Student and Schools System (STSC). Again the Task Force manually reviewed last name/date-of-birth matches for near first name matches missed by a computer check. The DACS and RAPS systems yielded an additional 83 potentially illegal votes. The STSC system yielded 192 potentially illegal votes.

Beyond these additional INS databases the Task Force cross-checked the 19,554 person class list of Naturalization Assistance Services Corp. against the voter registration rolls and the INS databases. NAS provided citizenship classes in Orange County through Catholic Charities, One-Stop Immigration Center, and Hermandad Mexicana Nacional. The NAS student list included alien numbers and thus allowed the Task Force to bypass the last name/date-of-birth match level of matching.

Also the Task Force obtained lists of persons who the Orange County Superior Court had recorded as claiming non-citizenship when they were summoned for jury duty. (The Court's records have a 33% error rate.) CHO staff manually reviewed this list of over 30,000 persons. This check yielded an additional 386 potentially illegal votes.

In January of 1997, the Orange County District Attorney seized material from the offices of Hermandad Mexicana Nacional. In February of 1997, the Committee on House Oversight placed these seized materials under subpoena. In August of 1997, the House Oversight Committee obtained from the Orange County District Attorney's Office, pursuant to the February, 1997 subpoena, a copy of several lists of names seized from Hermandad. The Task Force

[75] i.e. "Chris" and "Christopher" or "John" and "Johhn"

compared the names obtained from Hermandad to the 46th District voter list and identified matches between persons associated with Hermandad and voters. The Task Force then requested that the INS review its files for matches with the 419 voters identified from the Hermandad material.

In addition to these efforts to discover documented evidence that a person was not a citizen, the Task Force requested, at the suggestion of the minority, that the INS produce the mirror image of the initial computer match run by the Task Force. That is, the INS ran a match between the Orange County Voter Registration Lists and the CIS and NACS seeking persons who had evidence that they were citizens as of the date that they were registered. The INS generated two matches: a full name match and a last name match. Surprisingly, the last name match is not entirely inclusive of the full name match. Therefore the Task Force compared both lists of persons with evidence of citizenship as of their registration date to the lists of persons without evidence of citizenship as of their naturalization date. This comparison generated over 1,000 persons with conflicting information. Because the Task Force had employed a manual review seeking near first name matches when seeking evidence that a person was not a citizen, the Task Force also employed a manual review of evidence indicating that a person was a citizen at the time of their registration. After analyzing these files the Task Force concluded that virtually all of the persons with conflicting files were citizens at the time of their registration.

For each match identified by these computer runs the Task Force requested that the INS review the actual paper file associated with the match. This review of the paper file was summarized on a one-page worksheet designed by the Task Force in consultation with the INS. This worksheet contained information on the citizenship status of the individual, middle name data, and the most recent INS address information. The paper file reviews conducted by the INS indicated that over 50% of the INS files that carried no record of naturalization in the computer database actually related to a person who was a citizen as of their date of registration.

In addition to the address and citizenship information summarized on the worksheets produced by the INS the Task Force requested that the INS provide birthplace and signature information for 3,749 persons.

Throughout this investigation the Democratic Minority received, directly from the INS, exactly the same information as the Majority. Also, the Majority provided copies of all registration affidavits to the Minority.

The filing system created by the Majority employs the unique affidavit number related to an individual voter to identify the file (electronic and hardcopy) containing all the information relating to the status of that voter. Ideally, each person in the INS databases would have one and only one "alien number." However, in reality, some persons have multiple alien numbers. Often, the different alien number files contain inconsistent information as to the citizenship status of the individual. This inconsistency most frequently occurs when a temporary file is created and that temporary file is not indexed back to the original file. The temporary file is usually more recent and thus more likely to include a naturalization certifi-

cate. The INS database often locates the primary file first and that leads to the temporary file. Further, more than one person in the INS's files may meet the initial match criteria between a registered voter and an INS file. Therefore, many of the unique affidavit numbers have multiple alien numbers associated with them.

There is a fundamental problem with any investigation into voting by non-citizens. Undocumented or illegal aliens do not have a paper trail at the INS. The INS only keeps records on documented, legal aliens. Without more accurate data collection at the point of registration persons, will be able to register using fabricated identities and thus will be difficult if not impossible to detect.

BALLOTS CAST IN THE NOVEMBER 1996 ELECTION

To determine who cast ballots in the November 1996 election, the Task Force referred to the information obtained directly from the Orange County Registrar's Office. The Task Force printed, from the computer list provided by the Registrar's office, the entire list of 104,636 people who voted in the 1996 election from the 46th District. Each time the Task Force received new alien file summary worksheets from the INS, the works sheets were separated into two categories: (1) those on the voted list and (2) those not on the voted list.

In addition to the electronic record, the Registrar's office provided the Task Force with the results of its manual canvass. The manual canvass listed, by precinct, any changes, corrections, and updates to the electronic record of votes cast that were found during the recount and the review after the election. Also, the Registrar provided the Task Force with a list of persons who cast absentee ballots but were not listed on the electronic voter tape. Finally, the Orange County Registrar of Voters provided the Task Force with a list of persons who utilized the "New Citizen Window" provision of the California Elections Code.[76] This provision allows person who naturalize within 30 days of election day to register to vote despite the general prohibition on registering to vote within 30 days of election day. Because of an automatic default in the computer software utilized by the Orange County Registrar of Voters, the registration date of these persons would default to the last day available to the general population. Therefore it would appear that these persons had registered prior to their naturalization when in fact they had utilized the New Citizen provision. Also, the Task Force determined that persons who were naturalized prior to the 1996 election cycle but after they had registered had cured their defective registration by maintaining their registration subsequent to naturalizing. The Democratic Minority was provided with all of the material from the Orange County Registrar of Voters.

On October 28, 1997 the Task Force requested that the California Secretary of State reconfirm the list of persons who had cast ballots in the November, 1996 election. The Task Force's Democratic Minority received an exact copy of the list provided to the Secretary of State. The list provided to the Secretary of State at this juncture in the investigation included the widest possible definition of a "match". For example, it included "matches" that in-

[76] Cal. Elec. Code. §3501.

volved persons with different middle names and persons with conflicting INS information. Ultimately, the Task Force determined that the majority of persons included on this list were registered properly either because additional INS data obtained by the Task Force indicated that the person was a citizen as of registration or the voter did not constitute a sufficiently accurate match with an INS file that indicated an illegal registration. On November 5, 1997, Secretary of State Jones provided the Task Force with a list confirming which registered voters had cast ballots in the November, 1996 election. The Task Force updated its files on the voters so that it contained the verification provided by the Secretary of State. The Task Force's Democratic Minority received an exact copy of Secretary of State Jones's vote verification.

ANALYSIS OF THE EVIDENCE OBTAINED BY THE TASK FORCE

Based on the information in this INS summary and the information in the Orange County voter list, the potential matches identified by the Task Force have been divided into 15 categories. Each category is based upon a match between the Orange County voter registration rolls and INS records, and/or the source of the information that casts suspicion as to the legitimacy of that voter. Each category is in turn subdivided based on relevant criteria such as the naturalization status of the individual in the INS files, the place of birth claimed by the person on the Orange County voter registration affidavit, the age of the individual or the sex of the individual. The naturalization status categories are: (1) the individual is not naturalized, (2) the individual naturalized after registering to vote, and (3) the individual naturalized after voting.

The Task Force's analysis of each individual vote rests on the rebuttable presumption that each vote cast was cast legally. Therefore, the Task Force undertook the task of discovering documentary evidence that a person was not a citizen as of the date of their registration. The Task Force never presumes that any voters were illegal.

The Task Force's effort to investigate this allegation has involved the detailed review of information related to over 7,871 voters. The Task Force has only reviewed voters for whom the Task Force obtained an initial indication that the person may not have been eligible to cast a ballot in the November 1996 election.

The Task Force has documented evidence indicating that 624 persons registered when they were not citizens. Of these, 82 persons naturalized after they registered but before they cast their ballot. In addition, 26 claimed that they were born in the United States when they registered. The Task Force has attempted to verify the birth-records of these voters that appear to match INS files. Persons whose birth-records have been verified have been removed from the Majority's count. However, without additional information such as mother's maiden name and city of birth, a birth-record check is impossible to complete accurately.

In addition there are 196 persons for whom the Task Force has discovered some circumstantial indication that they may not have been citizens when they registered. However this information is incomplete and possibly inaccurate. For example, records of individuals who have disclaimed citizenship when summoned for jury duty

have a 33% error rate. When a sample of 450 records was tested, it was determined 150 records were incorrectly scanned into the Orange County Superior Court's computer database. Also, a number of paper files have been "lost" by the INS and the error rate between electronic and paper files exceeds 50%. Finally, 41 matches in this circumstantial category involve voters who claim U.S. birth.

Of the remaining files reviewed by the Task Force: 5,303 persons were actually citizens at the time that they registered and 1,718 persons appear to have registered improperly but did not vote in the November 1996 election. Summary of Results:

Category		
Documented Evidence of Invalid Voting		
1. Absentee Ballots—identified by the OC Registrar	124	
Sub-total	124	124
2. Hermandad Registrants—identified by the California Secretary of State and the LA Office of the INS (independently confirmed by CHO work)	278	
4. Exact Address	120	
3. Signatures Match	71	
5. Exact Middle Initial	88	
6. Address Same City	19	
7. Address CA–46	3	
8. Address Orange County	7	
9. Address California	38	
Sub-total	624	748
Circumstantial Indication of Invalid Voting		
10. Address US	53	
11. Address None	12	
12. Border Crossing Cards (only name and birthdate information)	34	
13. Student Visas (only name and birthdate information)	3	
14. INS Lost paper files (born after 1957)	19	
15. OC Jury List (born after 1957)	75	
Sub-total	196	944

1. The Orange County Registrar of Voters: 124

The Orange County Registrar of Voter determined that 124 absentee ballots were invalid. The Registrar also referred 11 potential double votes and 4 potential business address votes to the Orange County District Attorney. The District Attorney has not confirmed that any of these votes were illegal and therefore has taken no action.

2. Persons Registered by Hermandad Mexicana Nacional: 278

The California Secretary of State and the Los Angeles Office of the INS have identified 306 persons illegally registered by Hermandad who voted in the November 1996 election. The Task Force has been able to confirm, through its own investigation, that 278 persons were illegally registered by Hermandad and voted in the November, 1996 election. Of these, 93 voters were naturalized after they registered.

3. Exact address

In addition to a First Name/Last Name/Date-of-Birth match, the address from the Orange County voter registration affidavit matches the address in an INS file.

	Not naturalized	Naturalized after registering	Naturalized after voting	Total	Total (percent)
Voter claims foreign birthplace	49	61	7	117	97.5
Voter claims US birthplace	3	0	0	3	2.5
Total	52	61	7	120	100
	43.3%	50.8%	5.8%		

4. Matching signatures

The signature from the Orange County voter registration affidavit matches the signature from an INS alien file.

	Not naturalized	Naturalized after registering	Naturalized after voting	Total	Total (percent)
Voter claims foreign birthplace	54	9	1	64	90.1
Voter claims US birthplace	5	2	0	7	9.9
Total	59	11	1	71	100
	83.1%	15.5%	1.4%		

5. Exact middle initial

In addition to a First Name/Last Name/Date-of-Birth match, the middle initial from the Orange County voter registration rolls matches the middle initial from the INS records. The address information that relates to these matching files subdivides the middle initial matches.

	A–SC	A–CA46	A–9C	A–CA	A–US	A–NO	Total	Total (percent)
Voter claims foreign birthplace	17/2 nar	10/1 nar/1 nav	7	21/1nav	13	7	80	90.9
Voter claims US birthplace	0	0	1	0	5/1 nar	1	8	9.1
Total	19	12	8	22	19	8		
	21.6%	13.6%	9.1%	25%	21.6%	9.1%	88	100

6. Address same city

In addition to a First Name/Last Name/Date-of-Birth match, the address from the Orange County voter registration affidavit is in the same city as the address from an INS record. Middle initial data is either blank in both the Orange County registration file and the INS file or blank in one set of data.

	Not naturalized	Naturalized after registering	Naturalized after voting	Total	Total (percent)
Voter claims foreign birthplace	16	0	0	16	84.2
Voter claims US birthplace	2	1	0	3	15.8
Total	18	1	0		
	94.7%	5.35%	0%	19	100

7. Address CA–46

In addition to a First Name/Last Name/Date-of-Birth match the address from the Orange County voter registration affidavits and the address from an INS record are both within CA–46. Middle initial data is either blank in both the Orange County registration file and the INS file or blank in one set of data.

	Not naturalized	Naturalized after registering	Naturalized after voting	Total
Voter claims foreign birthplace	3	0	0	3
Voter claims US birthplace	0	0	0	0
Total	3	0	0	3

8. Address Orange County

In addition to a First Name/Last Name/Date-of-Birth match: the address from the Orange County voter registration affidavits and the address from an INS record are both within Orange County. Middle initial data is either blank in both the Orange County registration file and the INS file or blank in one set of data.

	Not naturalized	Naturalized after registering	Naturalized after voting	Total
Voter claims foreign birthplace	7	0	0	7
Voter claims US birthplace	0	0	0	0
Total	7	0	0	7

9. Address California

In addition to a First Name/Last Name/Date-of-Birth match: the address from the Orange County voter registration affidavits and the address from an INS record are both within California. Middle initial data is either blank in both the Orange County registration file and the INS file or blank in one set of data. Eight of the INS addresses in this data are dated and place the individual at the address outside of Orange County in 1995–96.

	Not naturalized	Naturalized after registering	Naturalized after voting	Total	Total (percent)
Voter claims foreign birthplace	28	0	0	28	73.7
Voter claims US birthplace	10	0	0	10	26.3
Total	38	0	0	38	100

10. Address United States

In addition to a First Name/Last Name/Date-of-Birth match: the address from the Orange County voter registration affidavits and the address from an INS record are both within the United States. Middle initial data is either blank in both the Orange County registration file and the INS file or blank in one set of data. Thirteen of the INS addresses in this data are dated and place the individual at the address outside of California in 1995–96.

	Not naturalized	Naturalized after registering	Naturalized after voting	Total	Total (percent)
Voter claims Foreign birthplace	31	5	0	36	67.9
Voter claims US birthplace	17	0	0	17	32.1
Total	48	5	0	53	100
	90.6%	9.4%	0		

Address none

In addition to a First Name/Last Name/Date-of-Birth match: the INS records have either no address information whatsoever or address information that relates to a foreign locale. Middle initial data is either blank in both the Orange County registration file and the INS file or blank in one set of data.

	Not naturalized	Naturalized after registering	Naturalized after voting	Total	Total (percent)
Voter claims foreign birthplace	11	0	0	11	91.7
Voter claims US birthplace	1	0	0	1	8.3
Total	12	0	0	12	100

Border crossing cards

A Citizen of Canada or a British subject residing in Canada or a citizen of Mexico may hold a nonresident alien border crossing card.[77] These persons are assigned alien numbers beginning with "80. A Border Crossing Card holder may enter limited areas of the United States for limited periods of time. The INS does not maintain a paper file on such persons.[78]

	Exact middle initial	Indeterminate middle initial	Total	Percent
Voter claims foreign birthplace	17	6	23	67.6
Voter claims US birthplace	4	7	11	32.4
Total	21	13	34	100
	61.8%	38.2%		

Student visas

These are matches between persons who have entered the United States on student visas and the Orange County registration files. The INS maintains limited information on these persons.

	Total
Voter claims foreign birthplace	3
Voter claims US birthplace	0
Total	3

INS lost files

These persons appear in the INS' electronic database without any evidence of naturalization but the INS has lost their hard files. The error rate between the initial electronic matches between the INS' electronic database and the checks of the INS' hard files has

[77] 8 CFR §212.6 Nonresident alien border crossing cards.
[78] INS letter July 3, 1997.

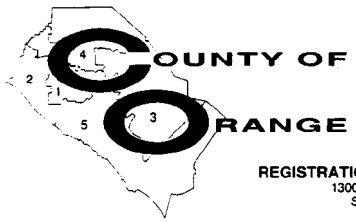
been 50%—half of the persons with no indication of naturalization in the computer database have naturalization certificates in their hard files. In addition, persons who became 18 prior to 1975 could have naturalized before the INS computerized its records. Women's files could also have been "lost" because they have changed their last name without notifying the INS or without the INS properly updating its database. There are 13 males born after 1957 who admit foreign birthplaces in this category.

	Male		Female		Total	Total (percent)
Birth date	1957+		1957+			
Middle initial	EMI	IMI	EMI	IMI		
Voter claims foreign birthplace	8	1	4	4	17	89.5
Voter claims U.S. birthplace	0	1	0	1	2	10.5
Total	8	2	4	5	19	
Total	10		9		19	
Total (percent)		52.6		47.4		100

15. Orange County jury list claimed non-citizen when summoned & the INS has no record: 167

In the period from January 1, 1996 to August 15, 1997 these persons may have claimed that they were not citizens when summoned for jury duty. The data entry system at the Orange County Superior Court has at least a 33% error rate. Therefore, these persons may have been excused from jury duty for a reason *other* than not being a citizen. (persons may also have indicated that they were citizens but been entered under a different code). In addition, for persons who naturalized before 1975, the INS may not have their names in their electronic databases. Further, women are more likely to have changed their last name. Therefore, the persons that arouse the most significant suspicion are the 40 admittedly foreign-born males born after 1957.

	Male	Female	Total	Total (percent)
Birth date	1957+	1957+		
Voter claims foreign birth place	40	25	65	86.7
Voter claims U.S. birthplace	7	3	10	13.3
Total	47	28	75	
Total (percent)	62.7	37.3	100	



JANICE M. MITTERMEIER
Chief Executive Officer

ROSALYN LEVER
Registrar of Voters

Mailing Address:
P.O. Box 11298
Santa Ana, California 92711

REGISTRATION & ELECTIONS DEPARTMENT
1300 South Grand Avenue, Bldg. C
Santa Ana, California 92705
(714) 567-7600
TDD (714) 567-7608
FAX (714) 567-7627

April 29, 1997

VIA FAX AND U.S. MAIL

Vernon J. Ehlers
Chairman
Task Force for the Contested Election
in the 46th Congressional District of California
1309 Longworth House Office Building
Washington, D.C. 20515-6230

Dear Chairman Ehlers:

I want to thank you for the opportunity to testify before your Task Force on April 19, 1997.

This letter is in response to your invitation to elaborate on those issues which were not completely covered in my testimony. I have addressed four items in this letter.

They are the alleged incident on November 2, 1996 at the Registration and Elections Department office, third party returns of absentee ballots at the polls, the Jury Tape identifying possible non-citizens of the United States and the Voter Participation Tape.

ALLEGED INCIDENT, NOVEMBER 2, 1996

The event described by Ms. Kopman is not representative of our office procedures. Staff is trained to follow the policies and procedures as outlined in federal and state statutes. It is difficult for me to believe any of my staff would disregard, even momentarily, one of these policies.

I directed my staff to review the described alleged incident on November 2, 1996, based on the descriptions provided by Ms. Kopman and the documents on file in my office. Of the 405 applications processed that day, staff has identified one instance where an application for an absentee ballot appears not to have been executed by the registered voter and where another voter at the same address also received an absentee ballot. This is the only instance which appears consistent with Ms. Kopman's statement.

However, contrary to Ms. Kopman's assertion, the ballot with a proper application was voted that day, November 2, 1996, in our office but the second ballot was voted by the registered voter and returned election day, November 5, 1996, to the polling place. Each of these ballot envelopes was signed by the individual voter and verified against their separate registration records. Neither of these ballots relate to the 46th Congressional District.

No permanent employee of my office corresponds with the physical description provided by Ms. Kopman. I have forwarded the information regarding this incident to the Orange County District Attorney for investigation.

The signature on an absentee ballot application does not affect ballot counting. Mr. Dornan's attorney testified at the April 19, 1997 hearing that the absent voter's signature would obviously match that on the absentee ballot application. This demonstrates contestant's misunderstanding of our signature verification procedure. In fact, a ballot is only opened and counted if the signature on the absentee ballot envelope itself matches the voter's signature from the voter registration affidavit in the Voter File.

THIRD PARTY RETURNS OF ABSENTEE BALLOTS AT THE POLLS

Contestant has alleged 197 improper absentee ballot submissions by third parties at the polling place election day. This list, in Robert K. Dornan's Field Hearing Brief, includes the 123 voters listed in the December 18, 1996 letter sent to my office by William Hart and responded to in my letter of January 17, 1997.

In my response of January 17, 1997 to the smaller list of 123 voters, 59 absentee ballot envelopes were determined to meet all Elections Code requirements. These ballots were appropriately counted. Four were not properly executed and should not have been counted. To confirm and clarify the testimony in my April 14, 1997 deposition, the 60 remaining votes should not have been counted since the individuals who delivered them to my office were not on the list of enumerated relatives contained in Elections Code Section 3017. It should be noted, however, that each of these 60 absentee ballots was verified by my staff as having been signed by the registered voter.

There is a reasonable argument that these ballots should have been counted pursuant to the authority of Elections Code Section 3000 which provides, "This Division shall be liberally construed in favor of the absent voter."

Following the April 19, 1997 hearing, I directed staff to further review the initial list and to increase the review to include all 197 names listed in contestant Robert K. Dornan's Field Hearing Brief.

Of the 197 records submitted, 4 records were duplicated on the list provided by contestant Dornan. The resulting 193 records were reviewed by staff. From that review the following was determined:

The following is an itemized accounting of the 95 absentee ballot envelopes that appear to have met the basic criteria of absentee return in person, by certain authorized relatives, or in emergency by a designated representative.

48 returned by voter or authorized relative

18 returned by individual who did not indicate relationship to voter but based on the name and Elections Code Section 3000 would be counted by our office

18 returned by designated representative (emergency absentee)

11 returned by authorized relative, however failed to include signature of relative

The following is an itemized accounting (by relationship of voter) of the 90 absentee ballot envelopes which do not appear to have strictly conformed to the criteria of Elections Code 3017 but were properly executed by the voter. By state law these ballots should have been challenged and not counted.

33 returned by mother-in-law, father-in-law, daughter-in-law, brother-in-law and son-in-law

20 returned by uncle, niece, nephew and cousin

17 returned by a friend or neighbor

10 returned by roommate, goddaughter, fiancé, significant other and staff at nursing home

10 no relation indicated

The following were not executed properly by the voter and should not have been counted:

8 printed signature, signature doesn't match or no signature

A detailed list of the above summary is enclosed for your reference.

JURY TAPE

On March 17, 1997, the Orange County Superior Court Administrator/Jury Commissioner provided my office with a computer tape of individuals who are registered voters but indicated to the Jury Commissioner that they are not eligible to serve as jurors because they are not United States citizens.

451 individuals were listed on the Jury Tape as potentially being non-citizens. Three of these individuals were not registered voters in Orange County. The registered voter records for the remaining 448 individuals were cancelled and an inquiry letter was sent to each individual. This list of names was then forwarded to the District Attorney for investigation pursuant to Elections Code Section 18100.

Of the 448 individuals listed as registered voters in Orange County, 296 have never voted and 152 have some voting history. Of these 448 individuals, 200 have indicated a U.S. state as their birthplace on the voter registration form. The inference is that these individuals may have stated they were not citizens on their Jury Summons in an attempt to evade jury service. To this date 65 responses to our inquiry letter have been received. All 65 of these people have indicated they are actually United States citizens. Their voter registration records have been restored and their responses have been forwarded to both the District Attorney and the Court Administrator/Jury Commissioner for further review/action.

Specifically in the 46th Congressional District, 151 registered voters were identified on this Jury Tape of which 40 have a U.S. state as birthplace on their registration form. Of the individuals on this list, 21 voted in the November 1996 general election. My office has received responses from 7 of these individuals who voted stating they are United States citizens. The remaining 14 individuals who voted have not responded to our inquiry as of this date.

VOTER PARTICIPATION TAPE

Mr. Dornan's attorney, in a letter dated December 18, 1996, insisted my office balance the Voter Participation Tape with the Official Statement of Votes Cast. Based on information available at that time, my office made logical assumptions which related to the creation of the tape. At that point in time and after researching 6 rosters and finding keying errors, it appeared that without investing significant staff hours, the difference of 460 would most logically all be keying errors.

I later made the decision to commit my office to the over 1,200 hours of staff research to again canvass these precincts using the original documents. I presented the results to the House Oversight Committee prior to my testimony on April 19, 1997 in Orange County, California. The reconciliation provided to the committee shows that the total voter signatures in the 46th Congressional District election are virtually identical to the total number of ballots cast. There were no "Phantom Voters".

The discrepancy being asserted by Mr. Dornan is simply not supported by original documentation. Any further reference to the Voter Participation Tape is both misleading and meaningless.

The true test of the accuracy of the election results is contained in the canvass of election results and the subsequent recount, both of which were observed by both candidates' representatives, neutral observers and the media and are available for review by your task force.

I appreciate the opportunity to provide additional clarification on these issues. If you have any additional questions regarding these matters, please contact me at (714) 567-7620.

Very truly yours,

Rosalyn Lever
Registrar of Voters

Enclosures

cc: Congressman Steny Hoyer
Congressman Robert Ney
William Hart, Attorney for Contestant Dornan
Wylie Aitken, Attorney for Contestee Sanchez
Ben deMayo, Deputy County Counsel

OFFICES OF
THE COUNTY COUNSEL
COUNTY OF ORANGE
10 CIVIC CENTER PLAZA
MAILING ADDRESS: P.O. BOX 1379
SANTA ANA, CALIFORNIA 92702-1379

714/834-3300
FAX 714/834-2359

LAURENCE M. WATSON
COUNTY COUNSEL

JAMES F. MEADE
ASSISTANT

EDWARD N. DURAN
RICHARD D. OVIEDO
BENJAMIN P. DE MAYO
HOWARD SEIDEN
GENE AXELROD
ROBERT L. AUSTIN
DONALD M. RUBIN
BARBARA L. STOCKER
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KARSEN R. PRATHER
JIM PERSINGER

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JANELLE M. BROCK
RACHEL M. BAYS
ANN E. FLETCHER
IRVING BERGER
AMY E. MORGAN
MARGARET E. EASTMAN
MARK R. HOWE
DANA J. SITTS
MARCUS S. SHORE

DEPUTIES

RECEIVED
JUN 17 1997
O.R.E.C.

Voter's Direct Dial Number

(714) 834-6294

Via Facsimile and U.S. Mail

June 17, 1997

William R. Hart
Hart, King & Coldren
P.O. Box 2507
Santa Ana, CA 92707

Re: Dornan-Sanchez Election Contest

Dear Mr. Hart:

The Registrar of Voters' office has, at your request, reviewed the lists of absentee voter envelopes submitted by you on June 2 and June 11, 1997. The following summarizes that review.

You submitted 33 copies of absentee ballot envelopes with your June 2 letter. After we gave you a preliminary review, you gave us a revised list of 44 copies of envelopes. Four on your June 2 list were duplicates of those you previously submitted and were on the original reconciliation performed by the Registrar and submitted to the House Oversight Committee in April, 1997. One of these four was again repeated on your June 11 submittal. The remaining 43 records were reviewed by Registrar staff. From that review, the following was determined:

17 absentee ballot envelopes appear to meet the basic criteria of the California Elections Code and the guidelines of the California Secretary of State and were properly counted:

Seven were returned by United States mail on or before election day.

Seven were returned by the voter or a relative listed in California Elections Code Section 3017.

Three were returned by individuals who did not indicate their relationship to the voter but, based on identical last name and California Elections Code Section 3000, would be counted by the Registrar.

Thirteen absentee ballot envelopes do not appear to have strictly conformed to the criteria of California Elections Code Section 3017 but were properly executed by the voter. These ballots should have been challenged and not counted:

2 were returned by sons-in-law.

2 were returned by cousins.

3 were returned by friends or neighbors.

5 were returned by social workers.

1 indicated no relation.

Thirteen appear to not have been executed properly by the voter, either because the voter printed their name or because a signature does not appear on the copy you provided. As noted in our prior correspondence, the Registrar is unable to review all 26,000 absentee ballot envelopes in the 46th Congressional District election to locate those in question. Assuming no more information appears on the original envelopes than on the copies you provided, these thirteen should not have been counted.

Detailed lists of the above summary are enclosed for your reference.

If you have any questions on the foregoing, please advise.

Very truly yours,

LAURENCE M. WATSON, COUNTY COUNSEL

By _____
Benjamin P. de Mayo, Deputy

Attachments
cc: Rosalyn Lever, Registrar of Voters
Fredric Woocher, Counsel for Contestee (with attachments)

OFFICE OF THE
DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA
MICHAEL R. CAPIZZI, DISTRICT ATTORNEY

MAURICE L. EVANS
CHIEF ASSISTANT

JOHN D. CONLEY
DIRECTOR
MAJOR OFFENSES

JAN J. NOLAN
DIRECTOR
SUPERIOR COURT

BRENT P. ROMNEY
DIRECTOR
MUNICIPAL COURT

WALLACE J. WADE
DIRECTOR
SPECIAL OPERATIONS

LOREN W. DuCHESNE
CHIEF
BUREAU OF INVESTIGATION

PLEASE REPLY TO:

☐ CENTRAL OFFICE
700 CIVIC CENTER DR. W.
P.O. BOX 808
SANTA ANA, CA 92701
(714) 834-3600

☐ NORTH OFFICE
1275 N. BERKELEY AVE.
FULLERTON, CA 92636
(714) 773-4480

☐ WEST OFFICE
8141 13TH STREET
WESTMINSTER, CA 92683
(714) 896-7251

☐ SOUTH OFFICE
30143 CROWN VALLEY PKWY.
LAGUNA NIGUEL, CA 92677
(714) 249-5028

☐ HARBOR OFFICE
4601 JAMBOREE ROAD
NEWPORT BEACH, CA 92660
(714) 476-4850

☐ JUVENILE OFFICE
341 CITY DRIVE SOUTH
ORANGE, CA 92668
(714) 935-7624

☐ MAJOR FRAUD
CONSUMER PROTECTION
405 W. 5TH STREET
SUITE 506
SANTA ANA, CA 92701
(714) 558-1200

July 14, 1997

Honorable William R. Froeberg
Judge of the Superior Court
Department 36
Orange County Courthouse
700 Civic Center Drive
Santa Ana, CA 92701

RE: Subpoena in Federal Election Contest (Dornan v. Sanchez)
Case No. SACV97-176-GLT

Dear Judge Froeberg:

Our office has received a subpoena in the above referenced action for records seized from Hermandad Mexicana Nacional pursuant to the search warrant issued by Judge James Brooks of the Orange County Municipal Court on January 13, 1997. As you know, investigators from our office and the Office of the Secretary of State served this warrant on January 14, 1997 and return was made to Judge Brooks on January 21, 1997. This court has heard numerous motions by Hermandad Mexicana Nacional to return seized items and the court is aware of our office's efforts to produce copies of documents and electronic data to Hermandad.

The subpoena we received, from Mr. William Hart of Hart, King & Coldren on behalf of contestant Robert Dornan, calls for the production of certain electronic evidence contained on computer 17. Mr. Dornan's attorneys have agreed to make production of this data subject to a protective order similar in nature to that which has been issued by the House Oversight Committee relating to certain other subpoenas in the 46th District election contest. In addition, Mr. Hart has provided our office with information indicating that the same electronic documents have been sought via subpoena from Hermandad and that there is currently outstanding an order of Congress to Hermandad to produce said documents. (As the court may recall, our office has returned a mirror image copy of computer 17 to Hermandad and thus Hermandad would appear to be in a position itself to comply with Mr. Hart's subpoena.)

Honorable William R. Froeberg
Judge of the Superior Court
Page 2
July 14, 1997

At this time, our office does not perceive that releasing this electronic data pursuant to a protective order would jeopardize our ongoing investigation into the voter registration activities of Hermandad Mexicana Nacional, particularly in light of the fact that copies of this data have already been returned to Hermandad.

Therefore, it is presently our intention to comply with Mr. Hart's subpoena pursuant to protective order unless directed by a court of competent jurisdiction not to comply with that subpoena. The purpose of this letter is to notify the court of recent activities in regard to the motions previously brought before this court, as well as to notify interested parties of our intention to comply with the subpoena.

Very truly yours,

Wallace J. Wade
Assistant District Attorney
Director, Special Operations

cc: Mark Rosen, Attorney for Hermandad Mexicana Nacional
William Hart, Attorney for Robert Dornan
Fred Woocher, Attorney for Loretta Sanchez

U.S. Department of Justice

Office of Legislative Affairs

97 JUL 30 PM 3:41

HOUSE OVERSIGHT

Office of the Assistant Attorney General

Washington, D.C. 20530

JUL 25 1997

The Honorable William M. Thomas
Chairman, Committee on House Oversight
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This will reply to your letter inquiring about the status of a criminal complaint filed with the Central District of California by Robert Dornan, the contestant in Dornan v. Sanchez, a Federal Contested Election Act proceeding currently before your Committee. Mr. Dornan seeks the prosecution of Hermandad Mexicana National and the Hermandad Mexicana National Legal Center under the provisions of 2 U.S.C. § 390 for alleged failure to comply with subpoenas issued by the United States District Court for the Central District of California.

This matter is being handled by the United States Attorney's Office for the Central District of California. We have asked that office about the status of Mr. Dornan's criminal complaint. We were advised that it has been corresponding with Mr. Dornan's attorneys concerning the use of 2 U.S.C. § 390 in this matter, that the Central District does not generally use criminal prosecution to enforce civil subpoenas or subpoenas in cases to which the United States is not a party, but that Mr. Dornan's request for criminal enforcement is still under review.

In addition, United States District Judge Gary L. Taylor has issued several orders relating to this matter, which suggest that further action by the Congress with respect to the Hermandad subpoenas may be necessary before their enforcement becomes ripe for judicial attention. Copies of these orders are enclosed for your information.

Please do not hesitate to contact me if we can be of further assistance with regard to this or any other matter.

Sincerely,

Andrew Fois for AF
Assistant Attorney General

Enclosures

WILLIAM M. THOMAS, CALIFORNIA
CHAIRMAN

GARY A. CONDIT, CALIFORNIA

Congress of the United States

House of Representatives

COMMITTEE ON HOUSE OVERSIGHT
1309 LONGWORTH HOUSE OFFICE BUILDING
(202) 225-8281
Washington, DC 20515-6157

August 15, 1997

Mr. Michael Capizzi
District Attorney
Orange County, California
700 Civic Center Dr.
Santa Ana, California

Dear Mr. Capizzi:

I am writing pursuant to the Committee on House Oversight subpoena of February 12, 1997. At this time, the Committee requests that your office provide a copy of the electronic databases, including HMN.DBF, MEMBERS.MDB, TEST.MDB and CITIZENS.MDB, recovered from a "Computer 17" obtained by the District Attorney from Hermandad Mexicana Nacional.

Please produce this material by August 20, 1997.

If you have any questions please contact John Kelliher, Assistant Counsel to the Committee on House Oversight, at (202) 225-8281.

Best regards,

Bill Thomas
Chairman

cc: Members, Committee on House Oversight

WILLIAM M. THOMAS, CALIFORNIA,
CHAIRMAN

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Congress of the United States
House of Representatives
COMMITTEE ON HOUSE OVERSIGHT
1309 LONGWORTH HOUSE OFFICE BUILDING
(202) 225-8281
Washington, DC 20515-6157

August 18, 1997

Mr. Alan Slater
Orange County Superior Court Clerk
700 Civic Center Dr., W.
Room B-100
Santa Ana, CA 92701

Dear Mr. Slater:

As you may know, the Committee on House Oversight is currently involved in an investigation of alleged vote fraud in Orange County. Pursuant to this investigation, I am writing to request a list of persons who have declined jury summonses by indicating that they are not citizens of the United States.

Specifically, I am requesting the first name, last name, middle initial, address and date-of-birth of all persons in Orange County who claimed they were not citizens when summoned for jury duty from January 1, 1996 to the present. This request applies only to currently available, computerized records. Therefore, please provide your response in an electronic format.

Please, provide this information by August 28, 1997.

If you have any questions please contact John Kelliher, Assistant Counsel to the Committee on House Oversight, at (202) 225-8281.

Best regards,

Bill Thomas
Chairman

cc: Members, House Oversight Committee

OFFICE OF THE
DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA
MICHAEL R. CAPIZZI, DISTRICT ATTORNEY

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DIRECTOR
MUNICIPAL COURT

WALLACE J. WADE
DIRECTOR
SPECIAL OPERATIONS

LOREN W. DuCHESNE
CHIEF
BUREAU OF INVESTIGATION

PLEASE REPLY TO

CENTRAL OFFICE
700 CIVIC CENTER DR. W
P.O. BOX 808
SANTA ANA, CA 92701
(714) 834-3600

NORTH OFFICE
1275 N. BERKELEY AVE
FULLERTON, CA 92631
(714) 773-4480

WEST OFFICE
8141 13TH STREET
WESTMINSTER, CA 92683
(714) 896-7261

SOUTH OFFICE
30143 CROWN VALLEY PKWY
LAGUNA NIGUEL, CA 92677
(714) 249-5929

HARBOR OFFICE
4601 JAMBOREE BLVD
NEWPORT BEACH, CA 92660
(714) 476-4650

JUVENILE OFFICE
341 CITY DRIVE SOUTH
ORANGE, CA 92668
(714) 935-7624

MAJOR FRAUD
CONSUMER PROTECTION
405 W. 5TH STREET
SUITE 606
SANTA ANA, CA 92701
(714) 568-7200

August 21, 1997

FEDEX LETTER
ACCT. #144195213

John J. Kelliher, Assistant Counsel
Committee on House Oversight
Congress of the United States
1309 Longworth House Office Building
Washington D.C. 20515-0250

RE: Congressional Subpoena for Records of Hermandad Mexicana Nacional

Dear Mr. Kelliher:

Pursuant to Congressional Subpoena issued by the House Oversight Committee on February 12, 1997 and your letter of August 15, 1997 requesting a subset of the originally subpoenaed records, I am herewith transmitting a zip drive containing the following files seized from Hermandad computer No. 17 as part of an ongoing criminal investigation into violations of California State Criminal Law:

HMN.DBF	TEST.MDB
MEMBERS.MDB	CITIZENS.MDB

I understand that these documents are being submitted pursuant to the protective order issued by the Committee and that the access to those documents will be restricted pursuant to that protective order. Please contact me if you have any questions regarding the evidence submitted or any other matter.

We have determined that the release of these documents at this time would not jeopardize our ongoing criminal investigation, primarily because copies of the documents have been returned to Hermandad Mexicana Nacional several months ago.

Thank you for your courtesies in this matter.

Very truly yours,

Wallace J. Wade

Wallace J. Wade
Assistant District Attorney
Director, Special Operations

Superior Court of the State of California
County of Orange

ALAN SLATER
Executive Officer/Jury Commissioner

700 CIVIC CENTER DRIVE WEST
P.O. BOX 1994
SANTA ANA, CA 92702-1994
(714) 834-5277
FAX (714) 834-6171

September 2, 1997

Mr. John Kelliher, Assistant Counsel
Committee on House Oversight
1309 Longworth
House Office building
Washington D.C. 20515

Re: Non-citizen prospective juror information

Dear John:

Enclosed are two discs containing the information you requested on Orange County residents who were excused from jury service for non-citizenship. Please be aware that we have discovered discrepancies in this data resulting from the use of incorrect codes during data entry. Of the 450 names extracted pursuant to subpoenas of Robert Dornan and Loretta Sanchez, 150 were found to have been excused as non-citizens when they should have been excused for other reasons such as non-deliverable.

The release of the information you have requested is made with the explicit understanding that the information will be treated as confidential by the House of Representatives Committee on House Oversight and that the information will be used only for purposes consistent with existing law. This has been confirmed by John Kelliher, Assistant Counsel to the Committee on House Oversight in a conversation on August 27, 1997, with Deborah M. Gmeiner, Deputy County Counsel, Orange County Counsel.

If you have any further questions, please do not hesitate to contact me at 714-834-2276.

Sincerely,

Gai L. Spickard
Assistant to the Executive Officer

Persons Excused From Jury Service For Non-Citizenship

Period: 1/1/96-8/27/97 (about 1pm)
Records: 66,827
Zip Files: NONUSAAJ.EXE (Last names starting with A-J)
NONUSAKZ.EXE (Last names starting with K-Z)

CREATING ASCII FILE

1) Copy the "EXE" files to a directory on your hard drive. Make sure you have at least 11mg of hard disk space.
2) From that directory, type NONUSAAJ and press the **ENTER** key
3) From that directory, type NONUSAKZ and press the **ENTER** key
3) Two ASCII files with the name NONUSAAJ.TXT and NONUSAKZ.TXT will be created. The record layout is:

filler	(1)
Last Name	(30)
First Name	(25)
Middle Initial	(1)
Address	(30)
City	(30)
State	(2)
Zip code	(5)
Birth Month	(2)
Birth Day	(2)
Birth Century	(2)
Birth Year	(2)

Note 1: The first record may be blank

Note 2: Persons were either selected from the Registrar of Voters or Department of Motor Vehicles files.

Note 3: This list does not include persons summoned to Harbor Municipal Court. That court manages its own jurors and uses a different system.

WILLIAM M. THOMAS, CALIFORNIA,
CHAIRMAN

ROBERT W. NEY, OHIO
JOHN A. BOEHNER, OHIO
VERNON J. EHLERS, MICHIGAN
KAY GRANGER, TEXAS
JOHN L. MICA, FLORIDA

SAM GEJDENSON, CONNECTICUT,
RANKING MINORITY MEMBER

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STAFF DIRECTOR
ROBERT J. BASKIN,
MINORITY STAFF DIRECTOR

Congress of the United States

House of Representatives

COMMITTEE ON HOUSE OVERSIGHT
1309 LONGWORTH HOUSE OFFICE BUILDING
(202) 225-8281
Washington, DC 20515-0515

October 16, 1997

Ms. Gay Spickard
Orange County Superior Court
700 Civic Center Dr., W.
Room B-100
Santa Ana, CA 92701

Dear Ms. Spickard:

I am writing to request a list of persons who have failed to respond to jury summonses.

Specifically, I am requesting the first name, last name, middle initial, address, date-of-birth, and excuse date of all persons in Orange County who failed to respond when summoned for jury duty. This request applies only to currently available, computerized records. Therefore, please provide your response in an electronic format.

Please provide this information by October 24, 1997.

If you have any questions please contact John Kelliher, Assistant Counsel to the Committee on House Oversight, at (202) 225-8281.

Best regards,

Bill Thomas
Chairman

cc: Members, House Oversight Committee

October 15, 1997
DRAFT

Ms. Gay Spickard
Orange County Superior Court
700 Civic Center Dr., W.
Room B-100
Santa Ana, CA 92701

Dear Ms. Spickard:

I am writing to request a list of persons who have failed to respond to jury summonses.

Specifically, I am requesting the first name, last name, middle initial, address, date-of-birth, and excuse date of all persons in Orange County who failed to respond when summoned for jury duty. This request applies only to currently available, computerized records. Therefore, please provide your response in an electronic format.

Please provide this information by October 24, 1997.

If you have any questions please contact John Kelliher, Assistant Counsel to the Committee on House Oversight, at (202) 225-8281.

Best regards,

Bill Thomas
Chairman

cc: Members, House Oversight Committee

DRAFT

To: Cathy Abernathy
From: John Kelliher
Date: 10/15/1997

1. Letter requests that the OC Superior Court provide a list of the currently available persons who have failed to respond to their jury summons. This covers June 1, 1997 to the present. I am gathering additional information on the possibility of retrieving additional data. The Court stores returned jury summonses for three years in a local warehouse. They are scanned into the computer when they are returned to the court and then boxed un-indexed and put into storage. Periodically the memory of the computer is "dumped" thus the limited dates available by computer. However, yesterday my contact at the Court, Gay Spickard, informed me that she believed that some of this "dumped" information could be retrieved if the Court contracted with their computer systems supplier to write a new program. She estimated that this would cost at least $1,000 and did not know how long it would take to obtain theis new software. She is checking on the details of this possibility. In the meantime I would like to request what they can currently provide.

Let's just go w/ what they have on hand for now -

Superior Court of the State of California
County of Orange

ALAN SLATER
Executive Officer/Jury Commissioner

700 CIVIC CENTER DRIVE WEST
P. O. BOX 1994
SANTA ANA, CA 92702-1994
(714) 834-5277
FAX (714) 834-6171

October 30, 1997

Mr. John Kelliher, Assistant Counsel
Committee on House Oversight
1309 Longworth
House Office building
Washington D.C. 20515

Re: FTA prospective juror information

Dear John:

Pursuant to your request I am forwarding a disk containing the names, addresses, birth and reporting dates for those persons who failed to appear in response to jury summons issued by the Orange County Jury Commissioner for the period June 1, 1997 through October 29, 1997. As you are aware computerized information is only available for this limited period of time due to the archiving of our records.

The release of the information you have requested is made with the explicit understanding that the information will be treated as confidential by the House of Representatives Committee on House Oversight and that the information will be used only for purposes consistent with existing law.

If you have any questions, please contact me at (714) 834 2276.

Sincerely,

Gai L. Spickard
Assistant to the Executive Officer

COUNTY OF ORANGE

JANICE M. MITTERMEIER
Chief Executive Officer

ROSALYN LEVER
Registrar of Voters

Mailing Address:
P.O. Box 11298
Santa Ana, California 92711

REGISTRATION & ELECTIONS DEPARTMENT
1300 South Grand Avenue, Bldg. C
Santa Ana, California 92705
(714) 567-7600
TDD (714) 567-7608
FAX (714) 567-7627

97 NOV 17 ... HOUSE ... OVERSIGHT

VIA FAX AND U.S. MAIL

November 12, 1997

Bill Thomas, Chairman
Committee on House Oversight
House of Representatives
Congress of the United States
1309 Longworth House Office Building
Washington, DC 20515-6157

Dear Mr. Thomas:

Enclosed is a copy of a Public Records Act request which we received from Fredric D. Woocher, attorney for Congresswoman Loretta Sanchez.

Please advise us if you have any legal reason why we should not comply with the request. If we do not hear from you by Wednesday, November 17, 1997 we will comply with Mr. Woocher's request.

Very truly yours,

Rosalyn Lever

Rosalyn Lever
Registrar of Voters

Enclosure

cc: Congressman Ehlers
Congressman Ney
Congressman Hoyer
Ben de Mayo, Deputy County Counsel
Bill Jones, Secretary of State

STRUMWASSER & WOOCHER
ATTORNEYS AT LAW

FREDRIC D. WOOCHER
MICHAEL J. STRUMWASSER
RALEIGH M. LEVINE
EDWIN S. REED

SEAN B. HECHT
SHANA L. WEBB
FELLOW INTERNET FELLOWS

100 WILSHIRE BOULEVARD, SUITE 1900
SANTA MONICA, CALIFORNIA 90401

TELEPHONE: (310) 576-1233
FACSIMILE: (310) 319-0156

November 11, 1997

By Facsimile & U.S. Mail

Rosalyn Lever
Registrar of Voters
1300 South Grand Ave., Bldg. C
Santa Ana, CA 92705

Re: California Public Records Act Request

Dear Ms. Lever:

As you know, this firm represents Congresswoman Loretta Sanchez in an election contest filed with the U.S. House of Representatives by Robert Dornan. It has been reported in the press that you recently received a letter from someone associated with the House Oversight Committee requesting that your office provide copies of the affidavits of registration for some 4,762 identified individuals on the County's voter rolls.

Pursuant to the California Public Records Act, Cal. Govt. Code § 6250 et seq., I hereby request that you promptly provide me with a copy of the above-described letter, including attachments, and any other communications you have had with the House Oversight Committee during the past 30 days regarding the Dornan election contest or the November, 1996, election in the 46th Congressional District. In particular, I hereby request that you promptly provide me with a copy of the list of specifically identified 4,762 (or some comparable number) individuals for whom affidavits of registration have been sought to be copied or reviewed by staff of the House Oversight Committee. If this information is available on computer diskette or some electronic format, I would like the information in that format as well as in hard copy. Of course, we would be glad to reimburse you for the reasonable copying expenses incurred in complying with this request.

I look forward to your prompt response to this request.

Sincerely,

Fredric D. Woocher

cc: Benjamin de Mayo, County Counsel (by fax)

WILLIAM M. THOMAS, CALIFORNIA,
CHAIRMAN

ROBERT W. NEY, OHIO
JOHN A. BOEHNER, OHIO
VERNON J. EHLERS, MICHIGAN
KAY GRANGER, TEXAS
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STACY CARLSON
STAFF DIRECTOR
ROBERT J. BASKIN,
MINORITY STAFF DIRECTOR

Congress of the United States

House of Representatives

COMMITTEE ON HOUSE OVERSIGHT
1309 LONGWORTH HOUSE OFFICE BUILDING
(202) 225-8281
Washington, DC 20515-0157

October 30, 1997

The Honorable Rosalyn Lever
Registrar of Voters
Orange County, California
1300 South Grand Ave., Bldg. C
Santa Ana, CA 92705

Re: Dornan v. Sanchez

Dear Ms. Lever:

I am writing to request a copy of the registration affidavit form related to the individuals identified on the attached list.

Please produce this material by November 14, 1997. Thank you for your assistance.

If you have any questions please contact John Kelliher, Assistant Counsel, at (202) 225-8281.

Best regards,

Bill Thomas
Chairman

enclosure: (1)

cc: Members, Committee on House Oversight

WILLIAM M. THOMAS, CALIFORNIA,
CHAIRMAN

ROBERT W. NEY, OHIO
JOHN A. BOEHNER, OHIO
VERNON J. EHLERS, MICHIGAN
KAY GRANGER, TEXAS
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STACY CARLSON,
STAFF DIRECTOR
ROBERT J. BASKIN,
MINORITY STAFF DIRECTOR

Congress of the United States
House of Representatives
COMMITTEE ON HOUSE OVERSIGHT
1309 LONGWORTH HOUSE OFFICE BUILDING
(202) 225-8281
Washington, DC 20515-6157

November 14, 1997

By Facsimile (714-567-7627)

The Honorable Rosalyn Lever
Registrar of Voters
Orange County, California
1300 South Grand Ave., Bldg. C
Santa Ana, CA 92705

Re: Dornan v. Sanchez

Dear Ms. Lever:

This is in response to your letter of November 12, 1997 regarding a Public Records Act request from Frederic D. Woocher, counsel for Congresswoman Loretta Sanchez in an election contest before the Committee on House Oversight. Mr. Woocher has requested all "communications you have had with the House Oversight Committee during the past 30 days regarding the Dornan election contest or the November, 1996, election in the 46th Congressional District," including "a copy of the list of specifically identified 4,762 (or some comparable number) individuals for whom affidavits of registration have been sought to be copied or reviewed by staff of the House Oversight Committee."

Mr. Woocher's request must be denied for several reasons.[1] First, the list of individuals which was provided by the Committee to you on October 30, 1997 consists of highly confidential information compiled by the Committee pursuant to its constitutional and statutory responsibilities to investigate federal contested elections. See 2 U.S.C. §§ 381, et seq.. The list was furnished to the Registrar's office on a confidential and temporary basis for the purpose of identifying for your staff the documents that the Committee wished to obtain for its investigation. Since the Committee never intended that the Registrar's office permanently retain (much less disclose) this list, the document remained the property of the Committee and was not subject to the Public Records Act. See Goland v. CIA, 607 F.2d 339 (D.C. Cir. 1978) (confidential documents furnished by the House to an executive agency for "internal reference" only was not subject to the Freedom of Information Act).

[1] I have consulted with the House General Counsel, who concurs with the views expressed herein.

Second, the list reflects the constitutionally privileged investigatory activities of the House of Representatives. It is well established that the Speech or Debate privilege "permits Congress to conduct investigations and obtain information without interference from the courts." Brown & Williamson Tobacco Corp. v. Williams, 62 F.3d 408, 416 (D.C. Cir. 1995); see also Eastland v. United States Servicemen's Fund, 421 U.S. 491 (1974). The Committee has taken the utmost care to protect the privacy and confidentiality of information obtained in the course of investigating this contested election. Disclosure of the list in question, which identifies individuals who may have voted illegally, would interfere with the confidentiality of the Committee's investigation, reveal the ongoing deliberative processes of the Committee, and discourage future cooperation with the Committee's requests for information. Accordingly, Mr. Woocher's request must be denied under the Public Records Act. See Cal. Gov. Code § 6254 (k) (exempting "[r]ecords the disclosure of which is exempted or prohibited pursuant to provisions of federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege"); see also Times Mirror Co. v. Superior Court, 53 Cal.3d 1325, 1340 n.10 (1991) ("The common law privilege protecting the 'mental processes' of legislators is also well settled in California.").

Third, Mr. Woocher's request must be denied because it constitutes an unwarranted invasion of the personal privacy of the individuals named in the list. See Cal. Gov. Code § 6254(c). Information suggesting possible criminal activity on the part of an individual, such as violating immigration laws or voting illegally, clearly implicates a significant privacy interest of that individual. See ACLU v. Deukmejian, 32 Cal.3d 440, 449-50 (1982); United States Department of Justice v. Reporters Committee for Freedom of the Press, 489 U.S. 749, 767 (1989).

Finally, there is no countervailing public interest in disclosure that would warrant granting Mr. Woocher's request. The sole public interest in disclosure is the extent to which it would shed light on the activities of the agency in question. See United States Dep't of Defense v. FLRB, 510 U.S. 487, 497 (1994). Mr. Woocher's request is clearly not designed to, and will not, reveal anything about the activities of the Registrar's office. Instead, it is designed to provide Mr. Woocher with discovery for use in the federal election contest pending before the Committee. This is not a proper use of the Public Records Act. See NLRB v. Robbins Tire & Rubber Co., 437 U.S. 214, 242 (1978) ("FOIA was not intended to function as a private discovery tool.") (emphasis in original). Accordingly, Mr. Woocher's request must also be denied on the grounds that "the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record." Cal. Gov. Code § 6255.

For these reasons I request that you (a) deny Mr. Woocher's request and (b) return the list to the Committee forthwith.

Sincerely,

Daniel F. C. Crowley
General Counsel

cc: Benjamin de Mayo, Esq.

DIVISIONS:
Archives
Corporate Filings
Elections
Information Technology
Limited Partnership
Management Services
Notary Public
Political Reform
Uniform Commercial Code

BILL JONES
Secretary of State
State of California

EXECUTIVE OFFICE
(916) 653-7244
1500-11th STREET
SACRAMENTO, CA 95814

December 10, 1997

The Honorable William M. Thomas
Chairman
COMMITTEE ON HOUSE OVERSIGHT
UNITED STATES HOUSE OF REPRESENTATIVES
1309 Longworth House Office Building
Washington, DC 20515-6157

Dear Chairman Thomas:

Pursuant to your request, I am pleased to provide the House Oversight Committee with the following results regarding the examination of voter registration and voting records pertaining to a list of individuals provided by your Committee for the November 5, 1996 General Election in California's 46th Congressional District. In doing so, I also want to express my appreciation for the outstanding assistance we received in this process from Orange County Registrar of Voters Rosalyn Lever and her staff.

In addition to reporting the factual results of our analysis, this letter also outlines the procedures that we used to examine the voter registration and voting records in the 46th Congressional District.

METHODOLOGY

To verify the voter registration information for those individuals whose names appeared in the data provided by your Committee, we used the 29-day close of voter registration file compiled by Orange County for the November 5, 1996 General Election. At the suggestion of the Orange County Registrar of Voters, we added 28 additional records that reflect the affidavits of individuals who registered within the 29-day close but were, for other reasons, not included on the County's "official" 29-day close file. We then electronically compared this voter registration file to the data received from your Committee. When registration affidavit numbers and either the date of birth or the full name matched between records contained in each of the two files, we have reported the records to be a match.

To verify the voting status for those individuals whose names appeared in the data provided by your Committee, we used the Orange County voter participation file for the November 5, 1996 General Election, which our office acquired in February of 1997. From this voter participation file we removed 560 duplicate records (i.e., records with same affidavit

numbers and dates of birth). We also removed eight records pertaining to persons who were issued absentee ballots but did not return them.

We then electronically compared this edited file of Orange County voters to the data received from your Committee. Using the same previous procedures, when registration affidavit numbers and either the date of birth or the full name matched between records contained in each of the two files, we reported the records to be a match.

To ensure the accuracy of our data analysis, we then extracted a ten percent random sample of the individual matches identified as having voted. We sent our staff to work on-site with the Registrar of Voters staff to manually cross-check those individuals' voting status against the signed precinct voting rosters. In cases where an absentee ballot was issued, we utilized the Registrar of Voters' computerized system to verify whether or not the ballot was returned.

FINDINGS

The data supplied to us by your Committee contained 4761 records, of which 359 were determined to be duplicate records (344 with exact affidavit numbers, dates of birth and names, and 15 records that are virtually exact matches). With these duplicates removed, the edited file contains 4,402 unique records. To ensure accuracy, we have only included breakdown totals for this edited file as listed below (without duplicate records):

I. Registered Voter Totals

Without Duplicates	Cross-File Match Totals – Registered Voters
4,400	Registered (Cross-matched electronically with registration records)
+ 2	Other Matches (Found after manual search: One with a first name spelling mismatch and both with different dates of birth.)
4,402	**TOTAL REGISTERED**

II. Voted Totals

Without Duplicates	Cross-File Match Totals – Voted
2,473	Voted (Cross-matched electronically with voted records)
+ 1	Other Matches (Found in voted file after manual search with first name spelling mismatch and different date of birth.)
2,474	**TOTAL VOTED**

Pursuant to our manual check of the voted information, the margin of error in our data analysis was determined to be ± 6%.

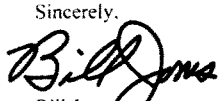
Additional Findings

In order to provide the Committee with the most accurate information possible, I requested my staff to electronically compare the list of 305 previously confirmed non-citizen voters to the data received from your committee. Again, using the same procedures, when registration affidavit numbers and either the date of birth or the full name matched between records contained in each of the two files, we reported the records to be a match.

Our analysis confirmed 264 individuals from the non-citizens voted list were also included in your data. Therefore, there are an additional 42 individuals who voted that are not currently contained in your data. Subsequently, they are not included in our official 2474 voted total.

As Chief Elections Officer, I hope that our analysis is useful to your Committee. In order to ensure the integrity of California's election system, I am available to provide additional assistance at any time.

Sincerely,



Bill Jones
Secretary of State

WILLIAM THOMAS, CALIFORNIA
CHAIRMAN

SAM JOHNSON, CONNECTICUT
RANKING MINORITY MEMBER

Congress of the United States
House of Representatives
COMMITTEE ON HOUSE OVERSIGHT
1309 LONGWORTH HOUSE OFFICE BUILDING
(202) 225-8281
Washington, DC 20515-0515

December 16, 1997

Mr. Michael R. Capizzi
Orange County District Attorney
700 Civic Center Drive West, Suite 200
Santa Ana, CA 92701

Dear Mr. Capizzi:

I am writing pursuant to the Committee on House Oversight subpoena of February 12, 1997. At this time, the Committee requests that you provide a copy of the materials seized by your office from Hermandad Mexicana Nacional. For your records, I have enclosed a copy of the Committee's subsequent subpoena to Hermandad Mexicana Nacional and their response.

In addition, the Committee requests that your office provide copies of any additional documents that may be of assistance to the Committee in its investigation.

Please produce this material by January 2, 1998.

If you have any questions please contact John Kelliher, Assistant Counsel to the Committee on House Oversight, at (202) 225-8281.

Best regards,

Bill Thomas
Chairman

cc: Members, Committee on House Oversight
Mark Rosen, Esq.

Enclosures

Subpena Duces Tecum

By Authority of the House of Representatives of the Congress of the United States of America

To Hermandad Mexicana Nacional, Custodian of Records

You are hereby commanded to produce the things identified on the attached schedule before the ..... Committee on House Oversight ..... of the House of Representatives of the United States, of which the Hon. Bill Thomas ..... is chairman, by producing such things in Room 1309 ..... of the Longworth ..... Building ....., in the city of Washington, on December 1, 1997 ....., at the hour of 1 p.m. .....

To U.S. Marshall or any staff member of the Committee on House Oversight to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 12 day of November 19 97

William M. Thomas
Chairman.

Attest: Robin H. Carle
Clerk.

Subpena for.....
Hermandad Mexicana Nacional
.....
Custodian of Records
.....
.....
before the Committee on the.....
House Oversight
.....
.....

Served.....
.....
.....
.....
.....
.....
.....House of Representatives

GPO: 1991 42-417 (m)

HERMANDAD MEXICANA NACIONAL

ATTACHMENT "A"

1. All documents that identify the names and addresses of all officers, directors and employees of Hermandad Mexicana Nacional (hereinafter "HMN") for the period November 9, 1994 to November 5, 1996.
2. HMN's Articles of Incorporation.
3. HMN's Bylaws.
4. HMN's Minutes of Board of Directors' meetings, including all special meetings, that relate to voter registration, vote fraud, the 1996 election and/or the Contest of Election filed by Robert K. Dornan for the period November 9, 1994 to present.
5. HMN's client and/or student list(s) and/or roster(s) in Orange County for the period November 9, 1994 to November 5, 1996.
6. All telephone records for HMN for the period November 9, 1994 to the present.
7. All documents that relate to the tax status of HMN for the period November 9, 1994 to November 5, 1996.
8. All documents that relate to the contractual relationship between the United States Immigration and Naturalization Service, Naturalization Assistance Service, and HMN for the period November 9, 1994 to November 5, 1996.
9. All documents that relate to the income received by HMN for the period November 9, 1994 to November 5, 1996.
10. All documents that relate to savings, checking and/or expense accounts maintained by HMN or any subsidiary or affiliate thereof including passbooks, monthly statements,

canceled checks, cash withdrawal slips, cash deposit slips, transfer forms, income statements, cash flow statements, profit and loss statements and financial accounting and loan documentation, including applications for the period November 9, 1994 to November 5, 1996.

11. All documents that relate to incentives, promotions, raffles and/or lotteries that were promoted by or participated in by HMN and/or Nativo Lopez for School Board, or anyone or any entity acting on their behalf, for the period November 9, 1994 to November 5, 1996.

12. All documents related to voter registration in Orange County including, but not limited to, lists of registered voters in your possession including, but not limited to voter registration affidavits, (including blank and completed affidavits), and any items detached from voter registration affidavits for the period November 9, 1994 to November 5, 1996.

13. All documents that relate to lists of persons who have been registered to vote by HMN in Orange County with the assistance of for the period November 9, 1994 to November 5, 1996.

14. All documents that relate to absentee voter ballots from Orange County that were handled or processed by HMN, or by anyone employed by, associated with or volunteering through HMN for the period November 9, 1994 to November 5, 1996.

15. All documents that relate to the procedures used by HMN to ensure that only eligible voters registered and/or requested absentee ballots with the assistance of HMN in Orange County for the period November 9, 1994 to November 5, 1996.

16. All documents that relate to documented and/or undocumented aliens registering to vote or voting in Orange County for the period November 9, 1994 to November 5, 1996.

17. All documents that relate to HMN's employees, associates or volunteers who engaged in the effort to register voters or encourage persons to vote in Orange County for the period November 9, 1994 to November 5, 1996.

18. All documents that relate to payments, bounties, incentives, or any other remuneration paid to anyone as compensation for enlisting persons to register to vote or vote in Orange County for the period November 9, 1994 to November 5, 1996.

19. All documents that relate to plans, strategies, tactics and/or efforts by HMN or anyone acting on its behalf in connection with the registration of voters or assisting persons to vote in Orange County for the period November 9, 1994 to November 5, 1996.

20. All documents that relate to naturalization, citizenship services and/or citizenship classes offered by HMN or anyone acting on their behalf in Orange County for the period November 9, 1994 to November 5, 1996.

21. All documents including, but not limited to, lists that identify the names, dates of birth, addresses, telephone numbers, naturalization dates and/or place of national origin of all persons to whom HMN has provided services regarding naturalization and/or citizenship services and/or citizenship classes in Orange County for the period November 9, 1994 to November 5, 1996.

22. All audio and video tapes prepared by or utilized by HMN in connection with naturalization and/or citizenship classes, and/or voter registration and voting services

provided through HMN in Orange County for the period November 9, 1994 to November 5, 1996.

23. All documents that relate to Robert K. Dornan and/or the Dornan for Congress campaign, or anyone acting on their behalf, for the period November 9, 1994 to November 5, 1996.

24. All documents that relate to the Loretta Sanchez and/or the Loretta Sanchez for Congress campaign, or anyone acting on their behalf, for the period November 9, 1994 to November 5, 1996.

25. All documents that relate to Nativo Lopez for School Board Campaign, or anyone acting on its behalf, for the period November 9, 1994 to November 5, 1996.

26. All documents that relate to the Immigration and Naturalization Service and/or Citizenship USA, or anyone acting on their behalf, for the period November 9, 1994 to November 5, 1996.

27. All documents that relate to Southwest Voter Registration Project in Orange County for the period November 9, 1994 to November 5, 1996.

28. All documents that relate to One-Stop Immigration and Education Center in Orange County for the period November 9, 1994 to November 5, 1996.

29. All documents that relate to Active Citizenship Project in Orange County for the period November 9, 1994 to November 5, 1996.

30. All documents related the California Republican Party, the national Republican Party, the Orange County Republican Party and/or affiliated committees for the period November 9, 1994 to November 5, 1996.

31. All documents that relate to the California Democratic Party, the national Democratic Party, the Orange County Democratic Party and/or affiliated committees for the period November 9, 1994 to November 5, 1996.

32. All documents that relate to Michael Farber for the period November 9, 1994 to November 5, 1996.

33. All documents that relate to Dump Dornan, for the period November 9, 1994 to November 5, 1996.

34. All documents that relate to Guttenburg Group, for the period November 9, 1994 to November 5, 1996.

35. All documents that relate to Citzens' Forum, for the period November 9, 1994 to November 5, 1996.

36. All documents that relate to Rancho Santiago College, for the period November 9, 1994 to November 5, 1996.

37. All documents that relate to the Carpenter's Union or any local thereof in Orange County for the period November 9, 1994 to November 5, 1996.

38. All documents that relate to the Laborer's Union or any local thereof in Orange County for the period November 9, 1994 to November 5, 1996.

39. All documents that relate to interviews HMN has conducted with anyone regarding the November 5, 1996 election and/or the Election Contest filed by Robert K. Dornan.

40. All documents that advise, counsel or encourage persons or entities to not cooperate with the current investigation of vote fraud in the 46th Congressional District of California.

MARK S. ROSEN
ATTORNEY AT LAW
2700 NORTH MAIN STREET
SUITE 630
SANTA ANA, CALIFORNIA 92705
TELEPHONE (714) 972-8040
FAX (714) 285-9840

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HOUSE OVERSIGHT

December 1, 1997

HAND-DELIVERED

Representative William M. Thomas
Chairman, House Oversight Committee
1309 Longworth House Office Building
Washington, D.C. 20515

Re: Subpoena for Hermandad Mexicana Nacional

Dear Chairman Thomas:

This letter and the documents contained in the box labeled as documents from Hermandad Mexicana Nacional constitute Hermandad Mexicana Nacional's response to the subpoena issued by the Committee and dated November 12, 1997.

Most of the documents which would have been responsive to the subpoena were seized by the District Attorney for the County of Orange on January 14, 1997. These documents have not yet been returned to Hermandad Mexicana Nacional, with very limited exceptions. These documents remain the property of Hermandad Mexicana Nacional but are not in Hermandad's custody, possession, or control

As a general matter, we object to each and every category to the extent that it seeks to subpoena documents which are covered by the attorney-client or attorney-work product privileges, or any other privileges under the law of California or the United States. Where a response to a request would include published newspaper, newsletter, or magazine accounts, we have not produced those published accounts.

We will now respond on a category-by-category basis to the subpoena:

1. We object to the request because it contains within it documents which are outside the jurisdiction of the House Oversight Committee and is therefore overbroad. Notwithstanding this objection, and without waiving it, the documents supplied in response to Category #4 contain this information.

2. We object to this request because the information is not germane to the election contest and is therefore not germane.

3. We object to this request because the information is not germane to the election contest and is therefore not germane.

4. We object to this request because the information is not germane to the election contest and is therefore not germane. Notwithstanding this objection, and without waiving it, minutes for board meetings for the calendar year 1996 are provided.

5. We object to this request because it infringes upon the privacy and associational rights of Hermandad Mexicana Nacional and its clients and students as set forth in the First Amendment and other provisions of the United States Constitution. Hermandad Mexicana Nacional will not voluntarily produce any documents which identify its members, clients, or students.

6. We object to this request because it infringes upon the privacy and associational rights of Hermandad Mexicana Nacional as set forth in the First Amendment and other provisions of the United States Constitution. The request is also overbroad because it encompasses many communications which are clearly beyond the scope and authority of the Committee's investigation. The Committee has failed to limit its subpoenas to specific phone numbers.

7. We object to this request because it infringes upon the privacy and associational rights of Hermandad Mexicana Nacional as set forth in the First Amendment and other provisions of the United States Constitution. Tax records and documents prepared under compulsion of the federal or state government are privileged documents not subject to disclosure. We further object because the tax status of

Hermandad is not germane to an election contest.

8. Documents falling within this category that Hermandad has in its possession, custody, or control, are produced.

9. We object to this request because it infringes upon the privacy and associational rights of Hermandad Mexicana Nacional as set forth in the First Amendment and other provisions of the United States Constitution. The request is also overbroad because it requests many documents which are clearly beyond the scope and authority of the Committee's investigation.

10. We object to this request because it infringes upon the privacy and associational rights of Hermandad Mexicana Nacional as set forth in the First Amendment and other provisions of the United States Constitution. The request is also overbroad because it requests many documents which are clearly beyond the scope and authority of the Committee's investigation.

11. Hermandad has no such documents in its possession, custody, or control.

12. Hermandad has no such documents in its possession, custody, or control.

13. The request is illiterate as written. Assuming the request to be for documents relating to lists of persons registered to vote by Hermandad in Orange County, deleting the incomplete phrase "with the assistance of", Hermandad has no such documents in its possession, custody, or control.

14. The ORIGINALS of all such documents in the possession, custody, or control of Hermandad are produced herewith.

15. Hermandad produces an instruction of November 2, 1996, instructing that only United States citizens were permitted to vote. The Committee already is in possession of the return declaration of the Orange County District Attorney in which numerous instances are set forth in which Hermandad advised callers that only United States citizens could vote.

16. Hermandad has no such documents in its possession, custody, or control.

17. See No. 15.

18. Hermandad has no such documents in its possession, custody, or control.

19. See No. 15.

20. We object to this request because it infringes upon the privacy and associational rights of Hermandad Mexicana Nacional and its clients as set forth in the First Amendment and other provisions of the United States Constitution. The request is also overbroad because it requests many documents which are clearly beyond the scope and authority of the Committee's investigation. See No. 5.

21. We object to this request because it infringes upon the privacy and associational rights of Hermandad Mexicana Nacional and its clients as set forth in the First Amendment and other provisions of the United States Constitution. The request is also overbroad because it requests many documents which are clearly beyond the scope and authority of the Committee's investigation. See No. 5.

22. Hermandad has no such items in its possession, custody or control.

23. The only such known items would be references to Dornan or Dornan for Congress in the newspaper Union Hispana, which are available to the public and which are not germane to this election contest. Publications in a newspaper are also constitutionally and statutorily protected from inquiry or investigation. It would be excessively burdensome and time consuming to search through files in which Dornan's office might have been contacted for casework for clients, and would be an invasion of the rights of those clients.

24. The only such items would be references to Loretta Sanchez or her campaign in the newspaper Union Hispana, and Hermandad objects to production of newspaper issues for the reasons set forth in Category 23.

25. Hermandad has no such items in its possession, custody or control.

26. Hermandad has no such items in its possession, custody or control.

27. Hermandad has no such items in its possession, custody or control.

28. Hermandad has no such items in its possession, custody or control.

29. Hermandad has no such items in its possession, custody or control.

30. Hermandad has no such items in its possession, custody or control.

31. Hermandad has no such items in its possession, custody or control.

32. Hermandad has no such items in its possession, custody or control.

33. Hermandad has no such items in its possession, custody or control.

34. Hermandad has no such items in its possession, custody or control.

35. Documents falling within this category are produced.

36. Hermandad has no such items in its possession, custody or control.

37. Hermandad has no such items in its possession, custody or control.

38. Hermandad has no such items in its possession, custody or control.

39. We object to the extent that the request seeks to inquire into interviews that any Hermandad officials or spokespersons have given to the media, as an infringement upon its First Amendment rights. Hermandad further objects to the extent that the request infringes upon the attorney-client or attorney work-product privilege. Subject to this objection, Hermandad has no such items in its possession, custody or control.

40. If this request is intended to inquire about advisories provided that persons have a right to counsel and the right not to incriminate themselves under circumstances where they have been harassed and threatened by the media, by Dornan and his representatives, and by the Orange County District Attorney, Hermandad objects to the characterization that informing people of their constitutional and statutory rights constitutes advising, counseling, or encouraging them not to cooperate with the current investigation of "vote fraud".

41. Hermandad objects that this category is vague, ambiguous and overbroad, and could include within its scope documents that are privileged or protected under each of the privileges and protections cited in this letter, and Hermandad therefore objects to this category in its entirety.

Very truly yours,

MARK S. ROSEN

MUÑOZ & ASSOCIATES
ATTORNEYS AT LAW
1717 SOUTH STATE COLLEGE BOULEVARD
SUITE 125
ANAHEIM, CALIFORNIA 92806-6024
TEL. (714) 978-6989 • FAX (714) 978-3210

EDWARD R. MUÑOZ

DANIEL HANOUM
Also Member Washington State Bar

MICHAEL BECKER

December 29, 1997

Mr. Bruce Moore
Deputy District Attorney
Special Assignments Unit
Orange County District Attorney
700 Civic Center Drive West
Suite 200
Santa Ana, CA 92701

Post-it® Fax Note 7671	Date	# of pages ▶ 4
To John Kelliher	From	
Co./Dept. Comm on House Oversight	Co.	
Phone #	Phone #	
Fax #	Fax #	

Dear Mr. Moore:

I have noted with interest the letter from Bill Thomas, Chairman of the Committee on House Oversight, dated December 16, 1997. In that letter, the Chairman requests your office provide copies of the materials seized from Hermandad Mexicana Nacional. I do not believe your office can legally comply with that request.

In the case of McSurely v. Ratliff, a Federal Circuit held that when documents seized by a prosecutorial agency have also been subpoenaed by a Congressional Committee, the documents must be returned to the owner of the documents once the prosection has ended. I have provided a copy of this case for your convenience.

Hermandad Mexicana Nacional is thereby requesting your office to return the seized documents without forwarding them to the Oversight Committee. Any production of these documents to the committee will be seen as a violation of Hermandad Mexicana Nacional's property rights. Hermandad Mexicana Nacional will take appropriate action if their rights are violated.

My hope is that we handle this return of documents in a manner that is most convenient for both parties. It is my understanding that you plan to meet with attorney Mark Rosen next week to discuss other Hermandad Mexicana Nacional documents which were requested by the Internal Revenue Service. I suggest you delay any action involving the House Oversight Committee until that meeting.

Please feel free to contact me if you have any questions.

Sincerely,

Edward R. Muñoz
Attorney for Nativo Lopez

ERM:arp
c.c.: Mark Rosen

Alan McSURELY, Margaret McSurely, Southern Conference Educational Fund, Inc., the National Conference for New Politics, and Vietnam Summer, Appellants,

and

Joseph Malloy, Intervenor,

v.

Thomas B. RATLIFF, Commonwealth's Attorney for the 35th Judicial District, Pike County, Kentucky; Perry A. Justice, Sheriff of Pike County, Kentucky; Grover Atkins, Jailer of Pike County, Kentucky; and Robert L. Matthews, Attorney General for the Commonwealth of Kentucky, Appellees,

and

United States of America, Intervenor.

No. 18638.

United States Court of Appeals
Sixth Circuit.
July 29, 1968.

Persons who had been subject of prosecution under antisedition law filed motions for order directing return of seized documents and to enjoin release of documents pursuant to subpoenas issued by United States Senate subcommittee. The United States District Court for the Eastern District of Kentucky, James F. Gordon, J., denied the motion, and movants appealed. The Court of Appeals held that, after time for appeal had expired, District Court had to return to owners the documents seized in aid of a prosecution under an antisedition statute that was declared unconstitutional, though United States Senate sub-committee had issued subpoenas for some of the documents.

Reversed.

Searches and Seizures ⇐5

After time for appeal had expired, district court had to return to owners the documents seized in aid of a prosecution under an antisedition statute that was declared unconstitutional, though United States Senate sub-committee had issued subpoenas for some of the documents. KRS 432.040; U.S.C.A.Const. Amends. 1, 4.

Morton Stavis, Newark, N. J. (Dan Jack Combs, Pikeville, Ky., Arthur Kinoy, William B. Kunstler, New York City, on the brief), for appellants.

Robert V. Zener, Dept. of Justice, Washington, D. C. (Edwin L. Weisl, Jr., Asst. Atty. Gen., Morton Hollander, Atty., Dept. of Justice, Washington, D. C., George B. Cline, U. S. Atty., Lexington, Ky., on the brief), for appellees.

Before PHILLIPS, CELEBREZZE and McCREE, Circuit Judges.

PER CURIAM.

State and local authorities of Kentucky commenced a prosecution of Alan McSurely and wife, Margaret McSurely, under the Anti-Sedition Law of the Commonwealth, KRS 432.040. Numerous books, pamphlets and documents were seized in connection with the arrests.

The McSurelys brought an action in the United States District Court to enjoin the prosecution, invoking the doctrine of Dombrowski v. Pfister, 380 U.S. 479, 85 S.Ct. 1116, 14 L.Ed.2d 22. A three-judge District Court held the Anti-Sedition statute to be unconstitutional on the grounds of vagueness and federal preemption. 282 F.Supp. 848. Enforcement of the statute and the pending State criminal prosecution were enjoined. No appeal was taken from this decision. The District Court directed that the seized documents be retained in the possession of the Commonwealth attorney for safekeeping until final disposition of the case by appeal or otherwise.

After the decision of the District Court and before the time for appeal had expired, subpoenas duces tecum ordering production of certain of the seized documents were issued by the Permanent Subcommittee on Investigations of the Committee on Government Operations of the United States Senate.

The Subcommittee issued the subpoenas in connection with its investigation of riots and civil disturbances. Identical subpoenas were served upon Mr. and Mrs. McSurely, the Commonwealth attorney and the United States Marshal.

The McSurelys filed motions in the District Court for an order directing the return of the seized documents and seeking to enjoin the release of the documents pursuant to the subpoenas. The District Court denied this motion and ordered the parties to the action and officers of the court to cooperate with the Senate Committee in making available such material, or copies thereof, as the Committee considers pertinent to the inquiry, but in a manner to keep the materials intact for use in the event of appeal.

The Supreme Court dismissed an appeal for want of jurisdiction: McSurely et al. v. Ratliff, 390 U.S. 412, 88 S.Ct. 1112, 19 L.Ed.2d 1272. The stay order previously granted by the Supreme Court was continued in effect pending an appeal to this Court. Two other orders of the Supreme Court are reported at 390 U.S. 914, 88 S.Ct. 845, 19 L.Ed.2d 974 and 389 U.S. 949, 88 S.Ct. 313, 19 L.Ed.2d 358.

The single issue now before this Court is whether the District Court erred in refusing to return to their owners documents which were seized in aid of a prosecution under an unconstitutional statute, now that the time for appeal has expired. We conclude that this question must be answered in the affirmative. The business of the District Court in this case has been completed. The right of the Court to retain possession of the seized documents, which include no contraband, has expired.

Appellants undertake to raise numerous questions concerning the validity and interpretation of the Senate Resolution and the breadth of the investigation authorized thereby. They also assert that the subpoenas violate their rights under the First and Fourth Amendments. These questions may be adjudicated under the appropriate procedure for challenging subpoenas of Congressional Committees. We decline to render an advisory opinion on these issues.

An order will be entered reversing the judgment of the District Court, without prejudice to the right of the Senate Committee to proceed with the enforcement of the subpoenas against Mr. and Mrs. McSurely.



Charles Leroy MELQUIST, Petitioner-Appellant,

v.

Frank J. PATE, Warden, Illinois State Penitentiary, Respondent-Appellee.

No. 16284.

United States Court of Appeals
Seventh Circuit.
July 24, 1963.

Petition for writ of habeas corpus. The United States District Court for the Northern District of Illinois, Eastern Division, Bernard M. Decker, J., denied the petition, and petitioner appealed. The Court of Appeals, Schnackenberg, Circuit Judge, held that where a member of the Cook County sheriff's police, unaware that a writ of habeas corpus had been issued in Cook County, transported petitioner, who was in custody of Cook County authorities, to a place in DuPage County and turned over petitioner to DuPage County authorities, who promptly arrested petitioner on a warrant charging him with murder in DuPage County, arrest and detention of petitioner in DuPage County was legal, even though DuPage County authorities were not aware of issuance of writ in Cook County.

Affirmed.

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CONSUMER PROTECTION
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SUITE 505
SANTA ANA, CA 92701
(714) 568-1200

December 31, 1997

Mr. John Kelliher
Assistant Counsel to the Committee on House Oversight
1309 Longworth House Office Building
Washington, D.C. 20515-6157

Dear Mr. Kelliher:

Pursuant to our telephone conversation earlier today, the Orange County District Attorney's Office is requesting an extension to produce a copy of the materials seized by this office from Hermandad Mexicana Nacional. These materials were originally subpoenaed on February 12, 1997, and pursuant to agreement, we have been holding copies of the materials for the Committee on House Oversight.

We have requested this extension, in large part, due to a December 29, 1997 letter from attorney Edward Munoz, a copy of which I have provided under separate cover. Mr. Munoz has requested that we delay production until a meeting next week with Hermandad's attorney, Mark Rosen, citing a Sixth Circuit case, *McSurely v. Ratliff*, 398 F.2d 817, which may impact on our compliance with the subpoena. We would like an opportunity to analyze that case and related provisions, before making the documents available to the Committee.

With your permission, we would like to delay production, under the subpoena, until January 14, 1998. You have already provided the Committee's Federal Express Account Number, and we will plan to sent the materials on January 14, unless you hear otherwise. Please let me know if this is not acceptable. Thank you.

Sincerely,

GUY NORMES
Supervising Deputy District Attorney
Deputy-In-Charge
Special Assignments Section

GNO:vlb

APPENDIX C: APRIL 19TH HEARING

HEARING

APRIL 19, 1997 SANTA ANA, CALIFORNIA

On February 12, 1997, the Contestee wrote Task Force Chairman Vern Ehlers and Ranking Minority Member Steny Hoyer inviting the Task Force to conduct a Field Hearing in Orange County that "* * * would convincingly demonstrate to the Task Force that no credible evidence cast doubt on the certified results of the November 6 election."

At that time, claims of voting fraud had been substantiated independently by local newspapers, the Orange County District Attorney, and the Secretary of State of California. The Task Force, at its February 26, 1997 meeting, postponed disposition of the Contestee's motion to dismiss election and moved that Task Force hold a Field Hearing in Orange County.

The Task Force held the Field Hearing on April 19, 1997 at the Santa Ana Court House. The Task Force heard eight hours of testimony from the contest's parties, election officials and other interested groups. Testimony was heard from California Secretary of State Bill Jones, Orange County District Attorney Michael Capizzi, Los Angeles District Director of the Immigration and Naturalization Service Richard Rogers, Orange County Registrar of Voters Rosalyn Lever, Robert K. Dornan, William Hart, Congresswoman Sanchez, Wylie Aitken and former Secretary of State Tony Miller.

Information gathered at this Field Hearing indicated that the Immigration and Naturalization Service was unwilling to assist either the Contestant or the Secretary of State Bill Jones in determining if non-citizens voted in the 1996 election.[79]

[79] Task Force for the Contested Election in the 46th Congressional district of California: Hearing on the Merits p. 13.

F6012

LORETTA SANCHEZ
46TH DISTRICT, CALIFORNIA

Congress of the United States
House of Representatives
Washington, DC 20515–0546

97 FEB 12 PM 4:57

HOUSE OVERSIGHT

February 12, 1997

Honorable Vernon J. Ehlers
Honorable Steny H. Hoyer
Committee on House Oversight
1309 Longworth House Office Building
U.S. House of Representatives
Washington, D.C. 20515

Dear Vern and Steny:

I am writing to advise the Task Force on the election contest in California's 46th District that I will be responding in detail prior to the hearing to be held the week of February 24th to the brief filed Monday with the Clerk of the House by Mr. Dornan. Many of the spurious charges made by Mr. Dornan have been rebutted point by point by the Orange County Registrar and I want to be sure the Task Force is aware of this and other flaws in the Dornan brief prior to your meeting.

As you know, I have made a motion to dismiss the challenge by Mr. Dornan. Because I am so convinced that a fair and thorough review of the election process in the 46th will verify the outcome certified by the Secretary of State, I will ask you to withhold consideration of my motion, and invite the Task Force to conduct a Field Hearing in Orange County as soon as practicable.

No credible evidence has been presented in more than three months since the election that even comes close to changing the outcome of the Congressional election in the 46th. Not only has Mr. Dornan failed to find a sufficient number of questionable ballots, he has presented no evidence those ballots were cast in the Congressional election, let alone any evidence those ballots were cast for any specific candidate.

I believe that a fair hearing, in regular order, which receives testimony from all concerned parties, will convincingly demonstrate to the Task Force that there is no credible evidence to cast doubt on the certified results of the November 6th election.

I appreciate your cooperation.

Very truly yours,

Loretta Sanchez

Loretta Sanchez

TASK FORCE FOR THE CONTESTED ELECTION IN THE 46TH CONGRESSIONAL DISTRICT OF CALIFORNIA: HEARING ON THE MERITS

HEARING

BEFORE THE

COMMITTEE ON HOUSE OVERSIGHT

TASK FORCE FOR THE CONTESTED ELECTION
IN THE 46TH CONGRESSIONAL DISTRICT
OF CALIFORNIA

HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

FIRST SESSION

SANTA ANA, CALIFORNIA
APRIL 19, 1997



U.S. GOVERNMENT PRINTING OFFICE
41-204 WASHINGTON : 1997

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ISBN 0-16-055138-2

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CONTENTS

	Page
Opening Statements:	
The Honorable Vernon J. Ehlers, Task Force Chairman	1
The Honorable Robert W. Ney	8
Statements:	
Bill Jones	13
Michael Capizzi	32
Richard Rogers	48
Rosalyn Lever	63
The Honorable Robert K. Dornan	78
William Hart	81
The Honorable Loretta Sanchez	157
Wylie Aitken	171
Tony Miller	218

APPENDIX D: INTERROGATORIES ISSUED BY THE COMMITTEE

INTERROGATORIES ISSUED BY THE COMMITTEE ON HOUSE OVERSIGHT

OCTOBER 1, 1997

By September 1997, nearly a year had passed since the 1996 election and many months since the issuance of the Contestant's subpoena's, yet many entities central to the investigation into vote fraud still had not answered important questions as to what they knew or how they were involved with the election.

At its September 24, 1997 meeting, the Committee on House Oversight voted to authorize the Chairman, in consultation with the Ranking Member, to issue interrogatories relevant to the contested election.[80] The Committee's Ranking Minority Member, Sam Gejdenson, requested that the interrogatories be sent within 7 days of the meeting. After the Committee Chairman discussed the interrogatories with the Ranking Minority Member, the interrogatories were issued to Michael Farber, Nativo Lopez, Hermandad, Robert Dornan, Loretta Sanchez,[81] Wylie Aitken, John Shallman and Bennie Hernandez.

The Democratic Minority was afforded the opportunity to send interrogatories to individuals not included on the list discussed in Committee. Because the Minority failed to notify the Majority in a timely fashion of its intent to issue interrogatories to the California Secretary of State and the Orange County District Attorney, these interrogatories were issued one day later.

Both Michael Farber and Nativo Lopez refused to answer the interrogatories. Unfortunately, there is no statutory mechanism by which the House can compel compliance with an interrogatory.[82]

Congresswoman Sanchez's campaign manager, John Shallman asserted in his interrogatory response that it had rebuffed overtures by Nativo Lopez, through Art Montez of LULAC-Santa Ana, to assist her campaign in exchange for financial assistance to his political efforts. Sanchez's campaign manager asserted that Lopez wanted "to get some money from us [the Sanchez campaign] for all the work he had been doing [registering voters]."[83]

---

[80] Rule XI, clause 2(m)(1)(B) of the Rules of the House of Representatives. Rule No. 6(a)(2) of the Rules of Procedure of the Committee on House Oversight.

[81] At the September 24, 1997 meeting the Committee quashed the Contestant's subpoena for the personal deposition of Loretta Sanchez. The interrogatories issued by the Committee afforded the parties a less confrontational venue for establishing the facts of this case.

[82] 2 U.S.C. § 192 & § 194 provide for the enforcement of subpoenas issued by Congress, but make no provision for interrogatories.

[83] Interrogatory of John Shallman.

Benny Hernandez denied the accusations [84] of Nelson Molina and Jana Carty that he had encouraged non-citizen voting and double voting.

[84] Task Force for the Contested Election in the 46th Congressional district of California: Hearing on the Merits p. 199–204.

F6012

COMMITTEE ON HOUSE OVERSIGHT

RESOLUTION

CA-46 Interrogatories

(Adopted on September 24, 1997)

Resolved, that pursuant to rule XI, clause 2(m)(1)(B) of the Rules of the House of Representatives, and Rule No. 6(a)(2) of the Rules of Procedure of the Committee on House Oversight, the Chairman of the Committee, in consultation with the Ranking Minority Member, is authorized to direct the issuance of interrogatories relevant to the contested election in the 46th Congressional District of California to, but not limited to, the following: The Honorable Robert K. Dornan, The Honorable Loretta Sanchez, Mr. Benny Hernandez, Mr. Michael Farber, and Hermandad Mexicana Nacional.

UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON HOUSE OVERSIGHT

ROBERT DORNAN	)
Contestant,	)
v.	)
LORETTA SANCHEZ	)
Contestee.	)

INTERROGATORIES TO THE HON. ROBERT DORNAN

TO: The Hon. Robert Dornan
c/o William R. Hart, Esq.
Hart, King & Coldren
200 East Sandpointe
Suite 400
Santa Ana, CA 92707

The Committee on House Oversight, in accordance with a resolution adopted by the Committee on September 24, 1997, a quorum being present, directs the following interrogatories to you pursuant to U.S. Const. art.I, House Rule 10(h). You are directed to answer each of interrogatory separately and under oath and to serve a copy of your answers thereto with the Committee on House Oversight within seven (7) days.

Instructions

1. For each objection interposed to any interrogatory or subpart thereof, state with specificity each and every ground upon which the objection is based.

2. These interrogatories are continuing in nature and therefore require that supplemental answers be provided should any additional, responsive information be acquired after the time of compliance herewith.

3. Whenever necessary to bring within the scope of these Interrogatories any information which might otherwise be construed to be outside the scope of these Interrogatories, the singular form of a word shall be interpreted in the plural and vice versa, all words and phrases shall be construed as masculine, feminine, or neuter gender, according to the context, and "and" as well as "or" shall be construed either disjunctively or conjunctively.

4. Unless otherwise noted, each interrogatory relates to the time period from November 7, 1994 to the present.

5. "During the 1995-1996 election cycle" denotes the time period November 7, 1994 to December 31, 1996.

Interrogatories

1. Please describe in detail: 1) what, if any, voter registration related projects or efforts the Dornan for Congress initiated, participated in, implemented, collaborated in, or promoted during the 1995-1996 election cycle; 2) the length of

each project or effort; 3) the names of all persons who worked on each project or effort; 4) the number of persons assisted in registering to vote; 5) and the names of such persons assisted.

2. Please describe in detail and identify documents regarding any procedures designed, followed or implemented by Dornan for Congress to ensure that only eligible voters were registered.

3. Are you aware, or do you have knowledge of others who are aware, of any documented or undocumented aliens registering or being registered to vote during the 1995-1996 election cycle? Are you aware, or do you have knowledge of others who are aware, of documented or undocumented aliens that were assisted by any employee, agent or volunteer of Dornan for Congress, to vote during the 1995-1996 election contest? If so, please list the names, addresses and telephone numbers of the employee, agent or volunteer of Dornan for Congress and the names, addresses and telephone numbers of any documented or undocumented aliens that were so registered.

4. Did you, or anyone to your knowledge at the Dornan for Congress, have any communications with Benny Hernandez regarding voter registration projects or efforts during the 1995-1996 election cycle? If so, please state the date, describe the nature of the communication and identify who else had knowledge of the communication.

5. Did you, or anyone to your knowledge at Dornan for Congress, have any communications with Nativo Lopez, the Nativo Lopez for Schoolboard Campaign, or Hermandad Mexicana Nacional regarding voter registration projects or efforts during the 1995-1996 election cycle. If so, please state the date, describe the nature of the communication and identify who else had knowledge of the communication.

6. Do you have knowledge, or are you aware of anyone at the Dornan for Congress having knowledge, of any employee, agent or volunteer of Hermandad Mexicana Nacional, registering or attempting to register any documented or undocumented aliens to vote? If so, please list the names, addresses and telephone numbers of the employee, agent or volunteer of Hermandad Mexicana Nacional and the names, addresses and telephone numbers of any documented or undocumented aliens that were so registered.

7. Have you, your attorneys, or Dornan for Congress undertaken any investigation of allegations of vote fraud in connection with the 1995-1996 election in the 46th District? If so, please describe in detail the nature, method, scope and results of any such investigation.

8. Did Dornan for Congress pay anyone bounties, fees or anything of value to register voters? If so, please describe in detail the nature and scope of such efforts, and list the names, addresses and telephone numbers of persons to whom such bounties, fees or things of value were paid.

9. Please describe in detail and identify documents regarding any procedures designed, followed or implemented by Dornan for Congress to verify the legality of registrations secured by third parties working with or paid by Dornan for Congress.

10. Describe how the files of Dornan for Congress are maintained, including, but not limited to, the name of the custodian of records and the custodian of petty cash funds.

COMMITTEE ON HOUSE OVERSIGHT

By: Bill Thomas
The Hon. William M. Thomas
Chairman

Minority Interrogatories to Contestant Robert Dornan

1. On September 28, 1997, the Los Angeles Times reported as follows: "[Mr. Dornan] told the audience of about 120 people that a committee staffer told him there actually are sufficient fraudulent votes to 'reseat' the former congressman." P. Warren, "Proof of Voter Fraud Found, GOP Claims," Los Angeles Times, September 28, 1997, page B1 (Attached as Exhibit A). Is this report accurate in sum and substance? If not, identify any and all aspects of the report that you contend are not accurate, and explain why you contend these aspects of the report are not accurate.

2. On September 28, 1997, the Orange County Register reported as follows:

> Former Rep. Robert K. Dornan predicted Saturday that a congressional committee soon will move to strip Rep. Loretta Sanchez of her seat because the panel has concluded that at least 1,200 fraudulent votes were cast in the 1996 election in which Sanchez defeated him.
>
> Dornan, speaking to California Republican delegates at a three-day convention here, said he based his prediction on a confidential telephone conversation with a staff member of the House Oversight Committee who shared with him the results of the panel's investigation.

D. Weintraub and M. Katches, "Dornan: Panel to overturn his defeat," Orange County Register, September 28, 1997, page 1 (metro section) (Attached as Exhibit B). Is this report accurate in sum and substance? If not, identify any and all aspects of the report that you contend are not accurate, and explain why you contend those aspects of the report are not accurate.

3. Did you attend the California Republican Convention on or about September 27, 1997?

4. Did you state in sum and substance "that a committee staffer told [you or anyone representing you or acting on your behalf] there actually are sufficient fraudulent votes to 'reseat' [you]?"

5. Did "a committee staffer" or anyone else affiliated with the House of Representatives as an employee or consultant tell you or anyone representing you or acting on your behalf in sum and substance that "there actually are sufficient fraudulent votes to 'reseat' [you]?"

6. If not, did you or anyone representing you or acting on your behalf hold any similar conversations with anyone affiliated with or employed by the House of Representatives.

7. Identify the individual who made the statement(s) described in the interrogatories 5 and 6 and the individual to whom the statement was made. In particular, state each individual's name. If you do not know the name of the individual, provide a physical description. If the individual is affiliated with or employed by the House of Representatives, state the individual's position. If you do not know the individual's position with the House of Representatives, describe the basis for the statement that the individual was "a committee staffer." If the individual represented you or was acting on your behalf, describe the nature of your relationship with the individual.

8. When did you or anyone representing you or acting on your behalf speak with the individual affiliated with the House of Representatives described in the foregoing interrogatory?

9. Where were the participants in this conversation when it took place?

10. Was anyone else present during the conversation? If so, identify each person who was present during the conversation. In particular, state each individual's name and position with the House of Representatives. If you do not know the name of the individual, provide a physical description. If you do not know the individual's position with the House of Representatives, provide any and all information you have regarding the person's employment. If the individual represented you or was acting on your behalf, describe the nature of your relationship with the individual.

11. Who initiated the conversation? If the conversation occurred by telephone, who made the call? If you or anyone representing you or acting on your behalf made the call, what telephone number did you or that person call? Also, who answered the phone? If the person who provided the information described in interrogatories 1 and 2 did not answer the phone, explain how you or the person representing you or acting on your behalf came to speak to that person.

12. Who first raised the subject of the contested election in the 46th district of California?

13. Describe the conversation in its entirety. State any and all subjects that were discussed, and describe any and all comments made by any and all participants in the conversation on each such subject.

14. Do you contend that undocumented aliens voted in the 1996 general election in the 46th congressional district of California?

If so, how many undocumented aliens do you contend voted in that election? Identify by name and address each undocumented alien you contend voted in that election? For each undocumented alien that you contend voted in that election, provide and describe any and all evidence you have to support your contention?

15. Do you contend that documented legal aliens voted in the 1996 general election in the 46th congressional district of California? If so, how many documented legal aliens do you contend voted in that election? Identify by name and address each documented legal alien you contend voted in that election? For each documented legal alien that you contend voted in that election, provide and describe any and all evidence you have to support your contention?

Los Angeles Times
ORANGE COUNTY
DATE: 9/25/97
SECTION: Metro
PAGE: 1

Proof of Voter Fraud Found,

Politics: Gingrich has told party leaders there is sufficient evidence to overturn Sanchez election, state Republican chairman tells convention in Anaheim. Democrats call congressional probe 'farce.'

By PETER M. WARREN
TIMES STAFF WRITER

ANAHEIM—House Speaker Newt Gingrich informed party leaders that "there is now sufficient evidence to overturn" the election of Rep. Loretta Sanchez, state GOP Party Chairman Michael Schroeder told the state Republican convention here Saturday.

Schroeder, who represents Robert K. Dornan in his bid to win back his seat from Sanchez (D-Garden Grove), made that claim as he introduced Dornan, who made a surprise appearance on the second day of the three-day gathering at the Anaheim Marriott.

Although Dornan provided more details at a news conference held later in the day, neither his claim nor Schroeder's was supported by any documentation. It marked the latest twist in the bitterly contested election that remains the subject of an investigation by the House Oversight Committee.

Dornan, who lost the November election in the 46th District to Sanchez by 984 votes, told reporters that he has learned that the probe has uncovered "bulletproof" evidence of between 1,200 and 1,500 fraudulent votes cast—more than enough to sway the outcome.

But it remained unclear Saturday whether the claims signaled a turning point in the House probe, or whether it was more of the same rhetoric that has dominated the debate. House committee officials have refused to discuss the details of their investigation.

A Sanchez spokesman called the investigation a farce and said that if an unbiased investigation shows enough evidence of voter fraud to change the outcome, "Loretta Sanchez would demand a new election."

That's just what Dornan predicted his former congressional colleagues would do

GOP Claims

before adjourning in November.

During the afternoon session of the convention, which is coincidentally meeting in the district that Dornan once represented, he told the audience of about 120 people that a committee staffer told him there actually are sufficient fraudulent votes to "reseat" the former congressman.

During the news conference Dornan put the total number of allegedly "provable" fraudulent votes at about 1,000, a sizable enough number that his supporters say would justify Congress not only ousting Sanchez but seating him without a new election.

However, Dornan predicted his colleagues would rather "vote for a new election" than take the political heat.

Schroeder introduced Dornan as "our

Please see DORNAN, B6

Continued from B1

congressman-elect and our congressman in exile."

Schroeder rallied the semiannual GOP conclave by insisting the Republican Party "would not go quietly into the night" and be cowed by charges that to oust Sanchez would "alienate Hispanics and alienate women."

At one point, Schroeder told those die-hards who remained in the hall that "some suggest we should drop it." Most yelled back, "No, no way!"

"We are going to draw a line in the sand when Democrats try to steal our elections," Schroeder said, and not cease "until the election is corrected and the laws are changed."

At issue is whether illegal votes were cast, and for whom. Dornan has long contended that efforts to recruit new minority voters for Sanchez helped result in voting irregularities that cost him the election. Sanchez's campaign hotly disputes that.

Sanchez spokesman John Shallman said that if Republicans can show there are 984 individuals who voted fraudulently and that they cast ballots for Sanchez, then there should be a new election.

However, he said Sanchez and Democrats have reservations about the objectivity of the investigation.

"Thus far, the investigation has been anything but fair," he said. "It has been a farce."

Dornan was received warmly at the convention, though organizers stashed him in a staff room for about 90 minutes after he arrived at the hotel, despite reporters' efforts to meet with him.

A staffer said party leaders did not want to detract from a speech being given by former Vice President Dan Quayle.

When Dornan called on delegates, there were only a remnant left in the hall from the 650 that heard Quayle. He made a pitch for the resolution coming up today that asks Congress to call for a new election in the Dornan-Sanchez dispute.

Dornan also said he is considering running for his seat in 1998 as "a matter of honor" because of the recent vote by 111 Republicans who joined Democrats in barring him from the House floor.

He received a standing ovation and several delegates embraced him.

Speaking about the months since his ouster, Dornan said it has been frustrating, but he praised Orange County Dist. Atty. Michael R. Capizzi for investigating the voter fraud [illegible]

Exhibit A
p. 2

Register
ORANGE COUNTY, CALIFORNIA
DATE: 9/28/97
SECTION: metro
PAGE: 1

Doman: Panel to overturn his defeat

POLITICS: Rep. Sanchez's chief aide says she has lost confidence in the election probe.

By DANIEL M. WEINTRAUB and MARK KATCHES
The Orange County Register

ANAHEIM — Former Rep. Robert K. Doman predicted Saturday that a congressional committee soon will move to strip Rep. Loretta Sanchez of her seat in the House of Representatives because the panel has concluded that at least 1,200 fraudulent votes were cast in the 1996 election in which Sanchez defeated him.

Doman, speaking to California Republican Party delegates at a three-day convention here, said he based his prediction on a confidential telephone conversation with a staff member of the House Oversight Committee who shared with him the results of the panel's investigation.

"The seat will be vacated," Doman told reporters after his speech. "There will be a new election."

Doman's account could not be confirmed Saturday night.

But Steve Jost, chief of staff for Sanchez, said Saturday that the Democratic congresswoman has "lost confidence" in the committee's investigation and would not be surprised if Republicans voted to kick her out of Congress.

"It's not merit anymore," Jost said. "It's politics. We're ready for anything."

Please see DOMAN Page 4

Exhibit B
p.1

Exhibit B
P. 2

DORNAN: He refers to himself as 'congressman in exile'

FROM 1

Dornan said the congressional staffer was a woman, but he refused to name her. He described her as a "whistle-blower" who told him that he had been her inspiration to enter politics.

Sanchez defeated Dornan by 984 votes. The outcome of the race has been under investigation by District Attorney Michael Capizzi, Secretary of State Bill Jones and the House committee since allegations surfaced that a nonprofit immigrant-assistance group registered people to vote who were not U.S. citizens.

Late last week, Oversight Committee Chairman Rep. Bill Thomas, R-Bakersfield, said the committee was still finishing its examination of the numbers.

And Rep. Vernon Ehlers, R-Mich., a key member of the Oversight Committee, said last week that the committee was more than a month away from concluding its investigation.

But Dornan gave a different account in his fiery speech to the GOP convention Saturday, in which he referred to himself as the "congressman in exile" and vowed to regain his place in Congress.

His unscheduled address came at the end of the afternoon program, when most of the delegates had left the hall. About 150 people were there to hear him, and they gave him a warm reception.

Dornan said his source on the committee staff told him the panel had determined that about 3,000 votes were illegally cast in the race, enough, Dornan said, to throw out the results of the election and give him the seat.

But Dornan said congressional Republicans, still shellshocked by a series of partisan setbacks in recent months, lacked the "intestinal fortitude" to hand him the seat. So he said he was told the panel would produce a "bulletproof" list of 1,200 to 1,500 fraudulent votes and call for a new election.

Dornan said this account matches what he has been hearing "second- and third-hand" from members of Congress. He also noted that House Speaker Newt Gingrich, commenting on the contested election for the first time last week, said he believed the committee could have proof of enough voter fraud to overturn the result.

Jost said Sanchez still believes the election was valid.

"She invited the committee to come to her district and investigate this because she was confident that there is no evidence of nowhere near enough votes to change the outcome of the election," Jost said. "She's more confident of that today than she's ever been."

HART, KING & COLDREN

A PROFESSIONAL LAW CORPORATION

200 EAST SANDPOINTE, FOURTH FLOOR
DIRECT ALL MAIL TO: P.O. BOX 2507
SANTA ANA, CALIFORNIA 92707
TELEPHONE (714) 432-8700
FACSIMILE (714) 546-7457

ROBERT S. COLDREN
GARY R. KING
WILLIAM R. HART
CANDICE L. CAMPBELL
JOHN H. PENTECOST
C. WILLIAM DAHLIN
GLENN MONDO

BARBARA J. DIBBLE
CHRISTOPHER R. ELLIOTT
RICHARD P. GERBER
JON J. JANECEK
LINDA J. LESTER
RACHELLE E. MENAKER
ROBERT J. MULVIHILL
SHAWN J. D. WACHTER

INLAND EMPIRE OFFICE
3350 SHELBY STREET, SUITE 200
ONTARIO, CALIFORNIA 91764
TELEPHONE (909) 944-2514

OF COUNSEL
MICHAEL J. SCHROEDER, P.C.
JOHN C. TEAL, JR.

VIA FEDERAL EXPRESS

October 8, 1997

The Honorable William M. Thomas
Chairman, Committee on House Oversight
United States House of Representatives
1309 Longworth House Office Building
Washington, D.C. 20515-6157

Re: Dornan/Sanchez Election Contest

Dear Chairman Thomas:

Enclosed please find the interrogatory responses from Contestant, Robert K. Dornan.

Very truly yours,

HART, KING & COLDREN

William R. Hart

WRH:ci
Enclosure(s)
cc: John Kelliher
Mark Braden
71362.001/170877

UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON HOUSE OVERSIGHT

ROBERT K. DORNAN, Contestant, vs. LORETTA SANCHEZ, Contestee.	RESPONSE TO INTERROGATORIES (MAJORITY AND MINORITY) BY CONTESTANT, ROBERT K. DORNAN

ANSWERS TO INTERROGATORIES

(Majority)

1. (1) None; Dornan for Congress in 1984, 1986, 1988, 1990, 1992, 1994 and 1996 always relied on representatives from the County and State Republican Party to organize and run voter registration drives.

(2) Not applicable.

(3) Not applicable.

(4) Not applicable.

(5) Not applicable.

2. Dornan for Congress did not design, follow or implement

any procedures in this regard. Therefore, Dornan for Congress has no documents regarding any such procedures.

3. I am aware of others who are aware of documented or undocumented aliens being registered to vote during the 1995-1996 election cycle. To my knowledge, no employee, agent or volunteer of Dornan for Congress assisted any documented or undocumented alien to vote in the 1995-1996 election cycle. I am informed and believe that Loretta Sanchez, Nativo Lopez, Benny Hernandez and Mike Farber were and are knowledgeable about the registration of documented or undocumented aliens in the 1995-1996 Election Contest. In my earlier filings with the Committee on House Oversight, my attorneys have provided affidavits and other evidence identifying individuals and organizations who we believe may have been involved in efforts to register noncitizens to vote. I would refer the Committee to that volume of information that has been earlier provided containing the identification of those individuals. Particular attention should be paid to Section V of Contestant's Field Hearing Brief filed on April 14, 1997.

4. To my knowledge, no one in Dornan for Congress had any communication with Benny Hernandez regarding voter registration projects or efforts during the 1995-1996 election cycle.

5. To my knowledge, no one in Dornan for Congress had any communication with Nativo Lopez, the Nativo Lopez for School Board Campaign, or Hermandad Mexicana Nacional regarding voter registration projects or efforts during the 1995-1996 election cycle.

6. After the November 5, 1996, election, I received several calls from supporters in the community advising me that noncitizens

had been registered and had voted in that election. Both Nativo Lopez and Michael Farber were mentioned as persons knowledgeable in this regard. I am informed and believe that Nativo Lopez is the executive director of Hermandad Mexicana Nacional and Michael Farber was a democratic candidate for Congress in the 1996 Democratic Primary and has business interests in the Guttenberg Group, Dump Dornan Campaign, The Strategy Group and Frontline Strategy Group, which, in turn, are affiliated with and physically located within the offices of Hermandad Mexicana Nacional. To my knowledge, Mr. Lopez may be reached at his residence located at 2218 South Van Ness, Santa Ana, California 92702, telephone number is unknown, or at Hermandad Mexicana Nacional located at 825 North Broadway, Santa Ana, California, telephone number (714) 541-0250. Mr. Farber may be reached at his residence located at 720 West Memory Lane, Santa Ana, California, telephone number is unknown, or at Hermandad Mexicana Nacional located at 825 North Broadway, Santa Ana, California, telephone number (714) 541-0250.

With regard to the names, addresses and telephone numbers of any documented or undocumented aliens so registered, my attorneys have provided to the Committee a list of some 1,160 individuals registered by Hermandad Mexicana Nacional prior to the November 1996 election. Of that total, the District Attorney and the Secretary of State have identified some 303 probable documented noncitizens and an additional 69 probable illegal aliens who actually voted in the 46th Congressional District in November 1996. The Secretary of State and the District Attorney have identified hundreds more who registered and voted throughout Orange County, California. The Hermandad list and supporting affidavit of Edward

Contreras, the District Attorney investigator, has been provided to the Committee by my attorneys and the Secretary of State. See Exhibit "2" and "4" of the Contestant's Field Hearing Brief. Of course, the Committee has been directly investigating the identities of additional documented or undocumented aliens in concert with the INS. I have been precluded from access to the INS records and all of our efforts to obtain this information directly from other sources (Hermandad, One-Stop Immigration, Rancho Santiago Colleges, Catholic Charities, Active Citizenship Campaign, Sanchez Campaign for Congress, etc.) have been stonewalled in their entirety.

7. Neither myself nor Dornan for Congress have undertaken any independent investigation of the allegations of voter fraud. My attorneys have engaged in an ongoing effort from December 1996 forward to bring to the attention of this Committee the basis for these allegations. My attorneys have sought deposition testimony and records from nearly 50 sources of information. The Committee is aware of each of those efforts and has been directly involved in the enforcement of that discovery. The Committee is in possession of all of the information and documentation that my attorneys have assembled in this investigation.

My attorneys have sought via United States District Court subpoena from various public agencies, including the Registrar of Voters, the United States District Court (Immigration Division), the Orange County District Attorney, and the INS.

My attorneys have sought information via United States District Court subpoena from the relevant organizations involved with voter registration in Orange County, including Hermandad Mexicana

Nacional, Catholic Charities, Rancho Santiago Colleges, One-Stop Immigration, Active Citizenship Campaign, Southwest Voter Project and Sanchez for Congress.

My attorneys sought information via United States District Court subpoena from individuals who were involved in voter registration and the Sanchez Campaign, including Loretta Sanchez, Nativo Lopez, Benny Hernandez, Mike Farber, Jim Prince, Father Miguel Vega, Burt Corona, various labor union locals. The results of this investigation in concert with the Committee's findings over the past number of months have identified the fact that thousands of noncitizens were registered in Orange County, California, in 1995-1996.

As many as 303 documented noncitizens and 69 illegal aliens actually voted in the 46th Congressional District out of a total of 1,160 voters registered by Hermandad. The District Attorney and the Secretary of State have identified hundreds more noncitizens who were registered and voted in Orange County but outside the 46th Congressional District. In addition, the Contestant has made available to the Committee the list of persons summoned for jury duty in Orange County, California, since 1995 who certified under penalty of perjury that they were unable to serve as jurors because they were noncitizens. Contestant is informed and believes that list has been cross-checked with the list of voters in the 46th Congressional District. The analysis undertaken by my attorneys of this data, without the aid of the INS records that are in the possession of the Committee, has revealed thousands of matches of names between the list of summoned jurors and persons voting in the 46th Congressional District.

We have identified as many as 149 additional votes that the Registrar of Voters acknowledges should not have been counted in the November 1996 election consisting of double voters, voters voting from commercial addresses and invalid absentee ballots. Of course, due to the fact that our subpoena to the INS was quashed by the Committee and we have been stonewalled by virtually all of the individuals or organizations involved in the Sanchez campaign and voter registration here in Orange County, we have not had the benefit of that information to further document the nature and extent of voter fraud in the 46th Congressional District in the 1995-1996 election.

The Committee must bear in mind that my efforts as the Contestant in this proceeding were directly threatened by both Steve Jost, Loretta Sanchez's chief of staff, and Nativo Lopez, executive director of Hermandad Mexicana Nacional in that each has been quoted in the press, respectively, as stating that Sanchez would advise persons and organizations to refuse to comply with legitimate discovery initiated in the Election Contest and Hermandad would advise residents within the community not to comply with investigators from any source who contacted those residents concerning election fraud in the 46th Congressional District. Obviously, under these circumstances, it would have been futile and, perhaps, dangerous to send volunteers into the community on a door-to-door basis in an effort to identify persons who may have been involved in voter fraud during the 1995-1996 election cycle.

8. No.

9. Not applicable (see answer to number 8).

10. In Dornan for Congress, there was no petty cash fund that

existed as such because during the campaign, all small expenses such as stamps, stationery and snacks for volunteers, etc., were paid for by small checks. The files in this regard are maintained by a firm in Virginia called Washington Intelligence Bureau which provides information to an accountant who prepared the Federal Election Commission forms. I then check the forms for accuracy to the best of my ability and sign them. It has been my practice to mail or personally deliver the completed forms to the Federal Election Commission.

OBJECTIONS

(Minority)

The Contestant both objects to and deplores the Minority's decision to continue to abuse their role in the Election Contest by focusing solely on assisting Loretta Sanchez in obstructing and stonewalling this Congressional investigation. The Minority is well aware that serious voter fraud occurred in the 46th Congressional District during the 1995-1996 election cycle. Rather than engage in a good faith attempt to determine the extent of this voter fraud and the persons responsible, the Minority has elected to abuse the limited authority granted to it by the Congress by using the interrogatory process to engage in a witch hunt against a Congressional whistle blower who has made public information damaging to the minority's political position on behalf of Loretta Sanchez.

It is completely irrelevant whether or not the Contestant attended the California Republican Party Convention. Any conversations that Contestant may have had with a whistle blower

during this contest that serves to document the Sanchez voter fraud and to overcome the stonewalling that has been engaged in by the Minority are similarly irrelevant.

The Contestant, without waiving any of the foregoing objections, all of which are reserved, hereby provide the following responses solely because of the Contestant's respect for the traditions and integrity of the House of Representatives and to assist his former colleagues in their effort to overcome the orchestrated stonewalling that has characterized the conduct of Ms. Sanchez and many others engaged in support of her agenda.

ANSWERS TO INTERROGATORIES

(Minority)

1. The story in the September 28, 1997, edition of the Los Angeles Times is partially correct. The person who contacted me by telephone on September 25, 1997, told me that she worked "on the hill". She further stated that "we have had over 1,200 names of illegal voters identified since July". The caller's use of the pronoun "we" and her reference to working "on the hill" lead me to conclude that she worked closely with the Committee on House Oversight or with someone with intimate knowledge of the investigation.

2. The story on September 28, 1997, in the Orange County Register is only partially correct for the reasons set forth in the answer to interrogatory number 1. Further, it was and is my assumption that the investigation is nearing its end both because that is my opinion and an opinion shared by the anonymous caller of September 25, 1997. Please note that the Register article accurately states that it was my "prediction" that the number of

illegal votes identified in the 46th Congressional District will probably be sufficient to call upon California Governor, Pete Wilson, to set a date for a special election.

3. Yes.

4. The caller on September 25, 1997, stated that there are "2,000 more identified since then (July)". I replied by stating words to the effect that if there were many more than 1,200 then I should be able to demand that I be seated as the Congressman from 46th District. The caller responded, "I agree".

5. The caller only used round numbers, i.e., 1,200 and 2,000 illegal votes, and expressed agreement with my observation that if the number of illegal votes were much more than 1,200, then that should be enough to declare me the victor in the November 1996 election.

6. No.

7. The caller was anonymous and refused to identify herself. The caller spoke only to me. The voice was female. The caller stated that she worked "on the hill" and I therefore assumed she meant Capitol Hill in Washington, D.C. She further used the pronoun "we" causing me to conclude that she occupied a position either within or close to the Committee and its investigation. The caller did not represent me nor was she ever acting on my behalf. I have no idea of the identity of the caller.

8. Thursday afternoon, September 25, 1997.

9. I have no idea of the location of the caller when she made the call to me. I was in my Washington area residence located in Fairfax, Virginia.

10. No one else was present during the conversation. Again,

no one represented me or was acting on my behalf relative to this phone call.

11. The anonymous caller initiated the conversation by placing a telephone call to my residence.

12. Upon picking up the telephone and greeting the caller and the caller confirming that she was actually speaking to Bob Dornan, the caller stated: "Please don't give up". At that point I assumed that she was referring to the contested election in the 46th Congressional District.

13. The conversation between myself and the caller on September 25, 1997, is set forth as close to verbatim as my recollection will permit as follows: (RKD is Robert K. Dornan; Caller is anonymous caller).

RKD: Hello?

Caller: Is this Congressman Dornan?

RKD: It sure is.

Caller: Please don't give up.

RKD: Well, of course I won't. Who is this?

Caller: I work on the hill and I'd rather not tell you my name. I just called to say that we have had 1,200 names of illegal voters identified since July. There are another 2,000 more identified since then that are being carefully checked so there are no mistakes.

RKD: Terrific. You mean 1,200 is what could be called bullet proof--no errors?

Caller: Yes.

RKD: Much more than that and I should be able to demand

that I be seated.

Caller: I agree.

RKD: Do I know you?

Caller: No. You inspired me to come to Washington.

RKD: Did you work for me? Were you an intern? A page?

Caller: No. I watched you on CNN (she may have said C-SPAN). My parents are pro-life supporters.

RKD: Thank them for me and thanks for calling. It's good for my morale.

Caller: (She laughed). That's why I called. I just don't want you to give up when you are so close.

RKD: I promise. We (meaning my family) will hang in there. Please call me when this is over. I've got to find out why the counting took so long.

Caller: I will. Good luck.

RKD: Thanks, again. Good bye.

14. Yes. To the best of my knowledge, the District Attorney and the Secretary of State have identified at least 69 undocumented aliens who voted in the 46th Congressional District in November 1996. I have been stonewalled in my efforts to identify additional undocumented aliens who voted in the 46th Congressional District because subpoenas issued by the United States District Court have been stonewalled or ignored by those organizations and individuals who know the answer to this question. Those individuals and organizations include Loretta Sanchez, the Sanchez for Congress Campaign, Hermandad Mexicana Nacional, One-Stop Immigration, Southwest Voter Project, Rancho Santiago College, Active Citizenship Campaign, Naturalization Assistance Services, Nativo

Lopez, Mike Farber, Jim Prince, John Shallman, Benny Hernandez, Father Miguel Vega, the INS and many of the other individuals and organizations who failed to respond to or comply with legitimate court ordered discovery in this Election Contest.

15. Yes. To the best of my knowledge, the District Attorney and the Secretary of State have identified at least 303 documented legal aliens who voted in the 46th Congressional District in November 1996. I have been stonewalled in my efforts to identify additional documented legal aliens who voted in the 46th Congressional District because subpoenas issued by the United States District Court have been stonewalled or ignored by those organizations and individuals who know the answer to this question. Those individuals and organizations include Loretta Sanchez, the Sanchez for Congress Campaign, Hermandad Mexicana Nacional, One-Stop Immigration, Southwest Voter Project, Rancho Santiago College, Active Citizenship Campaign, Naturalization Assistance Services, Nativo Lopez, Mike Farber, Jim Prince, John Shallman, Benny Hernandez, Father Miguel Vega, the INS and many of the other individuals and organizations who failed to respond to or comply with legitimate court ordered discovery in this Election Contest.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

Dated: October 8, 1997

Robert K. Dornan

Contestant Robert K. Dornan

71362.001/170801

PROOF OF SERVICE
Section 1013A (3)

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the county of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 200 East Sandpointe, Fourth Floor, Santa Ana, California 92707-0507.

On October 8, 1997, I caused the foregoing document described as **RESPONSE TO INTERROGATORIES (MAJORITY AND MINORITY) BY CONTESTANT, ROBERT K. DORNAN** to be served on the interested parties in this action by placing ( ) the original; **(X)** a true copy thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED SERVICED LIST.

____ **BY MAIL** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Santa Ana, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing in the affidavit.

____ **BY FACSIMILE TRANSMISSION** On October 8, 1997, in addition to service by mail, I served the above-referenced documents by facsimile transmission.

_XX_ **BY FEDERAL EXPRESS** I caused such envelope to be placed for collection and delivery on this date in accordance with standard Federal Express overnight delivery procedures.

____ **BY PERSONAL SERVICE** I caused such envelope to be delivered by hand to the offices of the addressee.

Executed on October 8, 1997, at Santa Ana, California.

____ **STATE** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

_XX_ **FEDERAL** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Chae Ianni

SERVICE LIST

The Honorable William M. Thomas (ORIGINAL)
Chairman, Committee on House Oversight
United States House of Representatives
1309 Longworth House Office Building
Washington, D.C. 20515-6157

John Kelliher
Deputy Counsel for the
Committee on House Oversight
1309 Longworth House Office Building
Washington, DC 20515-6157

Mark Braden
Baker & Hostetler
1050 Connecticut Avenue, N.W.
Washington Square, Suite 1100
Washington, DC 20036

UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON HOUSE OVERSIGHT

ROBERT DORNAN	)
Contestant,	)
v.	)
LORETTA SANCHEZ	)
Contestee.	)

INTERROGATORIES TO THE HON. LORETTA SANCHEZ

TO: The Hon. Loretta Sanchez
c/o Wiley Aitkin, Esq.
3 Imperial Promenade
Suite 800
P.O. Box 2555
Santa Ana, CA 92707-2555

The Committee on House Oversight, in accordance with a resolution adopted by the Committee on September 24, 1997, a quorum being present, directs the following interrogatories to you pursuant to U.S. Const. art.I, House Rule 10(h). You are directed to answer each of interrogatory separately and under oath and to serve a copy of your answers thereto with the Committee on House Oversight within seven (7) days.

Instructions

1. For each objection interposed to any interrogatory or subpart thereof, state with specificity each and every ground upon which the objection is based.

2. These interrogatories are continuing in nature and therefore require that supplemental answers be provided should any additional, responsive information be acquired after the time of compliance herewith.

3. Whenever necessary to bring within the scope of these Interrogatories any information which might otherwise be construed to be outside the scope of these Interrogatories, the singular form of a word shall be interpreted in the plural and vice versa, all words and phrases shall be construed as masculine, feminine, or neuter gender, according to the context, and "and" as well as "or" shall be construed either disjunctively or conjunctively.

4. Unless otherwise noted, each interrogatory relates to the time period from November 7, 1994 to the present.

5. "During the 1995-1996 election cycle" denotes the time period November 7, 1994 to December 31, 1996.

Interrogatories

1. Please describe in detail: 1) what, if any, voter registration related projects or efforts the Committee for Loretta Sanchez initiated, participated in, implemented, collaborated in, or promoted during the 1995-1996 election cycle; 2) the length of each project or effort; 3) the names of all persons who worked on each project or effort and the precinct and areas worked; 4) the number of persons assisted in registering to vote; 5) and the names of such persons assisted.

2. Please describe in detail and identify documents regarding any procedures designed, followed or implemented by the Committee for Loretta Sanchez to ensure that only eligible voters were registered.

3. Do you know Benny Hernandez? Was Mr. Hernandez an employee, agent or volunteer of the Committee for Loretta Sanchez? If so, please describe in detail his position, duties, compensation, and list the names of his direct superiors, co-workers and subordinates.

4. Please describe in detail the involvement, if any, that Benny Hernandez had with the Committee for Loretta Sanchez regarding voter registration and voter turnout.

5. Are you aware, or do you have knowledge of others who are aware, of any documented or undocumented aliens registering to vote during the 1995-1996 election cycle? Are you aware, or do you have knowledge of others who are aware, of documented or undocumented aliens that were assisted by any employee, agent or volunteer of the Committee for Loretta Sanchez to vote during the 1995-1996 election contest? If so, please list the names, addresses and telephone numbers of the employee, agent or volunteer of the respective organization and the names, addresses and telephone numbers of any documented or undocumented aliens that were so registered.

6. To your knowledge, was Nelson Molina requested by the Committee for Loretta Sanchez or anyone else to appear in a

campaign advertisement for Loretta Sanchez? Did he did appear in such an advertisement? Did you, or anyone to your knowledge, encourage or assist Mr. Molina to register to vote despite the fact that he was not a citizen?

7. Did you, or anyone to your knowledge, encourage or assist Jana Carty to register to vote twice, by both absentee ballot and at the polling place?

8. Did you, or anyone to your knowledge at the Committee for Loretta Sanchez, have any communications with Benny Hernandez regarding voter registration projects or efforts during the 1995-1996 election cycle? If so, please state the date, describe the nature of such communication and identify who else had knowledge of the communication.

9. Did you, or anyone to your knowledge at the Committee for Loretta Sanchez, have any communications with Nativo Lopez, the Nativo Lopez for Schoolboard Campaign, Hermandad Mexicana Nacional, Michael Farber, Humbert Corona, Citizens Forum, Dump Dornan or the Guttenberg Group regarding voter registration projects or efforts during the 1995-1996 election cycle? If so, please state the date, describe the nature of such communication and identify who else had knowledge of the communication.

10. Do you have knowledge, or are you aware of anyone at the Committee for Loretta Sanchez having knowledge, of any employee, agent or volunteer of Hermandad Mexicana Nacional, Michael Farber, Humbert Corona, Citizens Forum, Dump Dornan or

the Guttenberg Group registering or attempting to register any documented or undocumented aliens to vote? If so, please list the names, addresses and telephone numbers of the employee, agent or volunteer of the respective organization and the names, addresses and telephone numbers of any documented or undocumented aliens that were so registered.

11. Have you, your attorneys, or the Committee for Loretta Sanchez undertaken any internal investigation of allegations of vote fraud in connection with the 1995-1996 election in the 46th District? If so, please describe in detail the nature, method, scope and results of any such investigation.

12. Did the Committee for Loretta Sanchez pay anyone bounties, fees or anything of value to register voters? If so, please describe in detail the nature and scope of such efforts, and list the names, addresses and telephone numbers of persons to whom such bounties, fees or things of value were paid.

13. Please describe in detail and identify documents regarding any procedures designed, followed or implemented by the Committee for Loretta Sanchez to verify the legality of registrations secured by third parties working with or paid by the Committee for Loretta Sanchez.

14. Are you aware that the Committee for Loretta Sanchez received a subpoena pursuant to the Federal Contested Election Act? If so, list all individuals with whom have you discussed this subpoena from the date of receipt to the present? Are you

aware of any documents, computer disks or files in the possession of the Committee for Loretta Sanchez being destroyed, removed or deleted after your receipt of the subpoena?

15. Describe how the files of the Committee for Loretta Sanchez are maintained, including, but not limited to, the name of the custodian of records and the custodian of petty cash funds.

16. Are you aware of a contribution by Dump Dornan to the Nativo Lopez for Schoolboard Campaign, which was annotated with the memo for Loretta Sanchez GOTV? Was this check, in fact, used to assist the Committee for Loretta Sanchez?

17. Do you have any knowledge of who was endorsed or supported in the 1995-1996 election cycle by Hermandad Mexicana Nacional?

COMMITTEE ON HOUSE OVERSIGHT

By: Bill Thomas
The Hon. William M. Thomas
Chairman

WYLIE A. AITKEN, BAR NO. 37770
LAW OFFICES OF WYLIE A. AITKEN
WILLIAM J. KOPENY, ESQ.
KOPENY & POWELL
STAN BRAND, ESQ.
DAVID FRULLA, ESQ.
BRAND, LOWELL & RYAN
FREDERIC D. WOOCHER, ESQ.
STRUMWASSER & WOOCHER
3 IMPERIAL PROMENADE, SUITE 800
P.O. BOX 2555
SANTA ANA, CA 92707-2555
(714) 434-1424

Attorneys for Contestee, LORETTA SANCHEZ

COMMITTEE ON HOUSE OVERSIGHT OF THE

HOUSE OF REPRESENTATIVES OF THE UNITED STATES

In the Matter of the Contested Election of LORETTA SANCHEZ for the Office of the House of Representatives to the United States Congress, ROBERT K. DORNAN, Contestant, vs. LORETTA SANCHEZ, Contestee.	)	THE HONORABLE LORETTA SANCHEZ' RESPONSES TO INTERROGATORIES [U.S. CONST. ART 1, HOUSE RULE, 10(h)]

PRELIMINARY STATEMENT

Subject to each of the following qualifications and objections, the Honorable Loretta Sanchez responds to the Interrogatories propounded by the Committee on House Oversight, as follows:

These responses are based solely on the information presently known and currently available to this responding party after conducting a reasonable inquiry and search. Nevertheless, the information provided in these responses is given in a good faith effort to supply as much factual material as possible.

All of the answers are based only upon such information and documents which are presently available to and specifically known to this responding party. The following interrogatory responses are given without prejudice to responding party's right to produce evidence of any subsequently discovered fact or facts.

GENERAL OBJECTIONS

These interrogatories are oppressive and burdensome, because they are vague, ambiguous, and unintelligible so as to make responses impossible without speculation as to the meaning of the questions. However, without waiving said objections the answering party has attempted to give meaning to the interrogatories.

These interrogatories are also "continuing interrogatories" and as such oppressive and burdensome and prohibited by law. See Kenny v. Superior Court 255 Cal.App.2d 106, 63 Cal.Rptr. 84 (1967).

RESPONSES TO INTERROGATORIES

Response to Interrogatory No. 1:

1) None. However, we did provide as a courtesy blank voter registration cards at the campaign headquarters for anyone who wanted to pick one up and who wished to register to vote. I also would carry cards with me when calling on registered voters, one or two volunteers may have done so also. In the event a voter had moved and the new resident wanted to register or if there was a new elgible voter in the household I would

proivde a form on request. I am not aware that any blank cards we checked out were made available to any other organizations or persons.

2) Not applicable.

3) Not applicable.

4) Not applicable.

5) Not applicable.

Response to Interrogatory No. 2:

Since we did not have a voter registration program we implemented no procedures. The blank forms provided by the Registrar's office provided guidelines as to who could register and who could vote.

Response to Interrogatory No. 3:

Yes. Mr. Hernandez was a contract employee and worked as a field representative in my campaign. His wage records, which are a matter of public record are attached (See Exhibit Q). His only superiors were myself and John Shallman, the campaign manager. He had no subordinates. He left the campaign in August 1996 to work for the coordinated campaign sponsored by the California Democratic Party. While working with the coordinated campaign we supplemented his salary.

Response to Interrogatory No. 4:

None. His functions with my campaign involved volunteer recruitment, lawn sign placement and coordinating volunteers who went door to door visiting registered voters.

Response to Interrogatory No. 5:

I have no direct knowledge of voting by aliens other than our own investigation into Mr. Dornan's charges, (the results of which are attached and were previously provided to

the Committee) and what I've read in newspaper articles. To my knowledge no alien was ever assisted to vote by anyone connected with the Loretta Sanchez campaign.

Response to Interrogatory No. 6:

It is my understanding from Mr. Hernandez that he requested Mr. Molina to appear in a campaign advertisement. I have absolutely no knowledge that anyone encouraged or assisted Mr. Molina to register to vote. Mr. Molina himself states he did not register to vote or vote. At the time he was allegedly contacted by Mr. Hernandez regarding voting, the registration period was closed and Mr. Hernandez was no longer in my employ.

Response to Interrogatory No. 7:

Absolutely not.

Response to Interrogatory No. 8:

Not to my knowledge.

Response to Interrogatory No. 9:

None other than the fact that I was informed in October 1996 that after the close of registration Mr. Lopez was seeking financial assistance from our campaign which we declined to provide. See Shallman interrogatory response #9.

Response to Interrogatory No. 10:

No.

Response to Interrogatory No. 11:

I do not understand the use of the word Internal. We investigated Mr. Dornan's charges since he chose not to investigate his own charges. Counsel for Congresswoman Sanchez sent teams of investigators out into the district to attempt to interview voters listed in several categories created by the INS in order to verify the accuracy of the INS data and

records. The results of that field investigation to date are shown in Exhibit D. Investigators visited and attempted to interview 97 foreign-born voters who had been identified by the INS records as not having been naturalized as of election day, or for that matter, as of the end of 1996. Approximately one-quarter of the individuals we contacted were unwilling to talk to us. But 74 people were willing to be interviewed, and the results of those interviews were, to say the least, quite revealing as to the accuracy of the INS records.

Over 75% of the INS determinations of non-citizenship were confirmed by our investigators to be wrong. According to the INS database and records, none of these 74 individuals had been sworn in as a citizen as of election day. Yet 56 of them were able to show our investigators naturalization certificates proving that they had in fact become citizens prior to November 5, 1996! In only 18 of these 74 cases was the INS apparently correct that the voter had not become a citizen by election day. In other words, the INS records for these categories of individuals were actually three times more likely to be mistaken than to be correct, it does not take a rocket scientist to realize that something is seriously wrong with the citizenship determinations made based upon the INS data and records.

Contestee's comprehensive investigation of Mr. Dornan's allegations, included sending investigators out into the 46th District in an attempt to personally interview most of the voters falsely accused of having voted illegally by Mr. Dornan. Attached as Exhibit A are the detailed, allegation-by-allegation, results of our investigation. To say that Mr. Dornan's charges were not "credible" is an understatement. Among the findings of our investigation, consistent with the findings of the County Registrar, are the following:

1) The vast majority of Dornan's charges of double-voting were shown to be untrue simply on the face of the the publicly available election materials (e.g. affidavits, of registration plainly filled out by twins with different names and signatures, absentee ballot envelopes clearly executed and returned by the voter.)

2) Despite Mr. Dornan's attorneys' claim that "we actually went to the business addresses in question and confirmed at least 22 addresses were solely commercial addresses from which registered voters voted." Letter of 1-23-97 from William Hart, Esq. to Registrar of Voters Rosalyn Lever, at page 2.), none of the voters residing at the supposedly illegal or suspicious addresses reported ever having seen or spoken to anyone representing Mr. Dornan and the validity of most of these addresses was so apparent to anyone who visited them it was inconceivable that Contestant made any effort to substantial his reckless charges of illegal voting prior to leveling them.

3) When technical violations of the Elections Code appear to have occurred, there was absolutely no evidence of voter fraud or willful violation of the law. Rather, each instance was the result of an innocent mistake either by the voter or a volunteer pollworker.

4) The majority of the ballots cast in technical violation of the law were voted by registered Republicans, some of whom freely volunteered that they had voted for Mr. Dornan.

In response to Mr. Dornan's subpoena, the District Attorney's office provided Contestee with a typewritten list of the 1,160 Hermandad registrants in Orange County, as annotated by the INS with each individual's supposed immigration/citizenship status and, where applicable, his or her date of naturalization. As explained by District Director Rogers, INS first checked the names of these registered voters against its various electronic

databases, and then, "to ensure ourselves that relevant information was both comprehensive and correct, INS made a file-by-file, manual check of its paper file records to verify the results of its search." (Testimony of Richard K. Rogers, at pg. 2)

Information provided by the INS indicates 565 persons were registered by Hermandad in the 46th Congressional District and voted in the November 1996 election according to Contestee's version of the Registrar's "As Voted" tape. Of these 565 voters, the INS identified 112 as having been naturalized citizens prior to the date they registered to vote, and another 126 having been sworn in as citizens prior to election day, but after having registered. Three voters were confirmed by the INS as having been naturalized after the election, and one as having been denied citizenship. Sixty voters were categorized by the INS as still being in the process of naturalization as of the end of 1996, with another 18 "pending status review," a category also indicating that they had not yet been granted citizenship. A total of 133 voters were asserted to have "No Records" on them at the INS, 69 of whom were foreign-born and 64 of whom listed U.S. places of birth on their affidavits of registration (and for whom, therefore, it should not have been surprising not to have found an INS record). Finally, 112 voters' names contained "No Notation" by INS next to their name, which the District Attorney's office subsequently explained meant that the voters' names appeared somewhere in INS records -- presumably as documented resident aliens-- but not as having attained citizenship or awaiting naturalization; 103 of these voters show foreign birthplaces on their registrations and 9 have U.S. places of birth.

Attached as Exhibits are the results of our investigation:

Exhibit A - Dornan Allegations - Division 3. Absentee Voting, New Resident, And New Citizen Voting

Exhibit B - Absentee Voting 1, updated 4-28-97

Exhibit C - Double Voting, updated 4-28-97

Exhibit D - Business Addresses, updated 4-28-97

Exhibit E - Suspicious Households, updated 4-28-97

Exhibit F - Absentee Voting 2, updated 4-28-97

Exhibit G - Statement of Tony Miller, Legal Memorandum, Voting by United States Citizens Who Registered Prior to Completing the Naturalization Process.

Exhibit H - US Dept. of Justice, letter to Naturalization Applicant.

Exhibit I - Jones Universe, Summary of Analysis -- 46th CD

Exhibit J - Community Groups & Individuals Targeted by Dornan Subpoena of Registrar of Voters.

Exhibit K - Voter Registration Card Statement of Distribution Plans.

Exhibit L - Registration at Business Addresses

Exhibit M - Addresses with "Too Many" Registrations

Exhibit N - Probable Double Voters

Exhibit O - Photographs

Exhibit P - The 46th District Family Photo Album

Response to Interrogatory No. 12:

No.

Response to Interrogatory No. 13:

None. There were no third parties working with or paid by the Committee for Loretta Sanchez.

Response to Interrogatory No. 14:

Yes. I was informed that a subpena was incorrectly served on a Committee listed as Custodian of Records, Sanchez for Congress, and was served on Nancy Ramirez, a federal employee, who, as the Committee knows, is unable to accept service of such document and is totally unassociated with the Sanchez for Congress Committee.. I am not aware of the destruction, deletion or removal of any documents you have described.

Response to Interrogatory No. 15:

They are kept at the campaign headquarters and we do not have a formal custodian of records.

Response to Interrogatory No. 16:

Yes. I first became aware of such a check when a copy of it was attached to a Dornan subpena in conjunction with the Election Contest. Since I had no contact with Dump Dornan or the Nativo Lopez for School Board Campaign and no knowledge of the check I would therefore have no knowledge what the check was used for.

Response to Interrogatory No. 17:

No.

Dated: October 13, 1997

LAW OFFICES OF WYLIE A. AITKEN
WILLIAM J. KOPENY
STRUMWASSER & WOOCHER
BRAND, LOWELL & RYAN

By: WYLIE A. AITKEN
Attorneys for Contestee
LORETTA SANCHEZ

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF ORANGE

I have read the foregoing RESPONSES TO INTERROGATORIES, SET NO. ONE, PROP. BY COMMITTEE ON HOUSE OVERSIGHT and know its contents.

☐ CHECK APPLICABLE PARAGRAPHS

☒ I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☐ I am ☐ an Officer ☐ a partner _____ ☐ a _____ of _____

_____,

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. ☒ I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. ☐ The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☐ I am one of the attorneys for _____,

a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on October 13, 19 97, at Santa Ana, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

LORETTA SANCHEZ
Type or Print Name

Signature

PROOF OF SERVICE
1013a (3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF

I am employed in the county of _____, State of California.

I am over the age of 18 and not a party to the within action; my business address is: _____

_____

On _____, 19____, I served the foregoing document described as _____

_____

_____ on _____ in this action

☐ by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:

☐ by placing ☐ the original ☐ a true copy thereof enclosed in sealed envelopes addressed as follows:

☐ BY MAIL

☐ *I deposited such envelope in the mail at _____, California. The envelope was mailed with postage thereon fully prepaid.

☐ As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at _____ California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on _____, 19____, at _____, California.

☐ **(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on _____, 19____, at _____, California.

☐ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

_____
Type or Print Name

_____
Signature

*(BY MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG)

**(FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 3 Imperial Promenade, Ste. 800, Santa Ana, CA 92707-2555.

On October 13, 1997 I served the foregoing document described as **The Honorable Loretta Sanchez's Responses to Interrogatories propounded by the Committee on House Oversight;** on the parties herein in this action

☒ by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list;

☐ by placing ☐ the original ☐ a true copy thereof in sealed envelopes addressed as follows:

(SEE ATTACHED SERVICE LIST)

☐ BY PERSONAL SERVICE I caused such envelope to be delivered by hand to the offices of the addressee.

☒ BY MAIL

☐ I deposited such envelope in the mail at Santa Ana California.

☒ As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing.

Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Santa Ana, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

Executed on October 13, 1997 at Santa Ana, California.

☒ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

DEBORAH L. MILLER
Type or Print Name

D Miller
Signature

Mailing List: Re: In the Matter of the Contested Election of LORETTA SANCHEZ for the Office of House of Representatives to the United State Congress, ROBERT K. DORNAN v. LORETTA SANCHEZ

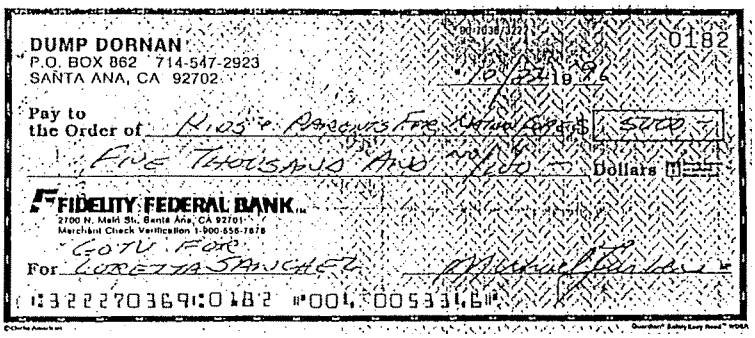
The Honorable William M. Thomas — VIA FACSIMILE & U.S. MAIL
Chairman of the Committee on House Oversight
1309 Longworth House Office Building
Washington, D.C. 20515-6157

William R. Hart, Esq. — VIA U.S. MAIL
HART, KING & COLDREN
200 E. Sandpointe, Suite 400
Irvine, CA 92707
Attorneys for Contestant, Robert K. Dornan

Stan Brand, Esq. — VIA U.S. MAIL
Brand, Lowell & Ryan
923 Fifteenth Street, N.W.
Washington, D.C. 20005
Attorneys for Contestee, Loretta Sanchez

William J. Kopeny, Esq. — VIA U.S. MAIL
KOPENY & POWELL
8001 Irvine Center Drive, Ste. 1170
Irvine, CA 92618
Attorneys for Contestee, Loretta Sanchez

Fredric D. Woocher, Esq. — VIA U.S. MAIL
STRUMWASSER & WOOCHER
100 Wilshire Blvd., Ste. 1900
Santa Monica, CA 90401
Attorneys for Contestee, Loretta Sanchez



DUMP DORNAN
P.O. BOX 862 714-547-2923
SANTA ANA, CA 92702

0182

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For Loretta Sanchez

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AREA CODE/PHONE NUMBER
(714) 268-6569

I.D. NUMBER (if applicable)
960763

STREET ADDRESS
825 N. Broadway Santa Ana Ca

CITY | STATE | ZIP CODE
Santa Ana | Ca | 92701

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NAME
Dump Dornan

I.D. NUMBER (if applicable)
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ADDRESS
P.O Box 862

CITY | STATE | ZIP CODE
Santa Ana | Ca | 92702

OCCUPATION/EMPLOYER OR NAME OF BUSINESS IF SELF-EMPLOYED (if applicable)
Independent Expenditure Campaign

DATE RECEIVED: 10/22/96

AMOUNT: $ 5000.00

NAME

I.D. NUMBER (if applicable)

ADDRESS | CITY | STATE | ZIP CODE

OCCUPATION/EMPLOYER OR NAME OF BUSINESS IF SELF-EMPLOYED (if applicable)

DATE RECEIVED: __/__/__

AMOUNT: $

NAME

I.D. NUMBER (if applicable)

ADDRESS | CITY | STATE | ZIP CODE

OCCUPATION/EMPLOYER OR NAME OF BUSINESS IF SELF-EMPLOYED (if applicable)

DATE RECEIVED: __/__/__

AMOUNT: $

II Late Contribution(s) Made To:

NAME OF CANDIDATE OR COMMITTEE

I.D. NUMBER (if applicable)

ADDRESS | CITY | STATE | ZIP CODE

OFFICE SOUGHT BY CANDIDATE OR BALLOT NO./LETTER AND JURISDICTION

DATE MADE: __/__/__

AMOUNT: $

DATE OF ELECTION: __/__/__

NAME OF CANDIDATE OR COMMITTEE

I.D. NUMBER (if applicable)

ADDRESS | CITY | STATE | ZIP CODE

OFFICE SOUGHT BY CANDIDATE OR BALLOT NO./LETTER AND JURISDICTION

DATE MADE: __/__/__

AMOUNT: $

DATE OF ELECTION: __/__/__

NAME OF CANDIDATE OR COMMITTEE

I.D. NUMBER (if applicable)

ADDRESS | CITY | STATE | ZIP CODE

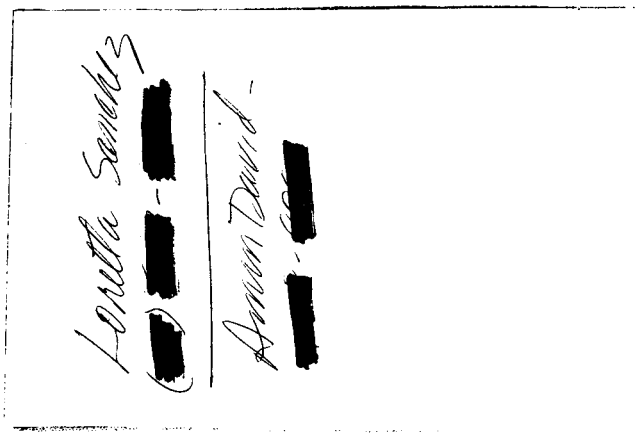
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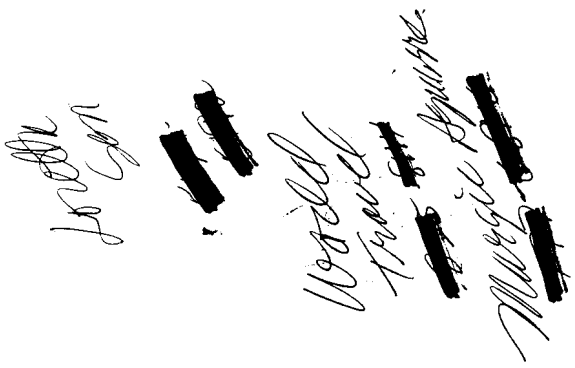
DATE MADE: __/__/__

AMOUNT: $

DATE OF ELECTION: __/__/__

FOR INFORMATION REQUIRED TO BE PROVIDED TO YOU PURSUANT TO THE INFORMATION PRACTICES ACT OF 1977, SEE INFORMATION MANUAL ON CAMPAIGN DISCLOSURE PROVISIONS OF THE POLITICAL REFORM ACT.


Loretta Sanders
[redacted]
Aaron David -
[redacted]



UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON HOUSE OVERSIGHT

ROBERT DORNAN Contestant, v. LORETTA SANCHEZ Contestee.	)

INTERROGATORIES TO THE COMMITTEE FOR LORETTA SANCHEZ - JOHN SHALLMAN, CAMPAIGN MANAGER

TO: The Committee for Loretta Sanchez - John Shallman
c/o Wiley Aitkin, Esq.
3 Imperial Promenade
Suite 800
P.O. Box 2555
Santa Ana, CA 92707-2555

The Committee on House Oversight, in accordance with a resolution adopted by the Committee on September 24, 1997, a quorum being present, directs the following interrogatories to you pursuant to U.S. Const. art.I, House Rule 10(h). You are directed to answer each of interrogatory separately and under oath and to serve a copy of your answers thereto with the Committee on House Oversight within seven (7) days.

Instructions

1. For each objection interposed to any interrogatory or subpart thereof, state with specificity each and every ground upon which the objection is based.

2. These interrogatories are continuing in nature and therefore require that supplemental answers be provided should any additional, responsive information be acquired after the time of compliance herewith.

3. Whenever necessary to bring within the scope of these Interrogatories any information which might otherwise be construed to be outside the scope of these Interrogatories, the singular form of a word shall be interpreted in the plural and vice versa, all words and phrases shall be construed as masculine, feminine, or neuter gender, according to the context, and "and" as well as "or" shall be construed either disjunctively or conjunctively.

4. Unless otherwise noted, each interrogatory relates to the time period from November 7, 1994 to the present.

5. "During the 1995-1996 election cycle" denotes the time period November 7, 1994 to December 31, 1996.

Interrogatories

1. Please describe in detail: 1) what, if any, voter registration related projects or efforts the Committee for Loretta Sanchez initiated, participated in, implemented, collaborated in, or promoted during the 1995-1996 election cycle; 2) the length of each project or effort; 3) the names of all persons who worked on each project or effort; 4) the number of persons assisted in registering to vote; 5) and the names of such persons assisted.

2. Please describe in detail and identify documents regarding any procedures designed, followed or implemented by the Committee for Loretta Sanchez to ensure that only eligible voters were registered.

3. Do you know Benny Hernandez? Was Mr. Hernandez an employee, agent or volunteer of the Committee for Loretta Sanchez? If so, please describe in detail his position, duties, compensation, and list the names of his direct superiors and subordinates.

4. Please describe in detail the involvement, if any, that Benny Hernandez had with the Committee for Loretta Sanchez regarding voter registration.

5. Are you aware, or do you have knowledge of others who are aware, of any documented or undocumented aliens registering to vote during the 1995-1996 election cycle? Are you aware, or do you have knowledge of others who are aware, of documented or undocumented aliens that were assisted by any employee, agent or volunteer of the Committee for Loretta Sanchez to vote during the 1995-1996 election contest? If so, please list the names, addresses and telephone numbers of the employee, agent or volunteer of the Committee for Loretta Sanchez and the names, addresses and telephone numbers of any documented or undocumented aliens that were so registered.

6. To your knowledge, was Nelson Molina requested by the Committee for Loretta Sanchez or anyone else to appear in a

campaign advertisement for Loretta Sanchez? Did he did appear in such an advertisement? Did you, or anyone to your knowledge, encourage or assist Mr. Molina to register to vote despite the fact that he was not a citizen?

7. Did you, or anyone to your knowledge, encourage or assist Jana Carty to register to vote twice, by both absentee ballot and at the polling place?

8. Did you, or anyone to your knowledge at the Committee for Loretta Sanchez, have any communications with Benny Hernandez regarding voter registration projects or efforts during the 1995-1996 election cycle? If so, please state the date, describe the nature of such communication and identify who else had knowledge of the communication.

9. Did you, or anyone to your knowledge at the Committee for Loretta Sanchez, have any communications with Nativo Lopez, the Nativo Lopez for Schoolboard Campaign, or Hermandad Mexicana Nacional, Guttenberg Group, Dump Dornan, Citizens Forum or Michael Farber regarding voter registration projects or efforts during the 1995-1996 election cycle? If so, please state the date, describe the nature of such communication and identify who else had knowledge of the communication.

10. Do you have knowledge, or are you aware of anyone at the Committee for Loretta Sanchez having knowledge, of any employee, agent or volunteer of Hermandad Mexicana Nacional, registering or attempting to register any documented or

undocumented aliens to vote? If so, please list the names, addresses and telephone numbers of the employee, agent or volunteer of Hermandad Mexicana Nacional and the names, addresses and telephone numbers of any documented or undocumented aliens that were so registered.

11. Have you, your attorneys, or the Committee for Loretta Sanchez undertaken any investigation of vote fraud in connection with the 1995-1996 election in the 46th District? If so, please describe in detail the nature, method, scope and results of any such investigation.

12. Did the Committee for Loretta Sanchez pay anyone bounties, fees or anything of value to register voters? If so, please describe in detail the nature and scope of such efforts, and list the names, addresses and telephone numbers of persons to whom such bounties, fees or things of value were paid.

13. Please describe in detail and identify documents regarding any procedures designed, followed or implemented by the Committee for Loretta Sanchez to verify the legality of registrations secured by third parties working with or paid by the Committee for Loretta Sanchez.

14. Did you receive a subpoena pursuant to the Federal Contested Election Act? With whom have you discussed this subpoena from the date of receipt to the present? Are you aware of any documents, computer disks or files of the Committee for

Loretta Sanchez being destroyed or deleted after your receipt of the subpoena?

15. Describe how the files of the Committee for Loretta Sanchez are maintained, including, but not limited to, the name of the custodian of records and the custodian of petty cash funds.

16. Are you aware of a contribution by Dump Dornan to the Nativo Lopez for Schoolboard Campaign, which was annotated with the memo for Loretta Sanchez GOTV? Was this check, in fact, used to assist the Committee for Loretta Sanchez?

17. Are you aware, or do you have knowledge of others who are aware, of any documented or undocumented aliens registering to vote during the 1995-1996 election cycle? Are you aware, or do you have knowledge of others who are aware, of documented or undocumented aliens that were assisted by any employee, agent or volunteer of the Active Citizenship Campaign, Catholic Charities, Southwest Voter Registration Project, One-Stop Immigration and Education Center, Carpenters Union, Communication Workers Union, or Rancho Santiago College to vote during the 1995-1996 election contest? If so, please list the names, addresses and telephone numbers of the employee, agent or volunteer of the respective

organization and the names, addresses and telephone numbers of any documented or undocumented aliens that were so registered.

COMMITTEE ON HOUSE OVERSIGHT

By: Bill Thomas
The Hon. William M. Thomas
Chairman

WYLIE A. AITKEN, BAR NO. 37770
LAW OFFICES OF WYLIE A. AITKEN
WILLIAM J. KOPENY, ESQ.
KOPENY & POWELL
STAN BRAND, ESQ.
DAVID FRULLA, ESQ.
BRAND, LOWELL & RYAN
FREDERIC D. WOOCHER, ESQ.
STRUMWASSER & WOOCHER
3 IMPERIAL PROMENADE, SUITE 800
P.O. BOX 2555
SANTA ANA, CA 92707-2555
(714) 434-1424

Attorneys for Contestee, LORETTA SANCHEZ

COMMITTEE ON HOUSE OVERSIGHT OF THE

HOUSE OF REPRESENTATIVES OF THE UNITED STATES

In the Matter of the Contested Election of LORETTA SANCHEZ for the Office of the House of Representatives to the United States Congress, ROBERT K. DORNAN, Contestant, vs. LORETTA SANCHEZ, Contestee.	JOHN SHALLMAN'S RESPONSES TO INTERROGATORIES [U.S. CONST. ART 1, HOUSE RULE, 10(h)]

PRELIMINARY STATEMENT

Subject to each of the following qualifications and objections, John Shallman responds to the Interrogatories propounded by the Committee on House Oversight, as follows:

These responses are based solely on the information presently known and currently available to this responding party after conducting a reasonable inquiry and search. Nevertheless, the information provided in these responses is given in a good faith effort to supply as much factual material as possible.

All of the answers are based only upon such information and documents which are presently available to and specifically known to this responding party.

PRELIMINARY STATEMENT OF JOHN SHALLMAN

I proudly served as Campaign Manager for Loretta Sanchez from August 1996 through the election in November 1996. I thank the Committee for the opportunity to respond to these Interrogatories and to set the record straight once and for all.

Let there be no mistake, we beat Bob Dornan fair and square. The fact is, noncitizens didn't beat Bob Dornan -- Bob Dornan beat Bob Dornan. Our campaign did not *need* to do anything improper to defeat him other than to tell the voters about his dismal record in Congress. The people of Orange County were as disgusted with Mr. Dornan as the House of Representatives was when it voted overwhelmingly to throw him off the House Floor.

We ran an issues-based campaign designed to persuade those voters *who were already registered* that Mr. Dornan had failed his constituents and that Congresswoman Sanchez was the right person to replace him. During the period of my employment as Campaign Manager, we did not affirmatively engage in *any* voter registration activities whatsoever. In fact, we

specifically directed that our limited resources be put almost entirely into an aggressive media campaign. In particular, we targeted those registered voters who had a history of voting over a number of election cycles. Thus, I am convinced that we won because Democrats and Republicans alike were fed up with Mr. Dornan's extreme right-wing agenda and not, as some insidiously suggest, because of some "Latino Conspiracy."

To many in Washington, Congresswoman Sanchez' victory over Mr. Dornan probably came as quite a surprise. After all, this was Orange County, a bastion of Republican conservatism where Bob Dornan was thought to be invincible. Many wondered, "how could a woman Democrat beat Bob Dornan in Orange County? There must have been something fishy going on. Democrats never win elections in Orange County."

Mr. Dornan was one of those people in Washington who had no idea that the voters of his own district might not want him in Congress anymore. Indeed, although he had no evidence to suggest that fraudulent votes cost him the election, shortly after all the votes were counted Mr. Dornan claimed that the very fact that he lost was in itself a "prima facie case of fraud." In other words, according to Mr. Dornan, the only way he could have lost the election was if it was improperly "stolen" from him.

To those who actually read the polls and understood the changing demographics of the 46th District, however, Congresswoman Sanchez' victory came as no surprise. They knew that the 46th Congressional District was no longer a "safe" Republican seat and that Mr. Dornan was no longer invincible. For example, a week before the election on This Week With David Brinkley, Cokie Roberts predicted Mr. Dornan's eventual defeat.

Was Ms. Roberts' clairvoyance the result of her being aware of some massive influx of noncitizen voters? Of course not. She knew that polls from both parties showed the race a dead heat and Ms. Sanchez gaining momentum. Indeed, on the eve of the election, a poll conducted by the Orange County Register of likely voters showed Congresswoman Sanchez *ahead* of Mr. Dornan by two points. Apparently deluded by his own sense of invincibility, Mr. Dornan insisted that he would still win by 10 percentage points. Based on my experience as a Campaign Consultant and having analyzed statistical election trends, I knew better. In fact the only thing that surprised us was how *close* the election was. Had turnout been equivalent to that of 1992 in the 46th District, we would have won by several thousand votes. But because of depressed turnout due to the early Clinton victory, we were left with a real barn-burner.

To illustrate my point, if a student has consistently received F's on his math tests throughout the year and then suddenly gets an "A" on his final examination, the teacher will have good cause to believe that the student may have cheated. But if an "A" student aces his final, it should come as no surprise at all and should hardly be construed as evidence of any wrongdoing. Our campaign studied hard and the citizens of Orange County gave us an "A" while they flunked Bob Dornan out of Congress.

Furthermore, the suggestion that a Democrat could walk into Orange County, California and "steal" an election from a Republican is illogical and absurd. This is akin to suggesting that a Republican could steal an election in Chicago. If anyone should be investigated in Orange County, it is the Republican political machine which has for years tried to intimidate ethnic voters, and in particular to suppress hispanic voter turnout. In my opinion, the activities of this Committee are simply the latest and most egregious example of this conduct.

A few additional points bear mentioning before moving on to my responses to the Interrogatories:

While I respect the Committee's stated effort to ensure the integrity of our voting system, I am disturbed by the tenor of the investigation. The election contest brought by Mr. Dornan and inexplicably kept alive by this Committee rests on a number of disturbing assumptions with racist undertones: (1) If noncitizens voted, they must have been hispanic; (2) If you are hispanic, you must have voted for Sanchez; and (3) If a hispanic organization did anything wrong, they must have been conspiring with Sanchez. Thus, it appears that Mr. Dornan and the Committee are playing a cynical, McCarthy-esque game of "Guilt by Latino Surname."

Even if one assumes that Latinos will likely vote for a Latino candidate, there was another candidate on the ballot with a Latino Surname -- J. Carlos Aguirre.

If Hermandad Mexicana Nacional did in fact improperly register noncitizens to vote, (of which we have no knowledge) who is to say that they were not conspiring with the Dornan campaign? How do we know that the people they registered to vote actually voted for Sanchez, not Aguirre or Stafford or Dornan? Why hasn't Bob Dornan been asked about his communications with Nativo Lopez and Hermandad?

At all times, I ran the Sanchez Campaign ethically, responsibly and within the letter and the spirit of the law. I take great offense to any suggestion to the contrary. I now respectfully suggest to the Committee that it bring this divisive investigation to a swift conclusion and allow Congresswoman Sanchez to move forward. It is time to begin the process of re-uniting a community that Mr. Dornan has tried so hard to divide. I would be pleased to answer any further questions the committee might have or to assist in its investigation in any way.

II.

GENERAL OBJECTIONS

1. Shallman objects to these Interrogatories, and each and every interrogatory contained therein, to the extent that they seek information which is not available to Shallman or not in his possession, custody or control. Responding to each Interrogatory, Shallman will not attempt to provide information that is unavailable or outside of his possession, custody or control.

2.. Shallman objects to these Interrogatories, and to each Interrogatory contained therein, to the extent they seek information which is beyond his personal knowledge. Although the Interrogatories ask for information regarding the period November 7, 1994 to December 31, 1996, Shallman's responses only reflect his knowledge of activities and information during the period in which he was Campaign Manager from August 1996 through November 1996.

3. These interrogatories are oppressive and burdensome, because they are vague, ambiguous, and unintelligible so as to make responses impossible without speculation as to the meaning of the questions. However, without waiving said objections, the answering party has attempted to five meaning to the interrogatories.

4. These interrogatories are also "continuing interrogatories" and as such oppressive and burdensome and prohibited by law. See Kenny v. Superior Court 255 Cal.App.2d 106, 63 Cal.Rptr. 84 (1967).

III.

RESPONSES TO INTERROGATORIES

RESPONSE TO INTERROGATORY NO. 1:

(1) During my three months with the campaign, the Sanchez campaign did not actively engage in an independent voter registration project or effort. The campaign had blank voter registration cards available for anyone who came into the office who wished to register to vote. To my knowledge, the campaign did not otherwise initiate, participate in, implement, collaborate in, or promote any voter registration related projects or efforts during the 1995-96 election cycle.

(2) N/A

(3) N/A

(4) N/A

(5) N/A

RESPONSE TO INTERROGATORY NO. 2:

This interrogatory is illogical and absurd. If a person is not registered, he or she cannot be an "eligible voter." Assuming that the interrogatory asks what the Sanchez Campaign did to ensure that only citizens eligible to *register* to vote were registered, I answer as follows: The Sanchez Campaign did not "register" anyone to vote. The Sanchez campaign provided walk-ins, if they asked, with blank registration cards on which to register. If a person filled out a registration card, it was standard protocol for the campaign to make a photocopy of the card and to send the original to the Orange County Registrar of Voters (if the voter requested the campaign to do so). Campaign volunteers and staff were not instructed to offer walk-ins the opportunity to fill out a registration card. If a walk-in asked, we would make a card available.

RESPONSE TO INTERROGATORY NO. 3:

(1) Yes.

(2) Mr. Hernandez was a part-time, independent contractor working for the Sanchez campaign when I began as campaign manager in August 1997. I do not know how long he had been associated with the campaign before I signed on. Shortly after joining the Campaign, he went to work for the California Democratic Party's Coordinated Campaign.

(3) Mr. Hernandez was the volunteer coordinator until he moved over to the Coordinated Campaign in August or September of 1996. He was responsible for signing up and organizing volunteers to walk precincts in the 46th district. I was his direct superior and he had no subordinates (other than volunteers).

RESPONSE TO INTERROGATORY NO. 4:

Mr. Hernandez, to my knowledge, had no involvement with the Sanchez Campaign related to voter registration.

RESPONSE TO INTERROGATORY NO. 5:

(1) Other than what I have read in news reports, I am not aware, nor do I have knowledge of others who are aware, of any documented or undocumented aliens registering to vote during the 1995-96 election cycle.

(2) No. I am not aware, nor do I have knowledge of others who are aware, of any documented or undocumented aliens that were assisted by any employee, agent or volunteer of the Committee for Loretta Sanchez to vote during the 1995-96 election contest.

(3) N/A

RESPONSE TO INTERROGATORY NO. 6:

(1) Not to my knowledge.

(2) Not to my knowledge.

(3) No.

RESPONSE TO INTERROGATORY NO. 7:

(1) No.

RESPONSE TO INTERROGATORY NO. 8:

(1) No.

RESPONSE TO INTERROGATORY NO. 9:

(1) Yes. But not until the registration period had closed.

(a) During October 1996, I received phone calls from a person who said his name was Art Montez. Mr. Montez represented himself to me as an associate of Nativo Lopez. At the time, I had no idea who Mr. Montez or Mr. Lopez were. He suggested to me that Mr. Lopez had had a significant voter registration program. Mr. Montez said to me words to the effect that "You guys better get some money to Nativo before Dornan does." I thanked him for calling me and explained to him, in no uncertain terms, that our campaign funds had already been budgeted and respectfully declined to finance any other campaign or any other person. The only other person who had knowledge of this conversation was Deputy Campaign Manager Dan Shallman, with whom I shared an office.

(b) I then had a telephone conversation with Nativo Lopez sometime in October. I immediately got the impression that Mr. Lopez did not want to talk to me, he wanted to speak directly to Ms. Sanchez. It was clear that Mr. Lopez resented the fact that I had interceded

between him and Ms. Sanchez. He said words to the effect that "If she won't speak to me herself, then she won't get my support." He told me that he needed to get some money from us for all the work he had been doing. I asked him what he had been doing with respect to the election. He explained that he was a school board candidate and had been registering voters. (The time to register had closed) He indicated that he wielded influence with many voters and that if we would retroactively subsidize his efforts, he might be inclined to encourage these voters to vote for Ms. Sanchez. From my previous conversation with Mr. Montez, I viewed this as an indication that if we did not support Mr. Lopez' campaign financially, he would be inclined to encourage these voters to support Mr. Dornan. As with Mr. Montez, I explained to him that we had no intention of giving money to other campaigns. In no uncertain terms, I told him that he would not get any financial support from us. Loretta Sanchez and Wylie Aitken were advised of this request and concerned that we should not finance Mr. Lopez in any way.

RESPONSE TO INTERROGATORY NO. 10:

(1) No.

RESPONSE TO INTERROGATORY NO. 11:

(1) We investigated Mr. Dornan's allegations of voter irregularities and the results were filed with the Committee.

RESPONSE TO INTERROGATORY NO. 12:

(1) No.

RESPONSE TO INTERROGATORY NO. 13:

(1) There were no "third parties" working with or paid by the Committee for Loretta Sanchez to "secure" voter registrations. Therefore, the answer is no.

RESPONSE TO INTERROGATORY NO. 14:

(1) No.

RESPONSE TO INTERROGATORY NO. 15:

(1) Boxes of precinct walk lists and targeted precincts are boxed and stored in the campaign office. Fundraising documents are stored at the campaign office. Financial records are all maintained by the Committee Treasurer Jules Glazer. Documents related to campaign strategy, research, and polling are either in the campaign headquarters or my office.

(2) Loretta Sanchez is the custodian of records.

RESPONSE TO INTERROGATORY NO. 16:

(1) No. I only was made aware of this alleged contribution at the April 19, 1997 field hearing in Santa Ana, California.

(2) Not to my knowledge.

INTERROGATORY NO. 17:

(1) Other than allegations I have read in news reports, I am not aware, nor do I have knowledge of others who are aware, of any documented or undocumented aliens registering to vote during the 1995-96 election cycle.

(2) No.

Dated: October 13, 1997

LAW OFFICES OF WYLIE A. AITKEN
WILLIAM J. KOPENY
STRUMWASSER & WOOCHER
BRAND, LOWELL & RYAN

By: WYLIE A. AITKEN
Attorneys for Contestee
LORETTA SANCHEZ

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF ORANGE

I have read the foregoing RESPONSES TO INTERROGATORIES, SET NO. ONE, PROP. BY COMMITTEE ON HOUSE OVERSIGHT and know its contents.

[ ] CHECK APPLICABLE PARAGRAPHS

☐ I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☐ I am ☐ an officer ☐ a partner _____ ☐ a campaign mgr. of Committee for Loretta Sanchez, a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. ☒ I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. ☐ The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☐ I am one of the attorneys for _____, a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on October 13, 19 97, at Santa Ana, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

John Shallman
Type or Print Name

John Shallman
Signature

PROOF OF SERVICE
(416.30 CCP Revised 5/1/88)

STATE OF CALIFORNIA, COUNTY OF

I am employed in the county of _____, State of California.
I am over the age of 18 and not a party to the within action; my business address is: _____

On _____, 19___, I served the foregoing document described as _____

_____ on _____ in this action

☐ By placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:
☐ by placing ☐ the original ☐ a true copy thereof enclosed in sealed envelopes addressed as follows:

☐ BY MAIL

☐ *I deposited such envelope in the mail at _____, California. The envelope was mailed with postage thereon fully prepaid.

☐ As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at _____, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on _____, 19____, at _____, California.

☐ **(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on _____, 19____, at _____, California.

☐ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

_____
Type or Print Name

_____
Signature

*(BY MAIL, SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL BOX, OFFICE OR AGENT)
**(FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)

TOTAL P.02

FROM : SHALLMAN COMMUNICATIONS PHONE NO. : 8185818388 Oct. 13 1997 01:38PM P01

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 3 Imperial Promenade, Ste. 800, Santa Ana, CA 92707-2555.

On October 13, 1997 I served the foregoing document described as Committee for Loretta Sanchez - John Shallman, Campaign Manager's Responses to Interrogatories propounded by the Committee on House Oversight; on the parties herein in this action

[✓] by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list;

[ ] by placing [ ] the original [ ] a true copy thereof in sealed envelopes addressed as follows:

(SEE ATTACHED SERVICE LIST)

[ ] BY PERSONAL SERVICE I caused such envelope to be delivered by hand to the offices of the addressee.

[✓] BY MAIL

[ ] I deposited such envelope in the mail at Santa Ana California.

[✓] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing.

Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Santa Ana, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

Executed on October 13, 1997 at Santa Ana, California.

[✓] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

DEBORAH L. MILLER
Type or Print Name

Dominer
Signature

Mailing List: Re: In the Matter of the Contested Election of LORETTA SANCHEZ for the Office of House of Representatives to the United State Congress, ROBERT K. DORNAN v. LORETTA SANCHEZ

The Honorable William M. Thomas — VIA FACSIMILE & U.S. MAIL
Chairman of the Committee on House Oversight
1309 Longworth House Office Building
Washington, D.C. 20515-6157

William R. Hart, Esq. — VIA U.S. MAIL
HART, KING & COLDREN
200 E. Sandpointe, Suite 400
Irvine, CA 92707
Attorneys for Contestant, Robert K. Dornan

Stan Brand, Esq. — VIA U.S. MAIL
Brand, Lowell & Ryan
923 Fifteenth Street, N.W.
Washington, D.C. 20005
Attorneys for Contestee, Loretta Sanchez

William J. Kopeny, Esq. — VIA U.S. MAIL
KOPENY & POWELL
8001 Irvine Center Drive, Ste. 1170
Irvine, CA 92618
Attorneys for Contestee, Loretta Sanchez

Fredric D. Woocher, Esq. — VIA U.S. MAIL
STRUMWASSER & WOOCHER
100 Wilshire Blvd., Ste. 1900
Santa Monica, CA 90401
Attorneys for Contestee, Loretta Sanchez

UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON HOUSE OVERSIGHT

ROBERT DORNAN

Contestant,

v.

LORETTA SANCHEZ

Contestee.

INTERROGATORIES TO BENNY HERNANDEZ

TO: Benny Hernandez
1334 N. Ferndale Street
Anaheim, CA 92802

The Committee on House Oversight, in accordance with a resolution adopted by the Committee on September 24, 1997, a quorum being present, directs the following interrogatories to you pursuant to U.S. Const. art.I, and House Rule 10(h). You are directed to answer each interrogatory separately and under oath and to serve a copy of your answers thereto with the Committee on House Oversight within seven (7) days.

Instructions

1. For each objection interposed to any interrogatory or subpart thereof, state with specificity each and every ground upon which the objection is based.

2. These interrogatories are continuing in nature and therefore require that supplemental answers be provided should any additional, responsive information be acquired after the time of compliance herewith.

3. Whenever necessary to bring within the scope of these Interrogatories any information which might otherwise be construed to be outside the scope of these Interrogatories, the singular form of a word shall be interpreted in the plural and vice versa, all words and phrases shall be construed as masculine, feminine, or neuter gender, according to the context, and "and" as well as "or" shall be construed either disjunctively or conjunctively.

4. Unless otherwise noted, each interrogatory relates to the time period from November 7, 1994 to the present.

5. "During the 1995-1996 election cycle" denotes the time period November 7, 1994 to December 31, 1996.

Interrogatories

1. State your present employer, its address and all former employers and respective addresses since 1990, and the inclusive dates of each.

2. Were you an employee, agent, or volunteer of Hermandad Mexicana Nacional, the Nativo Lopez for Schoolboard Campaign, the Guttenberg Group, Citizens Forum, the Committee for Loretta Sanchez, the Democratic Party, or Dump Dornan during the 1995-1996 election cycle? If so, please describe in detail your position, duties, compensation, the names of direct superiors, subordinates and co-workers with respect to each organization.

3. Describe in detail your involvement with Nativo Lopez, including, but not limited to, the nature of any involvement you

had with Mr. Lopez, Hermandad Mexicana Nacional, Citizens Forum, the Guttenberg Group, Dump Dornan or Michael Farber regarding voter registration efforts and voter turnout.

4. Describe in detail: 1) what, if any, voter registration related projects or efforts Hermandad Mexicana Nacional, the Nativo Lopez for Schoolboard Campaign, the Guttenberg Group, Citizens Forum, the Committee for Loretta Sanchez, or Dump Dornan initiated, participated in, implemented, collaborated in, or promoted during the 1995-1996 election cycle; 2) the length of each project or effort; 3) the names of all persons who worked on each project or effort and the areas or precincts worked; 4) the number of persons assisted in registering to vote; and 5) the names of such persons assisted.

5. Describe in detail and identify documents regarding any procedures designed, followed or implemented by Hermandad Mexicana Nacional, the Nativo Lopez for Schoolboard Campaign, the Guttenberg Group, Citizens Forum, the Committee for Loretta Sanchez, or Dump Dornan to ensure that only eligible voters were registered.

6. Are you aware, or do you have knowledge of others who are aware, of any documented or undocumented aliens registering to vote during the 1995-1996 election cycle? Are you aware, or do you have knowledge of others who are aware, of documented or undocumented aliens that were assisted by any employee, agent or volunteer of Hermandad Mexicana Nacional, the Nativo Lopez for

Schoolboard Campaign, the Guttenberg Group, Citizens Forum, the Committee for Loretta Sanchez, or Dump Dornan to vote during the 1995-1996 election cycle? If so, please list the names, addresses and telephone numbers of the employee, agent or volunteer of the respective organization and the names, addresses and telephone numbers of any documented or undocumented aliens that were so registered.

7. Describe in detail any voter registration projects or efforts undertaken jointly by Citizens Forum, the Guttenberg Group, or Dump Dornan with the Committee for Loretta Sanchez, and the level of compensation, if any, provided Citizens Forum, or the Guttenberg Group, or Dump Dornan by the Committee for Loretta Sanchez for these projects or efforts.

8. Describe in detail any voter registration projects or efforts undertaken jointly by Citizens Forum, the Guttenberg Group, or Dump Dornan with the Nativo Lopez for Schoolboard Campaign and the level of compensation, if any, provided Citizens Forum, the Guttenberg Group, Dump Dornan or any other group by the Nativo Lopez for Schoolboard Campaign for these projects or efforts.

9. Did you, or any employee, agent or volunteer of Hermandad Mexicana Nacional, the Nativo Lopez for Schoolboard Campaign, the Guttenberg Group, Citizens Forum, the Committee for Loretta Sanchez, or Dump Dornan pay anyone bounties, fees or anything of value to register voters? If so, please describe in

detail the nature and scope of such efforts, and list the names of persons to whom such bounties, fees or things of value were paid.

10. Have you had communications regarding voter registration projects or efforts with: 1) Loretta Sanchez, or the Committee for Loretta Sanchez; 2) the Guttenberg Group; 3) Wylie Aitken; 4) Carpenters Union; 5) the One-Stop Immigration and Naturalization Service; 6) the Active Citizenship Campaign; 7) the Southwest Voter Registration Project; 8) Nativo Lopez, or the Nativo Lopez for Schoolboard Campaign; 9) John Shallman; 10) Dump Dornan; 11) Citizens Forum; 12) Laborers Union; 13) Rancho Santiago College; or the 14) Communications Workers Union? If so, please list the date, describe the nature of the communication and identify who else had knowledge of the communication.

11. Do you know Nelson Molina? Did you, or anyone to your knowledge, request Mr. Molina to appear in a campaign advertisement for Loretta Sanchez? Did Mr. Molina appear in such an advertisement? Did you, or anyone to your knowledge, encourage or assist Mr. Molina to register to vote despite the fact that he was not a citizen?

12. Do you know Jana Carty? Did you, or anyone to your knowledge, encourage or assist Ms. Carty to register to vote twice, by both absentee ballot and at the polling place?

13. Please describe in detail the reasons for your failure to respond to a subpoena issued to you under the Federal Contested Election Act.

14. Did you communicate or cooperate with the Immigration and Naturalization Service or Citizenship USA regarding voter registration?

COMMITTEE ON HOUSE OVERSIGHT

By: Bill Thomas
The Hon. William M. Thomas
Chairman

Benny Hernandez, Trustee
2140 So. Lewis St., #100
Anaheim, CA 92802
(714) 634-0926 Home
(714) 634-2656 Home Fax
(714) 621-8631 Voice Mail

October 18, 1997

Hon. William M. Thomas
Chairman
United States House of Representatives
Committee on House Oversight
1309 Longworth HSE Office Bldg.
Washington, DC 20515

RE: Response to Interrogatories made to Benny Hernandez

Dear Hon. William M. Thomas:

Saturday, October 11, 1997 I received for the first time the interrogatories that were delivered to my apartment manager's office at 2100 So. Lewis St., Anaheim, CA 92802, by Federal Express/Saturday Delivery. Although you addressed it to 2140 So. Lewis St., **Apt. 2140**, Anaheim, CA 92802, my apartment number is #100.

You have instructed me to respond to your fourteen(14) interrogatories which will be submitted to your House Oversight Committee. As a lawful abiding citizen of the United States and as an elected official to the Anaheim City School District Board of Education who has taken an oath upon entering office in December of 1994 to obey all laws, I will respond to all of your inquiries so that this delicate matter of such investigation comes to a final closure soon, so that you and your committee members may resume to your full duties to continue your responsibilities to carry on the business that you were elected to do: to move this country forward.

Response to the fourteen(14) Interrogatories

Question No. 1:

12/13/94 to present	**Elected Official/Trustee** Anaheim City School District 1001 So. East Street Anaheim, CA 92805
Employment:	
9/15/97 to present	*Teacher* Garden Grove Unified School District 10331 Stanford Avenue Garden Grove, CA 92840
6/3/97 to 8/18/97	*Marketing & Research* The Gallup Organization 18200 Von Karman, Suite 1100 Irvine, CA 92612
10/2/96 to 6/1/97	*Self-employed/Consultant* (I dedicated a substantial portion of this period to run my election for the Anaheim Union High School District)
8/27/96 to 10/1/96	*Precinct Walker Coordinator* Democratic State Central Committee of California 840 So. Broadway Santa Ana, CA 92701
6/1/96 to 8/26/96	*Field Director* Loretta Sanchez for Congress 12553 S. Harbor Blvd. Garden Grove, CA 92840

11/18/91 to 5/31/96	*Family Counselor* Children's Bureau of Southern Calif. 50 S. Anaheim Blvd., Suite 241 Anaheim, CA 92805
11/20/86 to 8/31/91	*Children's Social Worker* County of Los Angeles Department of Children's Services 1740 E. Gage Avenue Los Angeles, CA 90001

Question No. 2:

As noted in question No. 1, I was involved during this election cycle with my own campaign and for few months I worked for the Democratic State Central Committee of California and Loretta Sanchez for Congress. No, I was not an employee, agent, or volunteer for Hermandad Mexicana Nacional, the Nativo Lopez for School board for Schoolboard Campaign, the Guttenberg Group, Citizens Forum, the Democratic Party, or Dump Dornan during the 1995-1996 election cycle.

Again, as noted in response to question No. 1, I was employed by Loretta Sanchez For Congress. I was hired as her Field Director with a monthly salary of $2,000. My duties included: Recruit, train and mobilize volunteers to become Precinct Leaders and identify targeted voters. Prepare precinct kits. Organize coffee meetings, phone banking, lawn signs distribution and remind voters to vote for Loretta on election day.

I reported to Loretta Sanchez and the campaign manager along with my co-workers, Aylin Kuyumcu, staff assistant and Juliet Martinez, fund-raiser person. I had no subordinates.

Question No. 3:

None.

Question No. 4:

None. Since I had no participation whatsoever and the groups or committee reference in this interrogatory, the responses to the sub questions are not applicable.

Question No. 5:

Again, I cannot describe in detail nor identify any documents regarding any procedures designed, followed or implemented by Hermandad Mexicana Nacional, the Nativo Lopez for Schoolboard Campaign, the Guttenberg Group, Citizens Forum, or Dump Dornan Committee to ensure that only eligible voters were registered because I had no contact with them whatsoever.

As field director for the Loretta Sanchez for Congress, I did not organize any registration drive that was directly involved in our 'Vote for Loretta Sanchez' field activity by our volunteer precinct walkers in the 46th Congressional District. Our sole field activity was to recruit volunteers to walk the precincts of the 46th Congressional District to tell registered voters to vote for Loretta Sanchez.

Question No. 6:

My answer to this interrogatory is no to each of the sub questions.

Question No. 7:

During the time I worked for Loretta Sanchez Campaign I had no knowledge of any voter registration projects or efforts undertaken jointly by Citizens Forum, the Guttenberg Group, or Dump Dornan with the Committee for Loretta Sanchez.

Question No. 8:

Again, during the time I worked for Loretta Sanchez Campaign I had no knowledge of any voter registration projects or efforts undertaken jointly by Citizens Forum, the Guttenberg Group, or Dump Dornan with the Nativo Lopez for Schoolboard Campaign.

Question No. 9:

No. I did not pay anyone bounty fees. I have no direct knowledge of any of the group reference to his interrogatory paying any bounty fees.

Question No. 10:

While this interrogatory is very broad and vague, I am attempting to be as a specific as I can in responding to the sub questions. I have had no communications regarding voter registration projects or efforts with: 1) Loretta Sanchez, or the Committee for Loretta Sanchez; 2) Guttenberg Group(I don't even know this group); 3) Wylie Aitken; 4) Carpenters Union; 5) One-Stop Immigration and Naturalization Service; 6) Active Citizenship Campaign(I don't even know who they are); 7) Nativo Lopez, or the Nativo Lopez for Schoolboard Campaign; 8) John Shallman; 9) Dump Dornan; 10) Citizens Forum; 11) Laborers Union; 12) Communications Workers Union.

However, after I left the Loretta Sanchez for Congress Campaign I did have communications and was involved in organizing voter registration. Specifically, I was involved with: 1) Southwest Voter Registration Project and; 2) Rancho Santiago College(I am a member of the planning committee for Future Citizens of America Task Force Committee.

Question No. 11:

I met Mr. Molina some time in July of 1996 when Loretta Sanchez Campaign was in the process to develop a campaign advertisement. Mr. Molina was approached and he agreed to participate with this film shooting because the filming was taken place at his employment site.

I have no direct knowledge whether Mr. Molina appeared in the product of the campaign advertisement.

My response to the final sub question of this interrogatory is no.

Question No. 12:

No, I don't know who Jana Carty is. I also have no direct knowledge whether Jana Carty was encouraged or assisted to register to vote twice, both by absentee ballot and at the polling place.

Question No. 13:

I did respond to a subpoena issued to me. My attorney was in court for another matter. Dornan's lawyers never rescheduled.

Question No. 14:

No.

This is the end of my response to your fourteen interrogatories. If you have any further questions regarding my answers, please feel free to contact me at the above telephone numbers or my attorney, Alfredo Amezcua at (714) 835-3538.

I hope that this will come to a final conclusion soon so that Loretta Sanchez can continue with her business as representative to the House of Congress of the 46th District. You will find that this whole investigation was a waste of tax payer dollars because there wasn't, to my knowledge, any organized group who purposely solicited illegal votes to defeat Bob Dornan. Bob Dornan defeated himself. We, including Loretta Sanchez, also worked very hard walking precincts, knocking on doors to tell our registered voters to vote for Loretta Sanchez. Our hard efforts paid off and Mr. Dornan can't accept such a defeat. He is just a sore loser. I hope Mr. Dornan decides to run again because we are ready to defeat him again and again.

I'm including a list of all my current and past community involvement just to give you an idea of who I am and what I do for my community in the 46th congressional district. Good Luck!!

Sincerely,



The Hon. Benny Hernandez
Trustee, Anaheim City School District

✳ CURRENT COMMUNITY INVOLVEMENT:

- School Board Member, Anaheim City School District
- Board of Directors, Orange County School Board Association
- Vice President, KinderCaminata, Inc.
- Board of Directors, Latino Social Work Network
- Member, Planning Committee of the National Association of Social Workers
- Member, Spanish-Speaking Mental Health Professionals of Orange County
- Member, Coalition for Mental Health of Orange County
- Member, Child Abuse Prevention Council of Orange County
- Member, Budget Committee of the Health Care Council of Orange County
- Member, Advisory Board of YMCA for North Orange County
- Member, Youth Motivation Taskforce
- Member, Puente Mentor Program of the Anaheim Union High School District
- Member, Anaheim Collaborative/School-to-Career Committee
- Member, Centro Cultural Committee of Orange County
- Member, League of United Latin American Citizens of Orange County District I
- Member, Los Hombres Group
- Member, Los Amigos of Orange County
- Member, Hispanic Chamber of Commerce
- Member, Hispanic Development Council of the United Way of Orange County
- Member, 68th Assembly District Committee Club
- Member, New Hope Counseling of the Crystal Cathedral

PAST COMMUNITY INVOLVEMENT

- Past President, South Anaheim Neighborhood Council
- Past President, Spanish-Speaking Mental Health Professionals of Orange County
- Past Chairperson, Children/Youth Services Committee of Mental Health Advisory Board
- Past Chairperson, Multi-Cultural Advisory Board of the Child Abuse Prevention Council
- Past Chairperson, Legislative Committee of National Association of Social Workers
- Past Chairperson, Legislative Committee of Multi-Ethnic Mental Health Taskforce
- Member, Diversity Council Committee of Children's Bureau
- Member, Community Development Block Grant Committee, City of Anaheim
- Member, Ponderosa Park Neighborhood Advisory Committee, City of Anaheim
- Member, Toastmasters Crystal Clear Communicators Noon Club
- Member, Christian Edition Men's Chorus
- Director, Pathfinder Club of Santa Ana Church
- Director, Southern California SDA Youth Sports League
- Manager, Little Baseball League, Riverside, CA
- Many certificates of achievements & awards

EDUCATION Masters in Social Work, Cal State University of Long Beach, CA - 1997
Bachelor in Social Work, Loma Linda University, Riverside, CA - 1979

HOBBIES Piano and organ, singing, community and church activities, camping, basketball, volleyball, softball, ping-pong, racquetball, tennis, traveling, reading, soft music, movies, chess.

AFFIDAVIT OF NELSON MOLINA

I, Nelson Molina, declare under penalty of perjury:

1. I reside at 1211 South Walnut Street, Anaheim, California. I reside there with my wife, Jana ~~C. Molina~~ D. Carty JC, and four children.

2. In the weeks prior to the November 5, 1996, elections, I was approached by Benny Hernandez, a representative of the Loretta Sanchez campaign. Mr. Hernandez also identified himself as a member of the Anaheim City School District Board of Education. Mr. Hernandez requested that I participate in a campaign advertisement for television by appearing with Loretta Sanchez. I volunteered my time to do so.

3. About one week later, Mr. Hernandez approached me and my wife at our home and requested further assistance in the campaign on behalf of Loretta Sanchez. During that conversation, which occurred several weeks prior to the November 5, 1996, election, Mr. Hernandez asked me whether or not I had voted by absentee ballot. I told him that while I was a legal resident, I was not a United States citizen. Mr. Hernandez told me "that didn't matter" and suggested that I register to vote and vote even though I was not a United States citizen. I told him I would not do so.

4. During the same conversation, Mr. Hernandez turned to my wife, Jana, and asked whether or not she had voted. My wife is a United States citizen and responded that she had voted earlier by absentee ballot. Mr. Hernandez then said that she "could vote twice" and urged her to appear at her polling place on November 5, 1996, and cast another vote for Loretta Sanchez.

5. My wife responded that she did not think that was appropriate since she had already voted once, but Mr. Hernandez responded that "it would be no problem" since she could "vote once by absentee ballot and then again at the poll". My wife declined to do so.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 6 day of February, 1997, at Anaheim, California.

Nelson Molina.
Nelson Molina

71362.001/157372

D. CARTY J.C.

AFFIDAVIT OF JANA ~~G. MOLINA~~

D. CARTY J.C.

I, Jana ~~G. Molina~~, declare under penalty of perjury:

1. I reside at 1211 South Walnut Street, Anaheim, California. I reside there with my husband, Nelson Molina, and four children.

2. In the weeks prior to the November 5, 1996, elections, my husband was approached by Benny Hernandez, a representative of the Loretta Sanchez campaign. Mr. Hernandez also identified himself as a member of the Anaheim City School District Board of Education. Mr. Hernandez requested that my husband participate in a campaign advertisement for television by appearing with Loretta Sanchez. He volunteered his time to do so.

3. About one week later, Mr. Hernandez approached me and my husband at our home and requested further assistance in the campaign on behalf of Loretta Sanchez. During that conversation, which occurred several weeks prior to the November 5, 1996, election, Mr. Hernandez asked my husband whether or not he had voted by absentee ballot. He told Mr. Hernandez that while he was a legal resident, he was not a United States citizen. Mr. Hernandez told him "that didn't matter" and suggested that he register to vote and vote even though he was not a United States citizen. He declined to do so.

4. During the same conversation, Mr. Hernandez turned to me and asked whether or not I had voted. I am a United States citizen and responded that I had voted by absentee ballot. Mr. Hernandez then stated that I "could vote twice" and urged me to appear at my

polling place on November 5, 1996, and cast another vote for Loretta Sanchez.

5. I responded that I did not think that was appropriate since I had already voted once, but Mr. Hernandez responded that "it would be no problem" since I could "vote once by absentee ballot and then again at the poll". I declined to do so.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 6 day of February, 1997, at Anaheim, California.

Jana ~~C. Molina~~ D. Carty
Jana D. CARTY

71362.001/157373

UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON HOUSE OVERSIGHT

ROBERT DORNAN	)
Contestant,	)
v.	)
LORETTA SANCHEZ	)
Contestee.	)

INTERROGATORIES TO HERMANDAD MEXICANA NACIONAL - NATIVO LOPEZ - PRESIDENT

TO: Hermandad Mexicana Nacional - Nativo Lopez
c/o Mark S. Rosen, Esq.
2107 No. Broadway
Suite 202
Santa Ana, CA 92706

The Committee on House Oversight, in accordance with a resolution adopted by the Committee on September 24, 1997, a quorum being present, directs the following interrogatories to you pursuant to U.S. Const. art.I, House Rule 10(h). You are directed to answer each interrogatory separately and under oath and to serve a copy of your answers thereto with the Committee on House Oversight within seven (7) days.

Instructions

1. For each objection interposed to any interrogatory or subpart thereof, state with specificity each and every ground upon which the objection is based.

2. These interrogatories are continuing in nature and therefore require that supplemental answers be provided should

any additional, responsive information be acquired after the time of compliance herewith.

3. Whenever necessary to bring within the scope of these Interrogatories any information which might otherwise be construed to be outside the scope of these Interrogatories, the singular form of a word shall be interpreted in the plural and vice versa, all words and phrases shall be construed as masculine, feminine, or neuter gender, according to the context, and "and" as well as "or" shall be construed either disjunctively or conjunctively.

4. Unless otherwise noted, each interrogatory relates to the time period from November 7, 1994 to the present.

5. "During the 1995-1996 election cycle" denotes the time period November 7, 1994 to December 31, 1996.

Interrogatories

1. List all present officers, directors and employees of Hermandad Mexicana Nacional and its various local and regional affiliates.

2. List all officers, directors and employees of Hermandad Mexicana Nacional and its various local and regional affiliates during the 1995-1996 election cycle.

3. Describe in detail the organizational structure of Hermandad Mexicana Nacional, including, but not limited to, a description of its subdivisions, its local and regional affiliates, and its purpose(s).

4. Describe the tax status of Hermandad Mexicana Nacional.

5. During the 1995-1996 election cycle, what federal or state grants or sources of private funding did Hermandad Mexicana Nacional receive to engage in voter registration or voter education efforts?

6. During the 1995-1996 election cycle, describe in detail the contractual relationship between the United States Immigration and Naturalization Service, the Naturalization Assistance Service and Hermandad Mexicana Nacional. Please list the employees or agents of Hermandad Mexicana Nacional who would be most familiar with these contractual relationships.

7. During the 1995-1996 election cycle, describe in detail the naturalization services that Hermandad Mexicana Nacional provided, what payments or fees were received for these services, how much income Hermandad Mexicana Nacional derived from providing these services, and what percentage did the income from providing such services constitute of Hermandad Mexicana Nacional's gross income. Please list the employees or agents of Hermandad Mexicana Nacional who would be most familiar with the naturalization services provided and the payments or fees received for these services.

8. During the 1995-1996 election cycle, describe in detail the involvement of Hermandad Mexicana Nacional, its officers, directors, employees or agents, with Citizenship USA.

9. During the 1995-1996 election cycle, describe in detail the involvement of Hermandad Mexicana Nacional, its officers, directors, employees, agents, or volunteers in registering voters, including, but not limited to: 1) who managed Hermandad Mexicana Nacional's voter registration efforts; 2) whether and to whom Hermandad Mexicana Nacional paid bounties, fees or other things of value for registering voters; 3) whether certain areas and/or precincts were assigned to persons for the purpose of registering voters; 4) the nature of and the extent to which phone banks and/or direct mail was used and describe the direct mail operations and the direct mail letters; 5) the nature of any "get out the vote" operations; and 6) and the names of all officers, directors, employees, agents, or volunteers of Hermandad Mexicana Nacional involved in registering voters.

10. Please describe in detail and identify documents regarding any procedures designed, followed or implemented by Hermandad Mexicana Nacional to ensure that only eligible voters were registered.

11. Are you aware, or do you have knowledge of others at Hermandad Mexicana Nacional who are aware, of any documented or undocumented aliens registering to vote during the 1995-1996 election cycle? Are you aware, or do you have knowledge of others who are aware, of documented or undocumented aliens that were assisted by any employee, agent or volunteer of Hermandad Mexicana Nacional to vote during the 1995-1996 election cycle?

If so, please list the names, addresses and telephone numbers of the employee, agent or volunteer of Hermandad Mexicana Nacional and the names, addresses and telephone numbers of any documented or undocumented aliens that were so registered.

12. Describe in detail all communications that any officer, director, employee, agent or volunteer of Hermandad Mexicana Nacional had regarding voter registration projects or efforts with: 1) Loretta Sanchez or the Committee for Loretta Sanchez; 2) Benny Hernandez; 3) the California Democratic Party or the Democratic National Committee; 4) Nativo Lopez or the Nativo Lopez for Schoolboard Campaign; 5) the Active Citizenship Campaign; 6) the Southwest Voter Registration Project; 7) Michael Farber, Citizens Forum, the Guttenberg Group, or Dump Dornan; 8) the One-Stop Immigration and Education Center; or 9) Carpenters Union Local; 10) Laborers Union; 11) Communications Workers Union; 12) Catholic Charities; or 13) Rancho Santiago College during January 1, 1996 to November 6, 1996. For each communication, please list the date, describe the nature the communication and identify who else had knowledge of the communication.

13. Have you, your attorneys, or Hermandad Mexicana Nacional undertaken any investigation of vote fraud in connection with the 1995-1996 election in the 46th District? If so, please describe in detail the nature, method, scope and results of any such investigation.

14. Please describe in detail and identify documents regarding any procedures designed, followed or implemented by Hermandad Mexicana Nacional to verify the legality of registrations secured by third parties working with or paid by Hermandad Mexicana Nacional.

15. Did the Nativo Lopez for Schoolboard Campaign receive a contribution check from Dump Dornan? If so, please describe: 1) in what amount was the check; 2) what was noted in the memo portion of the check; and 3) was this check used for a "get out the vote" effort in support of Loretta Sanchez.

16. Did you receive a subpoena pursuant to the Federal Contested Election Act? With whom have you discussed this subpoena from the date of receipt to the present? Are you aware of any documents, computer disks or files of Hermandad Mexicana Nacional being destroyed or deleted after your receipt of the subpoena?

17. Who did Hermandad Mexicana Nacional or any publications produced by Hermandad Mexicana Nacional endorse in the 1995-1996 election cycle?

18. Has Hermandad Mexicana Nacional advised, counselled or encouraged persons or entities to not cooperate with the investigation of vote fraud in the 46th District? If so, please list all persons, their addresses and telephone numbers who were so advised, counselled or encouraged.

19. Did Hermandad Mexicana Nacional register persons to vote in conjunction with their attendance at citizenship classes or their attendance at Immigration and Naturalization Service citizenship interviews?

COMMITTEE ON HOUSE OVERSIGHT

By: _____
The Hon. William M. Thomas
Chairman

MUÑOZ & ASSOCIATES
ATTORNEYS AT LAW
1717 SOUTH STATE COLLEGE BOULEVARD
SUITE 125
ANAHEIM, CALIFORNIA 92806-6024
TEL.: (714) 978-6989 • FAX: (714) 978-3210

EDWARD R. MUÑOZ

97 OCT 15 AM 10:40

October 8, 1997

The Honorable William M. Thomas
Chairman, Committee on House Oversight
United States House of Representatives
1309 Longworth House Office Building
Washington, D.C. 20510

RE: Interrogatories mailed to Hermandad Mexicana Nacional - Nativo Lopez - President

Dear Chairman Thomas:

I am in receipt of interrogatories from the Committee on House Oversight directed to Hermandad Mexicana Nacional - Nativo Lopez. These interrogatories direct my client, Nativo Lopez, to answer to each interrogatory separately and under oath and to serve a copy thereof to the Committee on House Oversight within seven days pursuant to U.S. Const. Art. 1, House Rule 10(h).

As counsel for Nativo Lopez, I have researched the authority you cited in a good faith attempt to comply with your request. I found no authorization in House Rule 10(h) which grants your Committee on House Oversight with the power to request interrogatories from my client. I also reviewed House Rule 11 and found no authorization for interrogatories therein either. Furthermore, I find no reference in the Federal Congressional Elections Act, (hereafter FCEA), which authorizes interrogatories for a non-party to the contested election. However, the FCEA allows for discovery between an election contestee and a contestant which may include requests for interrogatories.

Finding no authority for interrogatories in the House of Representatives Rules, I also reviewed the Federal Rules of Civil Procedure, (hereafter FRCP) for any guidance regarding the interrogatories you requested. The closest provision therein to your request expressly allows for interrogatories served only on parties to the action. (See FRCP rule 33.) However, my client is not a party to the House of Representatives Election Contest. Furthermore, kindly note that California civil law on discovery is also consistent with FRCP rule 33.

If you are unaware of any specific legal authority authorizing your request for interrogatories, kindly inform me of it. With all due respect, until I am made aware of any legal authority which authorizes your request for interrogatories from my client, Mr.

PROOF OF SERVICE BY MAIL
(1013A (3) C.C.P.)

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of eighteen years and not a party to the within entitled action; my business address is : 1717 South State College Boulevard, Suite 125, Anaheim, California 92806.

On **October 8, 1997,** I personally served the foregoing documents described as **LETTER RE: INTERROGATORIES MAILED TO HERMANDAD MEXICANA NACIONAL - NATIVO LOPEZ - PRESIDENT** on all interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

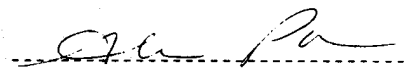
The Honorable William M. Thomas
Chairman, Committee on House Oversight
United States House of Representatives
1309 Longworth House Office Building
Washington, D.C. 20510

I deposited such envelope in the mail at Anaheim, California. The envelope was mailed with postage thereon fully prepaid.

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Anaheim, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit of mailing affidavit.

Executed on **October 8, 1997,** at Anaheim, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



ALMA PASTRANA

Lopez will be advised not to comply with your request.

I would also like to note for the record that I have been informed that a request for permission to appeal the September 24 Federal District Court Ruling by the Honorable Gary L. Taylor (Dornan v. Sanchez SA CV 97-1-GLT[CC] has been requested by counsel for Hermandad Mexican Nacional. An appeal could address several U.S. Constitutional issues germane to my client's rights in the instant matter; i.e. questions of Due Process, Congressional delegation of power, and statutory vagueness regarding the FCEA. Judge Taylor himself stated in his opinion "that an immediate appeal from this order may materially advance the ultimate interests and termination of the mater, the Court hereby certifies this opinion for interlocutory review under 28 U.S.C. § 1292(b)." (Dornan v. Sanchez supra at page 25) Indeed, an expedited appeal by the Ninth Circuit Court of Appeals would provide all of us with some valuable procedural guidance in this novel matter.

Additionally, for the record, my client reserves his right to exercise any and all objections as to form and/or content of the requested interrogatories. My client reserves his right to object as to any jurisdictional defects regarding the instant interrogatories. My client reserves all of his rights guaranteed under the First, Fourth, Fifth and Fourteenth Amendments to the U.S. Constitution and any additional rights that may be afforded him under California Constitutional Law. Furthermore, my client reserves his right to assert any privilege which may apply.

For the forgoing reasons, Mr. Lopez will respectfully decline to respond to the current set of Interrogatories until such time that his good faith concerns regarding both substantive and procedural questions of law are resolved.

Sincerely Yours,

Edward R. Muñoz
Attorney for Nativo Lopez

c.c.: Mark Rosen, Esq.
Nativo Lopez
Hermandad Mexicana Nacional

UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON HOUSE OVERSIGHT

ROBERT DORNAN	)
Contestant,	)
v.	)
LORETTA SANCHEZ	)
Contestee.	)

INTERROGATORIES TO THE COMMITTEE FOR LORETTA SANCHEZ - WILEY AITKEN, FINANCE CHAIRMAN

TO: The Committee for Loretta Sanchez - Wiley Aitken
3 Imperial Promenade
Suite 800
P.O. Box 2555
Santa Ana, CA 92707-2555

The Committee on House Oversight, in accordance with a resolution adopted by the Committee on September 24, 1997, a quorum being present, directs the following interrogatories to you pursuant to U.S. Const. art.I, House Rule 10(h). You are directed to answer each interrogatory separately and under oath and to serve a copy of your answers thereto with the Committee on House Oversight within seven (7) days.

Instructions

1. For each objection interposed to any interrogatory or subpart thereof, state with specificity each and every ground upon which the objection is based.

2. These interrogatories are continuing in nature and therefore require that supplemental answers be provided should any additional, responsive information be acquired after the time of compliance herewith.

3. Whenever necessary to bring within the scope of these Interrogatories any information which might otherwise be construed to be outside the scope of these Interrogatories, the singular form of a word shall be interpreted in the plural and vice versa, all words and phrases shall be construed as masculine, feminine, or neuter gender, according to the context, and "and" as well as "or" shall be construed either disjunctively or conjunctively.

4. Unless otherwise noted, each interrogatory relates to the time period from November 7, 1994 to the present.

5. "During the 1995-1996 election cycle" denotes the time period November 7, 1994 to December 31, 1996.

Interrogatories

1. Please describe in detail: 1) what, if any, voter registration related projects or efforts the Committee for Loretta Sanchez initiated, participated in, implemented, collaborated in, or promoted during the 1995-1996 election cycle; 2) the length of each project or effort; 3) the names of all persons who worked on each project or effort; 4) the number of persons assisted in registering to vote; 5) and the names of such persons assisted.

2. Please describe in detail and identify documents regarding any procedures designed, followed or implemented by the Committee for Loretta Sanchez to ensure that only eligible voters were registered.

3. Do you know Benny Hernandez? Was Mr. Hernandez an employee, agent or volunteer of the Committee for Loretta Sanchez? If so, please describe in detail his position, duties, compensation, and list the names of his direct superiors and subordinates.

4. Please describe in detail the involvement, if any, that Benny Hernandez had with the Committee for Loretta Sanchez regarding voter registration.

5. Are you aware, or do you have knowledge of others who are aware, of any documented or undocumented aliens registering to vote during the 1995-1996 election cycle? Are you aware, or do you have knowledge of others who are aware, of documented or undocumented aliens that were assisted by any employee, agent or volunteer of the Committee for Loretta Sanchez, to vote during the 1995-1996 election contest? If so, please list the names, addresses and telephone numbers of the employee, agent or volunteer of the Committee for Loretta Sanchez and the names, addresses and telephone numbers of any documented or undocumented aliens that were so registered.

6. Are you aware, or do you have knowledge of others who are aware, of any documented or undocumented aliens registering

to vote during the 1995-1996 election cycle? Are you aware, or do you have knowledge of others who are aware, of documented or undocumented aliens that were assisted by any employee, agent or volunteer of the Active Citizenship Campaign, Catholic Charities, One-Stop Immigration and Education Center, Southwest Voter Registration Project, Carpenters Union, Communications Workers Union, or the Laborers Union, to vote during the 1995-1996 election contest? If so, please list the names, addresses and telephone numbers of the employee, agent or volunteer of the Committee for Loretta Sanchez and the names, addresses and telephone numbers of any documented or undocumented aliens that were so registered.

7. To your knowledge, was Nelson Molina requested by the Committee for Loretta Sanchez or anyone else to appear in a campaign advertisement for Loretta Sanchez? Did he did appear in such an advertisement? Did you, or anyone to your knowledge, encourage or assist Mr. Molina to register to vote despite the fact that he was not a citizen?

8. Did you, or anyone to your knowledge, encourage or assist Jana Carty to register to vote twice, by both absentee ballot and at the polling place?

9. Did you, or anyone to your knowledge at the Committee for Loretta Sanchez, have any communications with Benny Hernandez regarding voter registration projects or efforts during the 1995-1996 election cycle? If so, please state the date, describe the

nature of such communication and identify who else had knowledge of the communication.

10. Did you, or anyone to your knowledge at the Committee for Loretta Sanchez, have any communications with Nativo Lopez, the Nativo Lopez for Schoolboard Campaign, or Hermandad Mexicana Nacional, Humbert Corona, the Guttenberg Group, Dump Dornan, Citizens Forum or Michael Farber regarding voter registration projects or efforts during the 1995-1996 election cycle? If so, please state the date, describe the nature of such communication and identify who else had knowledge of the communication.

11. Do you have knowledge, or are you aware of anyone at the Committee for Loretta Sanchez having knowledge, of any employee, agent or volunteer of Hermandad Mexicana Nacional, Humbert Corona, the Guttenberg Group, Dump Dornan, Citizens Forum or Michael Farber, registering or attempting to register any documented or undocumented aliens to vote? If so, please list the names, addresses and telephone numbers of the employee, agent or volunteer of Hermandad Mexicana Nacional and the names, addresses and telephone numbers of any documented or undocumented aliens that were so registered.

12. Have you, your attorneys, or the Committee for Loretta Sanchez undertaken any investigation of vote fraud in connection with the 1995-1996 election in the 46th District? If so, please describe in detail the nature, method, scope and results of any such investigation.

13. Did the Committee for Loretta Sanchez pay anyone bounties, fees or anything of value to register voters? If so, please describe in detail the nature and scope of such efforts, and list the names, addresses and telephone numbers of persons to whom such bounties, fees or things of value were paid.

14. Please describe in detail and identify documents regarding any procedures designed, followed or implemented by the Committee for Loretta Sanchez to verify the legality of registrations secured by third parties working with or paid by the Committee for Loretta Sanchez.

15. Did you receive a subpoena pursuant to the Federal Contested Election Act? With whom have you discussed this subpoena from the date of receipt to the present? Are you aware of any documents, computer disks or files of the Committee for Loretta Sanchez being destroyed, removed or deleted after your receipt of the subpoena?

16. Describe how the files of the Committee for Loretta Sanchez are maintained, including, but not limited to, the name of the custodian of records and the custodian of petty cash funds.

17. Are you aware of a contribution by Dump Dornan to the Nativo Lopez for Schoolboard Campaign, which was annotated with the memo for Loretta Sanchez GOTV? Was this check, in fact, used to assist the Committee for Loretta Sanchez?

COMMITTEE ON HOUSE OVERSIGHT

By: Bill Thomas
The Hon. William M. Thomas
Chairman

WYLIE A. AITKEN, BAR NO. 37770
LAW OFFICES OF WYLIE A. AITKEN
WILLIAM J. KOPENY, ESQ.
KOPENY & POWELL
STAN BRAND, ESQ.
DAVID FRULLA, ESQ.
BRAND, LOWELL & RYAN
FREDERIC D. WOOCHER, ESQ.
STRUMWASSER & WOOCHER
3 IMPERIAL PROMENADE, SUITE 800
P.O. BOX 2555
SANTA ANA, CA 92707-2555
(714) 434-1424

Attorneys for Contestee, LORETTA SANCHEZ

COMMITTEE ON HOUSE OVERSIGHT OF THE

HOUSE OF REPRESENTATIVES OF THE UNITED STATES

In the Matter of the Contested Election of LORETTA SANCHEZ for the Office of the House of Representatives to the United States Congress, ROBERT K. DORNAN,	)	THE COMMITTEE FOR LORETTA SANCHEZ - WYLIE AITKEN (IMPROPERLY IDENTIFIED AS WILEY AITKEN), CAMPAIGN CHAIR, (IMPROPERLY IDENTIFIED AS FINANCE CHAIRMAN) RESPONSES TO INTERROGATORIES
Contestant,	)	
vs.	)	
LORETTA SANCHEZ,	)	[U.S. CONST. ART 1, HOUSE RULE, 10(h)]
Contestee.	)	

INTRODUCTION

As the General Chair of Loretta Sanchez's campaign and as her counsel I would be remiss if I did not point out two glaring and disturbing facts about the nature of these interrogatories and how they have been characterized by the Oversight Committee.

The Committee through its chair and others have made glaring misstatements regarding the need for information from Congresswoman Sanchez, to wit, these interrogatories, in order to complete their investigation and have suggested quite unfairly that she was "stonewalling" information.

This misstatement coupled with an unfair and unwarranted attack against a fellow public official, Mr. Benny Hernandez, who has been falsely described as the #2 person in the Sanchez campaign, apparently reflects a calculated effort to confuse the media and the public and the issues.

These interrogatories seek information in two area 1) what was the voter registration efforts of the Sanchez campaign and what was that campaigns connection, if any, with Nativo Lopez, Hermandad Mexicana Nacional and other groups associated with Lopez? and 2) who is and was Benny Hernandez and what was his relationship to the Sanchez campaign?

As to area #1 Loretta Sanchez gave to the Committee in April of 1997 (approximately 6 months ago) the information now sought and gave it to them under oath!

On April 19, 1997 Loretta Sanchez testified before the Task Force at the field Hearing in Orange County. At that time, the results of the only field investigation ever done in this election contest were presented. Mr. Dornan's allegations about double voting, improper absentee ballots, illegal registrations at business addresses and so called suspicious households were proved to be patently false and the INS lists were shown to be patently unreliable. Falsely accused nuns, military personnel, twins and others were vindicated.

Congresswoman Sanchez clearly under oath outlined that her campaign did not hold a registration drive and that her campaign with its limited resources was a campaign of

persuasion. She clearly testified under oath there was no connection between her campaign and Hermandad Mexicana Nacional. She testified to one meeting with Nativo Lopez shortly after her nomination wherein he refused to support her because he had a long standing relationship with Mr. Dornan. Six months later the questions are the same and the answers are the same. (See transcript of April 19, 1997 hearing)).

At that same hearing, Mr. Dornan's attorneys presented false testimony against Benny Hernandez, a member of the Anaheim Elementary School Board who has an MBA from Cal State University at Long Beach and is a well respected social worker. Mr. Hernandez worked briefly in the Sanchez campaign in June/July/August 1996 as a field representative. He performed no executive role nor was involved in any campaign decision making. Weeks after he left he campaign on a visit to an Anaheim family to place a lawn sign for his own campaign as a candidate for the Anaheim Union High School District he was falsely accused of trying to have a resident alien vote and suggesting a citizen vote twice.

This sums up the alleged "stonewalling" by Congresswoman Sanchez. In the meantime, heavily documented and substantial charges of gross misconduct by Mr. Dornan's lawyers has been completely ignored.

PRELIMINARY STATEMENT

Subject to each of the following qualifications and objections, The Committee for Loretta Sanchez - Wylie Aitken, Campaign Chair, responds to the Interrogatories propounded by the Committee on House Oversight, as follows:

These responses are based solely on the information presently known and currently available to this responding party after conducting a reasonable inquiry and search.

Nevertheless, the information provided in these responses is given in a good faith effort to supply as much factual material as possible.

All of the answers are based only upon such information and documents which are presently available to and specifically known to this responding party. The following interrogatory responses are given without prejudice to responding party's right to produce evidence of any subsequently fact or facts.

GENERAL OBJECTIONS

These interrogatories are oppressive and burdensome, because they are vague, ambiguous, and unintelligible so as to make responses impossible without speculation as to the meaning of the questions. However, without waiving said objections the answering party has attempted to give meaning to the interrogatories.

These interrogatories are also "continuing interrogatories" and as such oppressive and burdensome and prohibited by law. See Kenny v. Superior Court 255 Cal.App.2d 106, 63 Cal.Rptr. 84 (1967).

The information being provided is information learned exclusively in my role as campaign chair.

RESPONSES TO INTERROGATORIES

Response to Interrogatory No. 1:

1) As campaign chair I was not intimately involved with all the day to day activities of the campaign. However, to my knowledge the campaign was not actively involved in voter registration.

2) Not applicable.

3) Not applicable.

4) Not applicable.

5) Not applicable.

Response to Interrogatory No. 2:

I've been informed that blank registration forms were made available and the forms were self-explanatory.

Response to Interrogatory No. 3:

Yes. I first met Mr. Hernandez when I was introduced to him as one of our campaign field representatives (he may have been our only one since our campaign had very limited resources). I was advised that he was also a School Board member in my City of Anaheim. I assume his superiors were John Shallman and Congresswoman Sanchez.

Response to Interrogatory No. 4:

None to my knowledge.

Response to Interrogatory No. 5:

I know the results of our investigation which was provided to the Committee and what I've read in the newspapers. To my knowledge not a single alien was assisted to register by anyone in the Sanchez campaign.

Response to Interrogatory No. 6:

See Response to No. 5.

Response to Interrogatory No. 7:

I was advised by Mr. Hernandez that he requested Mr. Molina appear in a hard hat in a campaign advertisement. Mr. Hernandez has vehemently denied to me that he offered to assist Mr. Molina to register and I find such a suggestion patently absurd.

Response to Interrogatory No. 8:

Absolutely not.

Response to Interrogatory No. 9:

Not to my knowledge.

Response to Interrogatory No. 10:

Not to my knowledge. After the close of registration Mr. Lopez apparently sought financial assistance from the Sanchez campaign. This request was declined.

Response to Interrogatory No. 11:

No knowledge other than what has appeared in the newspapers.

Response to Interrogatory No. 12:

Yes. Counsel for Congresswoman Sanchez sent teams of investigators out into the district to attempt to interview voters listed in several categories created by the INS in order to verify the accuracy of the INS data and records. The results of that field investigation to date are shown in Exhibit D. Investigators visited and attempted to interview 97 foreign-born voters who had been identified by the INS records as not having been naturalized as of election day, or for that matter, as of the end of 1996. Approximately one-quarter of the individuals we contacted were unwilling to talk to us or to show us any documentation regarding their citizenship status. But 74 people were willing to be interviewed, and the results of those interviews were, to say the least, quite revealing as to the accuracy of the INS records.

Over 75% of the INS determinations of non-citizenship were confirmed by our investigators to be wrong. According to the INS database and records, none of these 74 individuals had been sworn in as a citizen as of election day. Yet 56 of them were able to

show our investigators naturalization certificates proving that they had in fact become citizens prior to November 5, 1996! In only 18 of these 74 cases was the INS apparently correct that the voter had not become a citizen by election day. In other words, the INS records for these categories of individuals were actually three times more likely to be mistaken than to be correct. it does not take a nuclear physicist to realize that something is seriously wrong with the citizenship determinations made based upon the INS data and records.

Contestee's comprehensive investigation of Mr. Dornan's allegations, included sending investigators out into the 46th District in an attempt to personally interview most of the voters falsely accused of having voted illegally by Mr. Dornan. Attached as Exhibit A are the detailed, allegation-by-allegation, results of our investigation. To say that Mr. Dornan's charges were not "credible" is an understatement. Among the findings of our investigation, consistent with the findings of the County Registrar, are the following:

1) The vast majority of Dornan's charges of double-voting were shown to be untrue simply on the face of the the publicly available election materials (e.g. affidavits, of registration plainly filled out by twins with different names and signatures, absentee ballot envelopes clearly executed and returned by the voter.)

2) Despite Mr. Dornan's attorneys' claim that "we actually went to the business addresses in question and confirmed at least 22 addresses were solely commercial addresses from which registered voters voted." Letter of 1-23-97 from William Hart, Esq. to Registrar of Voters Rosalyn Lever, at page 2.), none of the voters residing at the supposedly illegal or suspicious addresses reported ever having seen or spoken to anyone representing Mr. Dornan and the validity of most of these addresses was so apparent to anyone who visited

them it was inconceivable that Contestant made any effort to substantial his reckless charges of illegal voting prior to leveling them.

3) When technical violations of the Elections Code appear to have occurred, there was absolutely no evidence of voter fraud or willful violation of the law. Rather, each instance was the result of an innocent mistake either by the voter or a volunteer pollworker.

4) The majority of the ballots cast in technical violation of the law were voted by registered Republicans, some of whom freely volunteered that they had voted for Mr. Dornan.

In response to Mr. Dornan's subpoena, the District Attorney's office provided Contestee with a typewritten list of the 1,160 Hermandad registrants in Orange County, as annotated by the INS with each individual's supposed immigration/citizenship status and, where applicable, his or her date of naturalization. As explained by District Director Rogers, INS first checked the names of these registered voters against its various electronic databases, and then, "to ensure ourselves that relevant information was both comprehensive and correct, INS made a file-by-file, manual check of its paper file records to verify the results of its search." (Testimony of Richard K. Rogers, at pg. 2)

Information provided by the INS was that 565 persons were registered by Hermandad in the 46th Congressional District and who voted in the November 1996 election according to Contestee's version of the Registrar's "As Voted" tape. Of these 565 voters, the INS identified 112 as having been naturalized citizens prior to the date they registered to vote, and another 126 having been sworn in as citizens prior to election day, but after having registered. Three voters were confirmed by the INS as having been naturalized after the election, and one as having been denied citizenship. Sixty voters were categorized by the

INS as still being in the process of naturalization as of the end of 1996, with another 18 "pending status review," a category also indicating that they had not yet been granted citizenship. A total of 133 voters were asserted to have "No Records" on them at the INS, 69 of whom were foreign-born and 64 of whom listed U.S. places of birth on their affidavits of registration (and for whom, therefore, it should not have been surprising not to have found an INS record). Finally, 112 voters' names contained "No Notation" by INS next to their name, which the District Attorney's office subsequently explained meant that the voters' names appeared somewhere in INS records -- presumably as documented resident aliens-- but not as having attained citizenship or awaiting naturalization; 103 of these voters show foreign birthplaces on their registrations and 9 have U.S. places of birth.

Attached as Exhibits to Loretta Sanchez' answers are the results of our investigation:

Exhibit A - Dornan Allegations - Division 3. Absentee Voting, New Resident, And New Citizen Voting

Exhibit B - Absentee Voting 1, updated 4-28-97

Exhibit C - Double Voting, updated 4-28-97

Exhibit D - Business Addresses, updated 4-28-97

Exhibit E - Suspicious Households, updated 4-28-97

Exhibit F - Absentee Voting 2, updated 4-28-97

Exhibit G - Statement of Tony Miller, Legal Memorandum, Voting by United States Citizens Who Registered Prior to Completing the Naturalization Process.

Exhibit H - US Dept. of Justice, letter to Naturalization Applicant.

Exhibit I - Jones Universe, Summary of Analysis -- 46th CD

Exhibit J - Community Groups & Individuals Targeted by Dornan Subpoena of Registrar of Voters.

Exhibit K - Voter Registration Card Statement of Distribution Plans.

Exhibit L - Registration at Business Addresses

Exhibit M - Addresses with "Too Many" Registrations

Exhibit N - Probable Double Voters

Exhibit O - Photographs

Exhibit P - The 46th District Family Photo Album

Response to Interrogatory No. 13:

No.

Response to Interrogatory No. 14:

Since the Loretta Sanchez campaign did not work with or pay third parties to register, we would have no such procedures in place.

Response to Interrogatory No. 15:

No. I was advised of or received subpenas directed to the campaign or my client. To my knowledge no documents have been destroyed and since our campaign was a low budget campaign we have no videos of our fund raising coffees.

Response to Interrogatory No. 16:

I'm told all records are in the campaign office, financial records with the campaign treasurer.

Response to Interrogatory No. 17:

Yes. I first saw it attached to a Dornan subpena in this Contest. I have no idea what the funds were used for.

Dated: October 13, 1997

LAW OFFICES OF WYLIE A. AITKEN
WILLIAM J. KOPENY
STRUMWASSER & WOOCHER
BRAND, LOWELL & RYAN

By: WYLIE A. AITKEN
Attorneys for Contestee
LORETTA SANCHEZ

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF ORANGE

I have read the foregoing RESPONSES TO INTERROGATORIES, SET NO. ONE, PROP. BY COMMITTEE ON HOUSE OVERSIGHT and know its contents.

☐ **CHECK APPLICABLE PARAGRAPHS**

☐ I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☐ I am ☐ an Officer ☐ a partner _____ ☒ a Campaign Chr. of Committee for Loretta Sanchez, a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. ☒ I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. ☐ The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☐ I am one of the attorneys for _____, a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on October 13, 19 97, at Santa Ana, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Wylie A. Aitken
Type or Print Name

Signature

PROOF OF SERVICE
1013a (3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF

I am employed in the county of _____, State of California.

I am over the age of 18 and not a party to the within action; my business address is: _____

On _____, 19____, I served the foregoing document described as _____

_____ on _____ in this action

☐ by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:

☐ by placing ☐ the original ☐ a true copy thereof enclosed in sealed envelopes addressed as follows:

☐ **BY MAIL**

☐ *I deposited such envelope in the mail at _____, California. The envelope was mailed with postage thereon fully prepaid.

☐ As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at _____ California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on _____, 19____, at _____, California.

☐ **(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on _____, 19____, at _____, California.

☐ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

_____
Type or Print Name

_____
Signature

*(BY MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG)

**(FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 3 Imperial Promenade, Ste. 800, Santa Ana, CA 92707-2555.

On October 13, 1997 I served the foregoing document described as **Wylie Aitken, Campaign Chair, Committee for Loretta Sanchez Responses to Interrogatories propounded by the Committee on House Oversight;** on the parties herein in this action

☑ by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list;

☐ by placing ☐ the original ☐ a true copy thereof in sealed envelopes addressed as follows:

(SEE ATTACHED SERVICE LIST)

☐ BY PERSONAL SERVICE I caused such envelope to be delivered by hand to the offices of the addressee.

☑ BY MAIL

☐ I deposited such envelope in the mail at Santa Ana California.

☑ As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing.

Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Santa Ana, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

Executed on October 13, 1997 at Santa Ana, California.

☑ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

DEBORAH L. MILLER
Type or Print Name

Signature

Mailing List: Re: In the Matter of the Contested Election of LORETTA SANCHEZ for the Office of House of Representatives to the United State Congress, ROBERT K. DORNAN v. LORETTA SANCHEZ

The Honorable William M. Thomas
Chairman of the Committee on House Oversight
1309 Longworth House Office Building
Washington, D.C. 20515-6157

VIA FACSIMILE & U.S. MAIL

William R. Hart, Esq.
HART, KING & COLDREN
200 E. Sandpointe, Suite 400
Irvine, CA 92707
Attorneys for Contestant, Robert K. Dornan

VIA U.S. MAIL

Stan Brand, Esq.
Brand, Lowell & Ryan
923 Fifteenth Street, N.W.
Washington, D.C. 20005
Attorneys for Contestee, Loretta Sanchez

VIA U.S. MAIL

William J. Kopeny, Esq.
KOPENY & POWELL
8001 Irvine Center Drive, Ste. 1170
Irvine, CA 92618
Attorneys for Contestee, Loretta Sanchez

VIA U.S. MAIL

Fredric D. Woocher, Esq.
STRUMWASSER & WOOCHER
100 Wilshire Blvd., Ste. 1900
Santa Monica, CA 90401
Attorneys for Contestee, Loretta Sanchez

VIA U.S. MAIL

UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON HOUSE OVERSIGHT

ROBERT DORNAN	)
Contestant,	)
v.	)
LORETTA SANCHEZ	)
Contestee.	)

INTERROGATORIES TO MICHAEL FARBER

TO: Michael Farber
c/o Mark S. Rosen, Esq.
2107 No. Broadway
Suite 202
Santa Ana, CA 92707

The Committee on House Oversight, in accordance with a resolution adopted by the Committee on September 24, 1997, a quorum being present, directs the following interrogatories to you pursuant to U.S. Const. art.I, House Rule 10(h). You are directed to answer each interrogatory separately and under oath and to serve a copy of your answers thereto with the Committee on House Oversight within seven (7) days.

Instructions

1. For each objection interposed to any interrogatory or subpart thereof, state with specificity each and every ground upon which the objection is based.

2. These interrogatories are continuing in nature and therefore require that supplemental answers be provided should

any additional, responsive information be acquired after the time of compliance herewith.

3. Whenever necessary to bring within the scope of these Interrogatories any information which might otherwise be construed to be outside the scope of these Interrogatories, the singular form of a word shall be interpreted in the plural and vice versa, all words and phrases shall be construed as masculine, feminine, or neuter gender, according to the context, and "and" as well as "or" shall be construed either disjunctively or conjunctively.

4. Unless otherwise noted, each interrogatory relates to the time period from November 7, 1994 to the present.

5. "During the 1995-1996 election cycle" denotes the time period November 7, 1994 to December 31, 1996.

Interrogatories

1. State your present employer, its address and all former employers and respective addresses since 1990, and the inclusive dates of each.

2. Were you an employee, agent, or volunteer of Hermandad Mexicana Nacional, the Nativo Lopez for Schoolboard Campaign, the Guttenberg Group, Citizens Forum, the Committee for Loretta Sanchez, or Dump Dornan during the 1995-1996 election cycle? If so, please describe in detail your position, duties, compensation, the names of direct superiors and subordinates with respect to each organization.

3. Describe in detail your involvement with Nativo Lopez, including, but not limited to, the nature of any involvement you had with Mr. Lopez or Hermandad Mexicana Nacional regarding voter registration efforts.

4. Describe in detail: 1) what, if any, voter registration related projects or efforts Hermandad Mexicana Nacional, the Nativo Lopez for Schoolboard Campaign, the Guttenberg Group, Citizens Forum, the Committee for Loretta Sanchez, or Dump Dornan initiated, participated in, implemented, collaborated in, or promoted during the 1995-1996 election cycle; 2) the length of each project or effort; 3) the names of all persons who worked on each project or effort; 4) the number of persons assisted in registering to vote; 5) and the names of such persons assisted.

5. Are you aware, or do you have knowledge of others who are aware, of any documented or undocumented aliens registering to vote during the 1995-1996 election cycle? Are you aware, or do you have knowledge of others who are aware, of documented or undocumented aliens that were assisted by any employee, agent or volunteer of the Committee for Loretta Sanchez, Active Citizenship Campaign, Catholic Charities, One-Stop Immigration and Education Center, Southwest Voter Registration Project or any other group, to vote during the 1995-1996 election contest? If so, please list the names, addresses and telephone numbers of the employee, agent or volunteer of the respective organization and

the names, addresses and telephone numbers of any documented or undocumented aliens that were so registered.

6. Are you aware, or do you have knowledge of others who are aware, of any documented or undocumented aliens registering or being registered to vote during the 1995-1996 election cycle? Are you aware, or do you have knowledge of others who are aware, of documented or undocumented aliens that were assisted by any employee, agent or volunteer of Hermandad Mexicana Nacional, the Nativo Lopez for Schoolboard Campaign, the Guttenberg Group, Citizens Forum, or Dump Dornan to vote during the 1995-1996 election cycle? If so, please list the names, addresses and telephone numbers of the employee, agent or volunteer of the respective organization and the names, addresses and telephone numbers of any documented or undocumented aliens that were so registered.

7. Describe in detail any voter registration projects or efforts undertaken in conjunction with Citizens Forum, the Guttenberg Group, or Dump Dornan with the Committee for Loretta Sanchez, and the level of compensation, if any, provided Citizens Forum, or the Guttenberg Group, or Dump Dornan by the Committee for Loretta Sanchez for these projects or efforts.

8. Describe in detail any voter registration projects or efforts undertaken in conjunction with Citizens Forum, the Guttenberg Group, or Dump Dornan with the Nativo Lopez for Schoolboard Campaign and the level of compensation, if any,

provided Citizens Forum, or the Guttenberg Group, or Dump Dornan by the Nativo Lopez for Schoolboard Campaign for these projects or efforts.

9. Did you, or any employee, agent or volunteer of Citizens Forum, the Guttenberg Group, or Dump Dornan pay anyone bounties, fees or anything of value to register voters? If so, please describe in detail the nature and scope of such efforts, and list the names of persons to whom such bounties, fees or things of value were paid.

10. Have you had, or are you aware of any employee or agent of the Citizens Forum, the Guttenberg Group or Dump Dornan having, communications regarding voter registration projects or efforts with: 1) Loretta Sanchez, or the Committee for Loretta Sanchez; 2) Benny Hernandez; 3) Wylie Aitken; 4) Humbert Corona; 5) the One-Stop Immigration and Naturalization Service; 6) the Active Citizenship Campaign; 7) the Southwest Voter Registration Project; 8) Nativo Lopez, or the Nativo Lopez for Schoolboard Campaign; 9) John Shallman or any other group from January 1996 to the present? If so, please list the date, describe the nature of the communication, and identify who else had knowledge of the communication.

11. Are you aware of a contribution by Dump Dornan to the Nativo Lopez for Schoolboard Campaign, which was annotated with the memo for Loretta Sanchez GOTV? Was this check, in fact, used to assist the Committee for Loretta Sanchez?

12. Did you receive a subpoena pursuant to the Federal Contested Elections Act? If so, list all individuals with whom you have discussed this subpoena from the date of receipt to the present. Are you aware of any documents, computer disks or files in your possession that were removed, destroyed or deleted?

COMMITTEE ON HOUSE OVERSIGHT

By: Bill Thomas
The Hon. William M. Thomas
Chairman

MARK S. ROSEN
ATTORNEY AT LAW
2700 NORTH MAIN STREET
SUITE 630
SANTA ANA, CALIFORNIA 92705
TELEPHONE (714) 972-8040
FAX (714) 285-9840

RECEIVED
97 OCT 16 AM 11:13

October 8, 1997

The Honorable William M. Thomas
Chairman, Committee on House Oversight
United States House of Representatives
1309 Longworth House Office Building
Washington, D.C. 20510

Re: Interrogatories Mailed to Michael Farber and Nativo Lopez/Hermandad Mexicana Nacional

Dear Chairman Thomas:

I am in receipt of interrogatories from the Committee on House Oversight directed to Michael Farber and to Hermandad Mexicana Nacional - Nativo Lopez. These interrogatories "direct" them to answer each interrogatory separately and under oath and serve an answers with the committee within seven days.

On Friday, October 3, 1997, I spoke with John Kelliher of the Committee. He stated that the interrogatories were directed to Nativo Lopez in his official capacity with Hermandad. Were this a deposition under Rule 30(b)(6) of the Federal Rules of Civil Procedure, the document would be served on the organization, and the organization would designate the proper person to respond. The interrogatories are ambiguous in this regard.

I asked Mr. Kelliher to advise me of what authority exists for the Committee or the House of Representatives to serve interrogatories on a non-party to a House proceeding. Mr. Kelliher declined to cite me to any authority. My own limited research indicates:

1. There is no provision in the rule cited in the interrogatories, House Rule 10(h), which allows for interrogatories;

2. There is no provision in House Rule 11 that allows for interrogatories;

3. The closest analogous provision, Rule 33 of the Federal Rules of Civil Procedure, allows only for interrogatories to be served on parties. None of my clients are parties to the House proceedings. Interrogatories are also limited to parties under California law, and in fact, in most, if not all, of the legal systems in the United States. I understand that nominees for positions requiring Senate confirmation often answer written questions, and that the contestant and contestee in this case have received interrogatories. However, the impetus for answering those seems to be that adverse committee or political repercussions will occur, rather than any force of law.

4. Nothing in the Federal Contested Elections Act allows for interrogatories.

5. Nothing in the procedures for enforcing discovery, 2 U.S.C.§190m et. seq., refers to the enforcement of interrogatories.

For these reasons, and until the Committee is kind enough to supply me with persuasive legal authority otherwise, Mr. Farber and Hermandad will decline to respond to the interrogatories.

For the record, I will state that several of the individual interrogatories are objectionable, and we are not waiving any right to object on the merits of the interrogatories. By way of example, and without being inclusive, Interrogatory No.12 to Michael Farber and Interrogatories Nos. 13 and 16 to Hermandad/Lopez appear to violate the attorney client and attorney work product privileges. Several of the requests appear not to be germane to an election contest and therefore beyond the scope of the Committee's inquiry.

Also for the record, each client reserves the right to exercise their rights under the Fifth Amendment. You stated in the course of the House debate on H. Res. 244 on September 30 that Hermandad has "broken both Federal and State law". Congressman Bonilla called Hermandad "one of the most corrupt organizations that has ever existed". These kinds of bombastic and poisonous statements receive a great deal of coverage in this district and serve to create

an atmosphere where it will be difficult to have impartial judicial proceedings in the state courts; indeed, that may well have been the intent. As Congressman Frank pointed out, you have the right to say whatever you want on the floor of the House. But you should not be surprised to see organizations and citizens invoke Constitutional rights when you make such accusatory statements and then propound sets of interrogatories the very next day.

Very truly yours,

MARK S. ROSEN

MSR/pl
cc: Edward Munoz, Esq.
Michael Farber
Hermandad Mexicana Nacional
Congressman Sam Gejdenson
Congressman Steny Hoyer
Congressman Barney Frank
Wylie Aitken, Esq.

BILL THOMAS, CALIFORNIA
CHAIRMAN

Congress of the United States
House of Representatives
COMMITTEE ON HOUSE OVERSIGHT
1309 LONGWORTH HOUSE OFFICE BUILDING
(202) 225-8281
Washington, DC 20515-0515

INTERROGATORIES TO CALIFORNIA SECRETARY OF STATE BILL JONES

TO: Bill Jones, Secretary of State
1500-11th Street
Sacramento CA 95814

The Committee on House Oversight, in accordance with a resolution adopted by the Committee on September 24, 1997, a quorum being present, directs the following interrogatories to you pursuant to U.S. Const. Art I, House Rule 10(h). You are directed to answer each interrogatory separately and under oath and to serve a copy of your answers thereto with the Committee on House Oversight within seven (7) days.

Instructions

1. For each objection interposed to any interrogatory or subpart thereof, state with specificity each and every ground upon which the objection is based.

2. These interrogatories are continuing in nature and therefore require that supplemental answers be provided should any additional, responsive information be acquired after the time of compliance herewith.

3. Whenever necessary to bring within the scope of these Interrogatories any information which might otherwise be construed to be outside the scope of these Interrogatories, the singular form of a word shall be interpreted in the plural and vice versa, all words and phrases shall be construed as masculine, feminine, or neuter gender, according to the context, and "and" as well as "or" shall be construed either disjunctively or conjunctively.

4. Unless otherwise noted, each interrogatory relates to the time period from November 7, 1994 to the present.

5. "During the 1995-1996 election cycle" denotes the time period November 7, 1994 to December 31, 1996.

Bill Thomas
Chairman

Minority Interrogatories to Hon. Bill Jones

On several occasions, you have alleged that there were 303 votes illegally cast in the 1996 general election in the 46th Congressional district. Do you still contend that these individuals illegally cast ballots in the 1996 general election? If so, identify these individuals by name and address and indicate how you arrived at the conclusion that any of these individuals cast illegal votes.

BEFORE THE COMMITTEE ON HOUSE OVERSIGHT
OF THE UNITED STATES HOUSE OF REPRESENTATIVES

In the Matter of the Contested Election in the 46th Congressional District in California.	**Secretary of State Bill Jones' Response to Minority Interrogatories**

Secretary of State Bill Jones hereby responds to the Minority Interrogatories served upon him by the Committee on House Oversight on October 7, 1997 as follows:

INTERROGATORY NO. 1:

On several occasions you have alleged that there were 303 votes illegally cast in the 1996 general election in the 46th Congressional district. Do you still contend that these individuals illegally cast ballots in the 1996 general election?

RESPONSE TO INTERROGATORY NO. 1:

No. Based upon revised and updated information received from the United States Immigration and Naturalization Service ("INS"), we now conclude that 305 individuals registered to vote by Hermandad Mexicana Nacional ("HMN") in Santa Ana, California unlawfully voted in the November 1996 General Election in the 46th Congressional District.

INTERROGATORY NO. 2:

If so, identify these individuals by name and address and indicate how you arrived at the conclusion that any of these individuals cast illegal votes.

RESPONSE TO INTERROGATORY NO. 2:

The Secretary of State objects to this Interrogatory insofar as an unrestricted, public disclosure of the names and addresses of the 305 persons as requested by the Committee would constitute a violation of the privacy rights of the 305 individuals whose identities are being requested by the Committee. The Secretary offers to stipulate to a mutually agreeable protective order, which would designate such information as confidential, for official Committee use only, and would prohibit public dissemination of the names and addresses of the 305 persons. Upon the adoption of such a protective order by the Committee, the Secretary will provide the requested names and addresses to the Committee pursuant to the terms of the protective order.

The analysis, which resulted in the Secretary's conclusion that 305 unlawful votes were cast by persons registered by HMN, was performed in the course of the Secretary's joint criminal investigation with the Orange County District Attorney's Office. In order to reach the conclusion that each of the aforementioned 305 persons cast an unlawful vote in the November 1996 General Election in the 46th Congressional District, the Secretary of State analyzed Orange County voting records, Department of Motor Vehicles records and citizenship status data provided by INS. According to INS, the information they have provided to the Secretary and the District Attorney was checked and re-checked numerous times for accuracy. Department of Motor Vehicles information was utilized to determine alternate spellings, name variations and aliases.

Using this data, the Secretary applied the California Elections Code to ascertain the legal eligibility of the individuals, who were confirmed as having voted. This determination resulted in the breakdown of the list into three (3) categories:

(1) **Legal Vote:** In order to be counted as a "legal vote," the vote was cast by a registered elector, who, according the verified data provided by INS, was a citizen of the United States ***at the time*** the person executed the affidavit of registration. That is, the person has a verified INS naturalization date which is contemporaneous or subsequent to the date of registration appearing on the affidavit of registration.

(2) **Illegal Vote:** In order to be counted as an "illegal vote," the vote was cast by a person registered to vote, who, according the verified data provided by INS, was

not a citizen of the United States *at the time* the person executed the affidavit of registration. That is, the person either (a) has not been naturalized according to INS records or (b) the verified date of naturalization provided by INS precedes the date of registration appearing on the affidavit of registration.

(3) **Legal Status of Vote Unknown:** If a vote is counted as "legal status of vote unknown," the following conditions were determined to exist:

(a) the registered elector stated a foreign country of birth on their affidavit of registration; and

(b) in reporting their verified data to the Secretary and the District Attorney, INS:

(i) was unable to verify the identity of the individual to their satisfaction, based upon a manual file review, and reported the immigration and naturalization status to the Secretary and the District Attorney as "unknown;" or

(ii) had no records corresponding to such person based on either the name stated on the affidavit of registration or the name as it might appear in an alternate spelling, name variation or alias based upon DMV record check.

Votes were categorized as "legal" or "illegal" if, and only if, the INS was able to provide verified data as to immigration and naturalization status. In all other instances, the votes were categorized as "legal status of vote unknown."

Date: October 10, 1997

Respectfully submitted,

BILL JONES
SECRETARY OF STATE

by James F. Sweeney
James F. Sweeney, Chief Counsel
SECRETARY OF STATE BILL JONES

VERIFICATION

I, BILL JONES, am Secretary of State of the State of California. All facts stated in SECRETARY OF STATE BILL JONES' RESPONSE TO MINORITY INTERROGATORIES are true and correct to the best of my own personal knowledge.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: October 10, 1997

BILL JONES
Secretary of State

PROOF OF SERVICE BY EXPRESS COURIER

The undersigned hereby declares as follows:

That he or she is an employee of California Secretary of State's Office and is not a party to the above-captioned matter; that his or her business address is 1500 11th Street, Sacramento, California 95814; that on the date inscribed below the undersigned served a copy by express courier service of the following documents:

SECRETARY OF STATE BILL JONES'RESPONSE TO MINORITY INTERROGATORIES

To the Chairman of the Committee on House Oversight at the address listed below:

The Honorable William M. Thomas
Chairman
COMMITTEE ON HOUSE OVERSIGHT
1309 Longworth House Office Building
Washington, D.C. 20515-6157

Executed under penalty of perjury at Sacramento, California, on October 10, 1997.

Julia Madsen
JULIA MADSEN

Congress of the United States
House of Representatives
COMMITTEE ON HOUSE OVERSIGHT
1309 Longworth House Office Building
(202) 225-8281
Washington, DC 20515-0515

INTERROGATORIES TO ORANGE COUNTY DISTRICT ATTORNEY
MICHAEL R. CAPIZZI

TO: Michael R. Capizzi, Orange County District Attorney
700 Civic Center Drive
Santa Ana, CA 92707

The Committee on House Oversight, in accordance with a resolution adopted by the Committee on September 24, 1997, a quorum being present, directs the following interrogatories to you pursuant to U.S. Const. Art.I, House Rule 10 (h). You are directed to answer each interrogatory separately and under oath and to serve a copy of your answers thereto with the Committee on House Oversight within seven (7) days.

Instructions

1. For each objection interposed to any interrogatory or subpart thereof, state with specificity each and every ground upon which the objection is based.

2. These interrogatories are continuing in nature and therefore require that supplemental answers be provided should any additional, responsive information be acquired after the time of compliance herewith.

3. Whenever necessary to bring within the scope of these Interrogatories any information which might otherwise be construed to be outside the scope of these Interrogatories, the singular form of a word shall be interpreted in the plural and vice versa, all words and phrases shall be construed as masculine, feminine, or neuter gender, according to the context, and "and" as well as "or" shall be construed either disjunctively or conjunctively.

4. Unless otherwise noted, each interrogatory relates to the time period from November 7, 1994 to the present.

5. "During the 1995-1996 election cycle" denotes the time period November 7, 1994 to December 31, 1996.

Bill Thomas
Chairman

Minority Interrogatories to Hon. Michael Capizzi

On several occasions, you have alleged that there were 303 votes illegally cast in the 1996 general election in the 46th Congressional district. Do you still contend that these individuals illegally cast ballots in the 1996 general election? If so, identify these individuals by name and address and indicate how you arrived at the conclusion that any of these individuals cast illegal

BEFORE THE COMMITTEE ON HOUSE OVERSIGHT
OF THE UNITED STATES HOUSE OF REPRESENTATIVES

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HOUSE OVERSIGHT

In the Matter of the Contested Election in the 46th Congressional District in California	**Michael R. Capizzi's Response to Interrogatories**

Michael R. Capizzi hereby responds to the Interrogatories served upon him by the Committee on House Oversight on October 7, 1997 as follows:

INTERROGATORY NO. 1:

On several occasions you have alleged that there were 303 votes illegally cast in the 1996 general election in the 46th Congressional District. Do you still contend that these individuals illegally cast ballots in the 1996 general election?

If so, Identify these individuals by name and address and indicate how you arrived at the conclusion that any of these individuals cast illegal votes.

RESPONSE TO INTERROGATORY NO. 1:

I have never alleged that there were 303 votes illegally cast in the 1996 general election in the 46th Congressional District. The scope of the District Attorney's investigation is broader than votes cast in that Congressional District.

Date: October 20, 1997

Respectfully submitted,

Michael R. Capizzi, District Attorney
County of Orange, State of California

VERIFICATION

I, Michael R. Capizzi am the District Attorney of the County of Orange, State of California. All facts stated in my RESPONSE TO INTERROGATORIES are true and correct to the best of my personal knowledge.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 20TH day of October, 1997

Michael R. Capizzi, District Attorney
County of Orange, State of California

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA)
) ss
COUNTY OF ORANGE)

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is: 700 Civic Center Drive West, Santa Ana, CA 92701.

On October 20, 1997, I served the within RESPONSE TO INTERROGATORIES on interested parties in said action by placing a true copy thereof enclosed in a sealed envelope, postage thereon fully prepaid, in the United States mail at Santa Ana, CA 92701, addressed as follows:

The Honorable William M. Thomas, Chairman
1309 Longworth House Office Building
Washington, D.C. 20515-6157

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Executed on October 20, 1997, at Santa Ana, California.

Nancy J. Lawrence

Nancy J. Lawrence

APPENDIX E: SUBPOENAS ISSUED BY THE COMMITTEE

SUBPOENAS ISSUED BY THE COMMITTEE ON HOUSE OVERSIGHT

On February 11, 1997, the Committee on House Oversight met and granted the Chairman, in consultation with the Ranking Minority Member, the authority to issue subpoenas for the purpose of obtaining information related to the contested election or the voter fraud investigation.[85]

During the voter fraud investigation, Congresswoman Sanchez and the Democratic Minority repeatedly declared that the Congresswoman and those that were involved with registering non-citizens to vote (i.e., Hermandad) never had any contact with one another. When asked directly by Congressman Ney at the April 19, 1997 Field Hearing if she or her campaign had any contact with Hermandad, Congresswoman Sanchez, under oath, responded "Not at all."[86] Although later at that same hearing, Congresswoman Sanchez admitted that she did meet with Nativo Lopez once during the campaign.[87]

In the material that was originally obtained by the Orange County District Attorney and then forwarded to the Committee, several documents showed that there was in fact a larger involvement between Hermandad and Congresswoman Sanchez than was declared by the Minority. Two phone message slips that were seized from Nativo Lopez's office have Congresswoman's Sanchez's name and a phone number on them. These messages suggest that Mr. Lopez and Representative Sanchez were exchanging phone calls during the campaign.

Other information obtained shows that Hermandad, despite its non-profit status, was a politically active organization immersed in Democratic politics. Hermandad not only opposed Robert Dornan but promoted the success of the Democratic party and the political ambitions of its Director, Nativo Lopez.

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[85] House Oversight Committee Rule 6 and House rule 11 Clause 2(m)(2)(A).

[86] Hearing Before the Committee on House Oversight Task Force for the Contested Election in the 46th Congressional District of California; April 19, 1997.

[87] Hearing Before the Committee on House Oversight Task Force for the Contested Election in the 46th Congressional District of California; April 19, 1997.

MOTION TO AUTHORIZE THE CHAIRMAN TO ISSUE SUBPOENAS FOR THE PURPOSE OF A CONTESTED ELECTION OR VOTER FRAUD INVESTIGATION
(as amended and agreed to on February 11, 1997)

Mr. Chairman, I move that, under the provisions of Committee Rule 6 and House Rule 11 Clause 2(m)(2)(A), the Committee delegate to the Chairman, in consultation with the Ranking Minority Member, the power to authorize and issue subpoenas for the purpose of gathering information for any contested election or voter fraud investigation.

I offer this motion to ensure that prompt action can be taken to obtain and preserve information the Committee may require, especially when such action is necessary when Members are out of town and not available for meetings.

Subpena Duces Tecum

By Authority of the House of Representatives of the Congress of the United States of America

To Mr. Michael R. Capizzi, District Attorney, Orange County, CA

You are hereby commanded to produce the things identified on the attached schedule before the ..... Committee on House Oversight ..... of the House of Representatives of the United States, of which the Hon. Bill Thomas ..... is chairman, by producing such things in Room 1309 ..... of the Longworth ..... Building ....., in the city of Washington, on March 31, 1997 ....., at the hour of 5 p.m.

To U.S. Marshal or any staff member of the Committee on House Oversight.

to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 12 day of February, 1997.

William M. Thomas
Chairman.

Attest:

Robin H. Carle
Clerk.

Subpena for Mr. Michael R. Capizzi

District Attorney, Orange County, CA

before the Committee on [redacted]

House Oversight

Served

House of Representatives

GPO: 1991 42-417 (m)

Schedule of Things To Be Produced

All property in your possession, custody or control – including, but not limited to, documents and computer disks and drives – that were obtained or seized by Investigator Edward Contreras, and/or other law enforcement officials, as a result of his and/or their search, on or about January 14, 1997, of the offices located at 825 North Broadway Street, Santa Ana, California 92702, pursuant to a certain Search Warrant issued by Orange County Municipal Court Judge James Brooks on January 13, 1997.

SI SE PUEDE CAMPAIGN '96 - LOU CORREA

Little need be said or argued with regard to the importance of returning the 69th AD to the Democratic fold. How the candidate cuts the issues or addresses these before the voters is really a question of campaign strategy best left to the candidate himself in consultation with his campaign consultants, supporters, workers, and funders. Therefore, this plan won't address these issues.

Our task is pretty simple - rack up voter registration numbers, focus on collection of a sufficient volume of absentee ballot applications, and organize the GOTV effort thirty days prior to election day through the effective collection and deposit of the absentee ballots. Obviously, this will require adequate resources that will be directed to accomplish this task. In other words, adequate attention, focus, and resource allocation must be made to the ground operation of the campaign to assure success.

This voter registration - GOTV grass-roots project is premised on two significant differences to previous projects: 1) the project will be a full-time six month duration different from previous campaigns that had brief durations of three to four months, and were conducted full-time only the last month of the campaign; and 2) the project will develop a level of grass-roots participation, repeat and continuity of contact of personnel/volunteers within the same precincts over the six month period, different from previous campaigns that would sweep through precincts with a crew of walkers (always extraneous to the neighborhoods) and/or professional staffers (from Sacramento) only two to three times prior to Election Day. We need to be committed to a full-time, serious, home-grown campaign if the candidate is serious about taking back the district for the Democratic Party. There is no other way.

The project envisions the following:

1. Begin immediately on April 1st and continue to Election Day, November 5, 1996, and include a two-week post-election tabulation, summary, and evaluation of results; and leave information intact for subsequent follow-up and continuity to commence in March, 1997, a continuing voter registration, U.S. citizenship, and issues education project (a total of 8 months);

2. Assemble a project staff and volunteers from within the precincts of the district which would consist of:

a) 100 week-end Precinct Promoters (P/P). These PP's would be responsible to work one precinct each for the duration of the campaign, conduct the voter registration and absentee ballot collection work, the collection of the ballots 30 days prior to Election Day, and form a committee of volunteers (minimally 5-10 individuals) in each precinct. This work of establishing the committee would commence immediately (traditional these efforts occur only one week prior to the election). These campaign workers would work

every Saturday for eight hours at a salary rate of $6.00 per/hour for six months (24 weeks/or 24 Saturdays). The goal of these PP's would be to visit each home in the precinct once a month (the first visit would be for the purpose of purging the voter rolls and identifying the verifiable voters in the precinct) for a total of six full visit during the six month duration of the campaign;

b) 20 (P/T) Site/Promoters (S/P). These SP's would be assigned to strategic sites/locations to conduct voter registration/absentee ballot collection throughout the district. These could be commercial areas but also strategic churches of high volume (for example, commercial sites during the afternoon/evenings Monday-Friday and churches on Saturdays and Sundays. There are approximately 14 Catholic parishes of significant Latino attendance in the 69th AD. These campaign workers would work 20 hours each week at a base salary rate of $5.00 per/hour for six months (24 weeks). These Promoters would be incorporated into the precinct operation after the period of voter registration is ended, and site activity is no longer of value to the campaign.

c) 5 (P/T) Telemarketers/Promoters (T/P). These TP's would be assigned to conduct telemarketing of existing registered voters to solicit absentee ballot applications (after having directed mail pieces soliciting their signature on pre-prepared absentee ballot applications); additionally, they would begin establishing telephonic dialogue with the voter constituents in relation to the candidate and the issues of import/interest. These campaign workers would work 20 hours each week at a base salary rate of $5.00 per/hour for six months (24 weeks);

d) 13 (P/T) Promoter/Supervisors (P/S). These PS's would be assigned to supervise the precinct promoters, the site promoters, and the telemarketer promoters. The basic ratio between campaign worker and supervisor is 1:10. These campaign workers would work based on the same schedule (or number of hours) those campaign workers under their supervision would work. Ten Promoter/Supervisors of the 100 Precinct/ Promoters would work eight (8) hours each week at a rate of $6.00 per/hour for six months (24 weeks); two Promoter Supervisors of the 20 Site/Promoters would work 20 hours each week at a rate of $6.00 per/hour for six months (24 weeks); and one Promoter/Supervisor of the 5 Telemarketer/Promoters would work 20 hours each week at a rate of $6.00 per/hour.

e) 550 campaign volunteers. These volunteers would be the base of the five (5) precinct volunteers to comprise the precinct committees of the 100 strategic Latino precincts. These volunteers would not be compensated. They should, however, receive meals on the day of election. Their basic function and task is simply (but importantly) is to mobilize the vote in favor of the candidate. The task to for the precinct committee must begin immediately (by the Precinct Promoters) and the activity of the committee would be to support the work of the PP, i.e., voter registration, absentee ballot collection, ballot collection, posting of yard signs in the precinct, GOTV on the day of election, etc.

GENERAL GOALS OF THE PROJECT.

The general goals of the project for this 69th AD in terms of voter registration are to register 20,000 new voters in the district. The equivalent value of each new registrant is $5.00 per/registration. The total value of these voters for the purpose of identifying a budget amount is $100,000.

The general goals of the project for this 69th AD in terms of absentee ballot applications are to collect 25,000 such applications in the district. The equivalent value of each completed application is $5.00 per/application. The total value of these completed applications for the purpose of identifying a budget amount is $125,000.

The general goals of the project for this 69th AD in terms of absentee ballots collected/deposited are to obtain 25,000 such ballots in the district. The equivalent value of each collected/deposited ballot is $5.00 per/ballot. The total value of these ballots for the purpose of identifying a budget amount is $125,000.

The total budget for the project, based on the figures identified above, $350,000.

12-3-#4

ROSAS

1.- HAYME LOPEZ
177
128
334
330

2.- EVANGELINA SANCHEZ
123
098
162
166

3.- EDGAR FLORES
156
296
150
052

4.- VICTOR GUTIERREZ
098
096
302
094

5.- JAIME FLORES
086
077
293
078

6.- JOSE GARCIA
061
060
083
107

7.- JOSE LUIS ROJAS
091
297
104
179

8.- RAUL MORENO
103
119
106
114

9.- LORENA DELGADO
129
115
130
137

10.- NANCY CORNEJO
131
132
135
183

	Presinto	1	2	3	4	5	6
1	68-078	HAYME,JORGE	HAYME,LORE	HAYME	OMAR,GUADALUPE		
2	68106	EVA,VICTOR	EVA,RAUL	EVA,RAUL	EVA,JOSE LUIS		
3	68060	RAUL, JAIME	JORGE,NOEMI	JORGE,NOEMI	NOEMI		
4	68107	EVA, VICTOR	NANCY,JOSE	NANCY,JOSE	NOEMI		
5	68177	RAUL,JAIME	HAYME,EDGAR	AIDA MORALES			
6	68083	EVA,VICTOR	NANCY,JOSE	NANCY, JOSE	JOSE		
7	68094	HAYME, EDGAR	VICTOR, JOSE LUIS	VICTOR,JOSE LUIS	VICTOR		
8	68334	JAIME,JOSE	HAYME,EDGAR	JUAN GARCIA	HAYME,EDGAR,ARTURO		
9	68119	EDGAR, REFUGIO	EVA, RAUL	EVA, RAUL	JAIME, LORENA		
10	68114	GUILLE, RAUL	EVA, RAUL	EVA, RAUL	LORE, JAIME		
11	68296	EVA, VICTOR	VICTOR, JOSE LUIS	VICTOR, JOSE LUIS	NOEMI		
12	68166	EVA,VICTOR	NOEMI,JORGE	NOEMI, JORGE	NOEMI		
13	68302	JOSE,HECTOR	NANCI,JOSE	NOEMI,JOSE,EDGAR	JOSE, LAURA		
14	68103	NANCY, RAUL	EVA, RAUL	EVA, RAUL	EVA, CARLOS		
15	68150	JORGE,HAYME	HAYME,EDGAR	TERESA, EDGAR	MARIA A. EDGAR		
16	68162	EDGAR, JAIME	EVA, RAUL	EVA, JOSE	JAIME,FLORA		
17	68115	NANCY, RAUL	JAIME, LORE	JAIME,GUADALUPE	LORENA,JOSE LUIS		
18	68330	HAYME, JORGE	VICTOR, JOSE LUIS	VICTOR, JOSE LUIS	VICTOR,CLAUDIA		
19	68135	EVA, VICTOR	VICTOR, JOSE LUIS	VICTOR, JOSE LUIS	HAYME,J.L.MANUEL		
20	68098	NANCY, RAUL	EVA, VICTOR	VICTOR, JOSE LUIS	NANCY, MARIANO		
21	68129	JAIME, NANCY	LORENA, JAIME	LORENA,JAIME	AIDA,JOSE ANTONIO		
22	68061	JORGE	JORGE,NOEMI	JORGE,NOEMI	NOEMI, ANTONIO		
23	68086	HAYME, EDGAR	LORENA, JAIME	LORENA, JAIME	REFUGIO,JAIME		
24	68183	EDGAR, JOSE	NANCY, EDGAR	NANCY, EDGAR			
25	68156	EDGAR, JOSE	NOEMI, JORGE	NOEMI, JORGE			

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	Pre into	1	2	3	4	5	6
26	68128	LORENA, JAIME	NOEMI, JAIME	JAIME, LORE	JAIME		
27	68104	EVA, VICTOR	JOSE	NANCI, JOSE	JOSE		
28	68096	JORGE, HAYME	NOEMI, JORGE	JORGE	[illegible]		
29	68052	EVA, VICTOR	LORENA, JAIME	LORENA, JAIME	[illegible]		
30	68131	NANCY, RAUL	EVA, RAUL	LORENA, JAIME	RAUL		
31	68130	LORENA, JAIME	LORENA, JAIME	GUADALUPE, JAIME	JAIME		
32	68123	JORGE, HAYME	NOEMI, JORGE	NOEMI, JORGE	HAYME		
33	68297	NANCY, JOSE	NANCY, JOSE, EDGAR	JUAN GARCIA, LUIS	[illegible] JOSE		
34	68048	EDGAR, JOSE	LORENA, JAIME	REFUGIO, NATIVO	[illegible]		
35	68137	LORENA, JAIME	LORENA, JAIME	LORENA, JAIME	[illegible]		
36	68091	HAYME, EVA, EDGAR	NANCY, EDGAR	HAYME, JOSE LUIS	HAYME/EDGAR		
37	68132	VICTOR, JOSE LUIS	EVA, RAUL	NOEMI, VICTOR	VICTOR		
38	68179	VICTOR, JOSE LUIS	VICTOR, JOSE L.	VICTOR, JOSE LUIS	VICTOR/J.L.		
39	68293	NANCY, JOSE	HAYME, JOSE	MARIANO, OMAR	JOSE		
40	68077	NOEMI, JORGE	REFUGIO, NATIVO	JORGE			
41							
42							
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Diciembre 18, 1996

*******AUTO**3-DIGIT 926
Francisco Baragas
15261 Van Buren St
Midway City, CA 92655-1662

Estimado/a Francisco Baragas:

Más de un mes después de las elecciones de noviembre 1996 el ex-diputado, Robert Dornan, no deja de atacar a nuestras familias y comunidad entera, acusándonos de fraude por su derrota.

Peor, ahora tiene un grupo de achichincles tocando puertas de familias latinas para cuestionarlas de cómo votaron en las elecciones Estas son extremas tácticas de intimidación y de venganza racista enfocando sólo contra nuestras familias latinas.

No se deje intimidar. Usted no está bajo ninguna obligación de hablar ni contestar las preguntas de estos gangsteriles ni de otras personas. No los tiene que ni siquiera dirigir la palabra. Simplemente hay que refirirlos a nuestra oficina. Deje que nosotros tratemos con ellos.

Hay que cerrar filas, unir y proteger a nuestras familias y no permitir a estos malos perdedores intimidarnos. Dornan ya no es diputado y no tiene nada de autoridad en tocar nuestras puertas. Nadie más tiene autoridad de intimidarnos. NO SE DEJE INTIMIDAR. Llame a su Hermandad Mexicana Nacional inmediatemnte si alguien, cualquiera persona, le trata de cuestionar. Somos una familia y hay que responder como una sola. (714) 541-0250.

Atentamente,

Nativo V. López
Co-Director Nacional

SHOCK PIECE

IMPORTANT CITIZENSHIP INFORMATION ENCLOSED

Hermandad Nacional Mexicana

Dear Friend,

If you have friend or family member who is not yet a citizen of the United States and wants to be, now is the time for them to apply for citizenship.

Not tomorrow, but today.

Here's why:

America's anti-immigration campaign is growing. Every day radio and television fills the airwaves with misleading messages about immigrants and their effect on this country.

Politicians like Pat Buchanan are using racial slurs to win votes. Buchanan shouted that he would "shut down the border" to cheers at a reacent rally. He proposed a five year moratorium on *legal* immigration. If this weren't enacted, he said, America "will not be a nation anymore."

Speaker of the House Next Gingrich--a national leader--has voiced strong support of a nationwide Proposition 187, suggesting that some immigrants aren't worthy of federal programs.

And Senator Alan Samson has proposed a bill to eliminate the rights of immigrants to state and federal benefits and cut immigration dramatically, separating husbands from wives, parents from children.

Locally, Congressman Dana Rohrabacher addressed an anti-immigration audience with a stereotypically racial comment, "If Pedro is not here legally, he's not going to get $ 50,000 for that heart bypass operation."

Not since the 1920s has America considered such a ruthless limitation on immigration.

We know that this country was built and sustained by immigrants. It would be foolish to reverse America's immigration policy and deny our historic reputation as a melting pot. We have a standing as a country where a person's merit is judged by achievements--not race, religion or ethnic background. We must uphold that standard.

But, if these powerful politicians have there way all that may end. This is why you must act now to insure citizenship for your loved ones.

Hermandad Mexicana Nacional is the only one-stop location to immediately obtain all services for U.S. citizenship for your family and friends.

- We will assist them with filing applications, photos, and finger prints.
- We conduct classes to prepare them for citizenship exam.
- We will prepare them for a successful interview with the INS.
- We will register them to vote.
- We will make them aware of family reunification in the United States, teaching them how to immigrate other family members
- And we offer many other educational and legal services.

Please, don't put this letter aside. Fill out the enclosed reply form and mail it to us today. Your quick response is vital to insure the success of future citizens

There is a wall in the Pentagon dedicated to the unparalleled heroism, bravery and sacrifice of Hispanic-Americans. There, 36 congressional medals of honor are a testament to our dedication and respect for America.

You could do no finer service than to help your friends and family become citizens today.

Sincerely,

Nativo Lopez
Director, Hermandad Mexicana Nacional

TELEPHONE SCRIPT

(English script)

Hello, may I speak with ____(name on your list)__ s

(your name) and I'm calling on behalf of Nativo l
Mendoza

for the Santa Ana School Board. You should have received your absentee ballot this week. Please vote for both Nativo Lopez and Sal Mendoza for School Board.

You will be receiving more information by mail on both candidates in the next few days. Please call us if you need any help. The telephone number is (714) 542-6242.

(Guion en Español)

Buenos (dias, tardes, noches). Me permite hablar con ___(nombre en su lista)_____. Yo me llamo ____(su propio nombre)____ y le estoy llamando de parte de Nativo Lopez y Sal Mendoza que son candidatos para la Junta Escolar de Santa Ana. Usted deberia haber recibido su boleta electoral por correo. Ya la recibio? No se olvide votar por Nativo Lopez y Sal Mendoza por la Junta Escolar. En los proximos dias le vamos a enviar mas material sobre la campaña. Favor de llamarnos si usted necesite ayuda en llenar la boleta electoral. El numero de telefono es: (714) 541-0250. Aqui le podemos dar una orientacion de como llenar su boleta (di el horario de las orientaciones).

Muchas Gracias.

LATINO LEGISLATIVE CAUCUS

FAX

April 26, 1996

To: Parties interested in Assembly District 69 (Santa Ana) Voter Registration

From: RICHARD G. POLANCO, Chair, Latino Legislative Caucus

Re: Meeting to discuss voter registration and GOTV for 1996 general election

Location: Santa Ana **Date / Time:** Friday, May 3, 1996, 4:00 p.m.

The purpose of the meeting is to plan a cohesive campaign to maximize voting opportunities for Latinos and others in this District. In meetings since last Fall, you have helped to develop a vision of focusing our efforts to optimize our collective impact. I look forward to working with you on developing and implementing our plan.

I would also like to take the opportunity to provide you with an overview of the election scene in the state and in the southern California area.

Please RSVP to Saeed Ali at 310-390-0959 to confirm your attendance. He will provide you with the location information as soon as the site is confirmed.

Thank you.

IBEW, 1st.
3222

Natura

February 2, 1996

Mr. Bill Press, Chair
California Democratic Party
8440 Santa Monica Boulevard
Los Angeles, CA 90069

Dear Bill:

The purpose of this letter is to inform you of the Chicano/Latino Caucus' extensive analysis of how to resolve some of the core election problems with the 1996 campaign. It is our great hope that you will be in agreement that Latinos are uniquely positioned in California to be of crucial assistance to both the Presidential and legislative campaigns.

Overview:

The first priority remains for everyone to assure that President Clinton is reelected. The second priority is to remedy the loss of a Democratic majority in the California State Assembly. The Caucus contends that a carefully coordinated Presidential campaign will both ensure the President's re-election but also serve as the vehicle to ensure that we take back control of the California State Assembly.

At the outset, it is important to know that we have carefully reviewed all 1994 election data and have carefully updated all demographics through 1995. In addition, we have taken special care to evaluate where the Latino vote is uniquely positioned to be the margin of victory for 1996. In carrying out this analysis, we have come to the conclusion that no other demographic group, including but not limited to gender, race or language minority status, is in the position to clearly ensure that seats which were previously lost can be regained. Neither is there any other demographic group that can ensure that democratic seats which are at-risk can be retained.

Based on the recent historically high Latino voter turnout in 1994, accompanied by the massive 400,000 new Latino registrations, our community's contribution is beyond challenge. Neither can any other group credibly claim (particularly in the key five districts cited herein) that they represent an adequately large pool of voters to ensure victory. Only Latinos in these key areas offer sufficient votes.

Equally important is that for the five targeted seats, our sole concern is not based on supporting only Latino candidates. Three of the seats have fully qualified Latino candidates. The remaining two involve Caucasian candidates. The obvious link between Latino candidates and Caucasian candidates for these five seats is that with adequate resources, all these seats are either regained or sustained. This means that the proposal which follows should in no way be construed as an effort to support solely Latino candidates. Instead, this proposal should be seen as a balanced approach which speaks to the broad interests of the Democratic Party, while at the same time acknowledging that the Latino voter is key to any successful strategy.

Solutions:

The leadership and membership of the Chicano/Latino Democratic Caucus propose the following in order to return a Democratic majority to the the Assembly:

(1) The California Democratic party allocate $600,000 to five key Assembly races. This money must be used to target a Latino voter registration drive and Latino vote by mail campaign in these crucial districts.

(2) The five key Assembly districts to be targeted are the 26th, 28th, 56th, 69th and 80th. $220,000 should be allocated to the 28th AD, with $220,000 going to the 69th AD. In addition, $60,000 would be allocated to the 56th AD and $50,000 to the 80th AD and $50,00 to the 26th AD.

(3) Four of these key seats are currently held by Republicans.

(4) We believe that a strong Latino voter registration campaign and a well funded Latino vote by mail drive could deliver those seats to Democrats

(5) The fifth targeted district is in the Central Valley and is held by a termed out Democrat.

(6) In three of these races, there are very viable Latino candidates and in two races there are no Latino candidates running.

The Democratic Edge:

In the 69th AD there is a 21.3% Democratic voter registration edge over the Republicans and in the 28th AD there is a 19.2% voter registration edge. The Democratic party registration edge in the 56th AD is 13.7% and there is a 8.9% Democratic edge over the Republicans in the 80th AD. There is an 18.1 Democratic registration edge in the 26th AD.

In the Lieutenant Governor's race the vote in the 28th AD was 54.08% D to 37.84% R, in the 26th AD the vote was 52.2% D to 41.72% R, in the 56th AD the vote was 50.05% D to 43.515 R, in the 69th AD the vote was 47.31% D to 39.91% R and in the 80th AD, the vote was 46.98% D to 44.25% R.

It is clear that the Democratic Edge will continue to grow if sufficient resources are provided.

Shared Oversight:

The $600,000 allocation for these five key seats, including any proposed disbursement, should be determined by a consensus of the following individuals and/or their designees: the Chair of the California Democratic Party, the Northern and Southern California Field Directors, the Chair of the Chicano/Latino Democratic Caucus and the Chair of the Latino Legislative Caucus of the Assembly and Senate.

Both the Chicano/Latino Caucus and the Latino Legislative Caucus are aware that $600,000 represents a significant amount of money. We are further aware that there are different financing schedules for both the California Democratic Party, the DNC and Coordinated Campaign. We are also aware that the majority of the money for all of the campaigns will not in large part begin to be dispersed until late summer of 1996. Notwithstanding, as a Caucus, we do not want to be placed in a position where the $600,000 has either not been budgeted or been allotted to a different project.

To avoid this scenario, we would like to engage in immediate and substantive discussion to review both our strategy and any financial impediments associated with this effort. The Caucus has always appreciated your openness to discuss my issues of critical importance. I would also like to arrange an immediate meeting with the designated representatives from the Latino Legislative Caucus, so that we can discuss our shared view that this is the level of resources that need to be provided by the Democratic Party. We are confident that a coalition on theses issues between the Chicano/Latino Caucus, Latino Legislative Caucus and the Party Chair will provide a successful vehicle to ensure victory in 96.

Thank you for your consideration in this matter. We must resolve the core concerns by February 4, 1996. If you have any questions about this proposal, please feel free to contact me at (415) 348-4897.

Sincerely,

Antonio Salazar-Hobson, Chair
California Chicano/Latino Democratic Caucus

Memorandum

Nationz
FYI

Subject After Action Report

Date 07/30/96

To Jane Arellano
Assistant District Director
Adjudications

From Andrew Lopez
SDAO
Adjudications III

THROUGH OFFICIAL CHANNELS

On July 30,1996, a naturalization outreach was conducted at Hermandad Mexicana Nacional, 7915 Van Nuys Blvd., Panorama City, California under the direction of Santos HERNANDEZ and Percilla CASTRO.

Out of one hundred and thirty-three (133) cases scheduled for interview, ninety-nine (99) cases were granted; two (2) was continued; twenty-one (21) cases were scheduled for re-exams; zero (0) cases were terminated; one (1) case was withdrawn; and there were ten (10) no shows.

During the course of our N-400 interview process the following incidents occurred:

On July 3, 1996 this Supervisory District Adjudications Officer (SDAO) conducted an Outreach at this same location with the same staff present. Because of its infancy in conducting N-400 interviews at this location, there were a few problems encountered by this SDAO and the staff was informed as to the correct procedure in order to rectify the situation and make an environment that was conducive to conducting N-400 interviews. Specifically, the staff was instructed to make sure that the air-conditioning system was functioning properly in the area/rooms where our District Adjudication Officers (DAO's) were conducting interviews. At this site on this date, July 3, 1996, only one half of the interview rooms had a minimaliy functioning air-conditioning system and had it been a warm/hot day, the heat would have been unbearable. The staff, at that time, agreed to fix the air-conditioning system for us for the next time we would conduct interviews at their site.

Second, on no less than five (5) occasions, the staff of Hermandad Mexicana Nacional were caught and warned by this SDAO about wandering into the interview area/rooms while N-400 interviews were being conducted by the INS DAOs. (Note that these were only the times *this* SDAO caught them) One of the staff members was warned three (3) times!! The excuses they gave were that they had to 1) use the phone, 2) get a cup of coffee and 3) use the copy machine. This SDAO moved the phone to a location

outside the interview area, moved the coffee pot to the kitchen and told the staff that they could either move the copy machine out to their work area or that this SDAO would make copies for them. Again, because this was a new location, this SDAO anticipated that there would be a few problems that the staff of Hermandad Mexicana Nacional were not aware of and would rectify once told by a INS staff member-I was wrong.

On this date, July 30, 1996, the first thing I noticed when I arrived at 08:30 a.m. was that the air-conditioning was not functioning in the interview rooms and that it was starting to get warm in the rooms. I asked the staff if they could turn the air-conditioning system on and they indicated that it was on and that they had not, in fact, repaired the problem with their air-conditioning system. This made for a very uncomfortable environment for our DAO's and at one point, one of our DAO's had to leave her room and move into the kitchen to finish conducting her interviews because of the unbearable heat.

Second, during the course of conducting interviews, this SDAO noticed one of the staff members, Percilla CASTRO (a director no less) shoot back to the area where our DAO's were conducting N-400 interviews. Upon following her back, *this SDAO found her no less than one (1) foot away from a N-400 interview in progress-she was talking on the telephone.* The DAO conducting the interview was instructed to stop his interview and CASTRO was escorted out of the room. The whole staff of Hermandad Mexicana Nacional was gathered together by this SDAO and again warned about compromising our N-400 interviews by going into the areas/rooms where the N-400 interviews were taking place. They were further told that if there was anything they needed, such as the use of their phone, they were to instruct the INS SDAO on duty and he/she would make arrangements to accommodate them. A later conversation with the DAO who's interview was interrupted revealed that this was the second time this day that a staff member from Hermandad Mexicana Nacional had been back in the room when N-400s were being conducted.

CC: Hermandad Mexicana Nacional

2 color
50-75M / JUNE 15, 1996
11x17"
"BECOME A CITIZEN"

May 24, 1996

MEMORANDUM

TO: Mike Farber
FROM: Nativo V. Lopez
RE: Shock piece directed towards the Spanish speaking community related to U.S. citizenship

Concept: General shock piece calling upon the Spanish speaking permanent resident community to take the step to obtain U.S. citizenship status.

Content ideas: Pictures of Buchanan, Gringich, and Senator Alan Simpson

Buchanan: generally well known for his anti-immigrant and anti-mexican proposals, postures, antics, opinions, etc.

Gringich: generally well known (lesser so than Buchanan within the Mexican community) for his anti-immigrant, anti-worker, anti-Mexican (bail-out; NAFTA, etc.) positions, postures, etc. He also recently voiced strong support for a national Proposition 187 type legislation (an amendment offered by Congressman Gagagley/spelled wrong/ within the body of the Lamar Smith-Alan Simpson Immigration Bill)

Senator Alan Simpson: Proposed legislation in the Senate proposing the most restrictive measures to curtail the rights of legal permanent residents and U.S. citizens to reunify their families into the United States; eliminate the rights of both categories to obtain federal and state benefits; reduce almost by half the number of individuals that can legally immigrate to the U.S.; and many other onerous measures.

These three men don't want you nor your children in America.
They seek to curtail your rights. They oppose your right to U.S. citizenship. They oppose your right to a public education and health care. They oppose your right to work for a living. They want to militarize the border. They don't want you to immigrate your family members to America.

HERMANDAD MEXICANA NACIONAL wants YOU!
HMN wants you to become a U.S. citizen TODAY!

ONLY YOU CAN FOIL THE PLANS OF THESE THREE MEN!

BECOME A U.S. CITIZEN TODAY, PROTECT YOUR FAMILY NOW!

HMN is the only one-stop location to immediately obtain all services for U.S. citizenship
* fill out the application, pictures, finger-prints
* classes to prepare for the U.S. citizenship exam
* all materials related to being a successful U.S. citizen
* U.S. citizenship exam in writing
* preparation and orientation for a successful interview with INS
* register to vote and vote by mail in the next elections
* orientation on how to immigrate other family members
* other educational and legal services available to all



Hermandad Mexicana Nacional

Se complace en anunciar nuestra

Fiesta Navideña Anual

Para miembros y amigos

El jueves, 19 de diciembre de 1996

en nuestro local ubicado en
825 N. Broadway St. Santa Ana
Comenzará a las 6:00 p.m.

Invitados de honor
Diputada Loretta Sánchez
y otros oficiales latinos electos

Participe del espectáculo Navideño y disfrute de las deliciosas botanas, refrescos y rifa gratis de regalos

Para más información comuníquese
al 714/541-0250

HMN HERMANDAD MEXICANA NACIONAL



Loretta Sanchez
(714) 637-5192

Ammon Davis -
754-8090

Promoters

hrly wage: $6.00
weekly wage: 240.00
monthly wage: 960.00
annual wage: 12,480.00 } $14,352.00
taxes & benefits 1,872.00 } (15%)

20 Prom x $14,352 = $287,040

hrly wage: $7.00
weekly wage: 280.00
monthly wage: 1,112.00
annual wage: 14,560.00 } $16,744.00
taxes & benefits: 2,184.00 } (15%)

20 Prom x $16,744 = $334,880

hrly wage: $8.00
weekly wage: 320.00
monthly wage: 1,280.00
annual wage: 16,640.00 } $19,136.00
taxes & benefits 2,496.00 } (15%)

20 Prom. x $19,136 = $382,720.00

Citizen Dornan
Mr. Dornan.

3,500 Registered voters

8,500 Absentee ballots collected

Responsible for 10,000 new voters

New Americans assisting all Americans to comply with their civic duty — VOTE

1982 working in 46th Cong. District

2,000 New citizens monthly throughout the 46th C.D.

One of highest concentrations of eligible legal residents by any congressional districts in the U.S. — approximately 160,000

500 volunteers assisted in voter & citizenship program

Meter por Promotor

5 ciudad por día
25 ciudad por semana
100 ciudad por mes

100 ciudadanos por mes X 20 Prom = 2,000
(2,000 X 12 meses = 24,000

Votar por correo

10 VBM por día
60 VBM por semana (6 días)
60 X 5 semanas = 300
30 Prom X 300 = 9,000

- Cada Prom. 2 precintos.
- caminar cada precinto por semana
- caminar cada precinto 5 veces en las 5 semanas y / vez para dejar el voto. (ultima semana de Oct / primer semana de Noviembre)

SUBPOENA 1 **Subpena Duces Tecum**

By Authority of the House of Representatives of the Congress of the United States of America

To Doris Meissner, Commissioner, INS

You are hereby commanded to produce the things identified on the attached schedule before the ..... Committee on House Oversight ..... of the House of Representatives of the United States, of which the Hon. Bill Thomas ..... is chairman, by producing such things in Room 1309 ..... of the Longworth House Office Building ....., in the city of Washington, on Wednesday, May 21, 1997, at the hour of 12:00 Noon .....

To U.S. Marshall (or any staff member of the Committee on House Oversight) to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this ....14..... day of .....May..... 19..97..

William M. Thomas
Chairman.

Attest:

Robin H Carle
Clerk.

Subpena for.....

Doris Meissner, Commissioner, INS

.....

.....

before the Committee on the.....

House Oversight

.....

Served I Nicholas Parks personally served a copy of the subpoena on Priscilla Green, authorized representative of Doris Meissner, at 3:52 pm on May 14, 1997 at 425 I street, Room 7048, Washingtonton, D.C.

Nick Parks

Staff Committee on House Oversight

House of Representatives

GPO: 1991 42-417 (m)

SUBPOENA 1

Attachment A

Instructions

1. The INS' response to this subpoena shall include all information within the INS' possession, custody or control including, but not limited to, information in the possession, custody or control of any of INS' current or past servants, employees, agents, attorneys, or other representatives. In complying with this subpoena, the INS is also required to produce information that it has a legal right to obtain, to copy or have access to, and information placed in the temporary possession, custody or control of any third party.

2. If any responsive information has been destroyed or lost, set forth the content of such information, the date such information was destroyed or lost and, if destroyed, the procedures and authority under which it was destroyed, and the identity of the last known custodian of such information prior to its destruction.

3. To the extent that no single document exists or is in the possession, custody or control, of the INS that contains all or part of the information sought, the INS should provide such other documents in its possession, custody or control which are sufficient to show, compute, compile, or explain all of the information sought in the request or as much information as is available.

4. This subpoena requests that the INS use its best efforts to provide the most complete information responsive to this request. If this subpoena cannot be complied with in full, it shall be complied with to the extent possible, which shall include an explanation of why full compliance is not possible.

5. The voter registration list for Orange County, California was provided to the INS by the Office of the Secretary of State for California. As a convenience, the voter registration list has been enclosed with this subpoena. Either copy of the voter registration list may be used for matching purposes.

6. Along with the list requested, this subpoena requires the INS to produce the technical specifications used to derive the list, including, but not limited to:
   a) the storage medium (i.e. 9-track, floppy diskette);
   b) whether the file was compressed;
   c) data specification format (i.e. IBM Standard Label or other);
   d) character format (EBCDIC, ASCII or other);
   e) file type (fixed length or variable length); and
   f) blocking factor.

7. Along with the list requested, this subpoena requires the INS to produce the protocol used to derive the list, including but not limited to:
   a) record layout;
      1) beginning and ending position of each data element in the system;
      2) each data element's width; and
      3) each data element's type (i.e. character, numeric with sign embedded, or alphanumeric);

b) name and phone number of agency official (s) responsible for creating and providing the list;
c) file name (data set name);
d) total number of records in the file; and
e) control totals for important numeric fields.

8. It shall not be a basis for refusal to respond to this subpoena that any other person or entity also possesses the information requested.

9. If any information responsive to this subpoena was, but no longer is, in the possession, custody or control of the INS, identify the information and explain the circumstances by which the information ceased to be in the possession, custody, or control of the INS.

10. If the relevant INS databases described are not accurate, but the actual relevant INS databases are known or are otherwise apparent from the context of the request, production is required of all responsive information notwithstanding the error.

11. The INS is under a continuing obligation to promptly provide additional information responsive to this subpoena.

Definitions

1. "Relevant INS databases" means the electronic databases entitled or known as CIS (Central Indexing System), CLAIMS (Computer Linked Application Information Management System), DACS (Deportable Alien Control System), ENFORCE (Enforce), NACS (Naturalization Casework System), RAPS (Refugees, Asylum and Parole System), STSC (Students and Schools System), and NAILS (National Automated Immigration Lookout System).

2. "INS" means the Immigration and Naturalization Service.

3. "Electronic format" means a format which can be accessed via computer.

4. "Identifying information" means: date of birth, street address (es), gender, phone number, alien registration number, date of naturalization.

5. A "match" occurs when the surname and date of birth of a person on the INS database corresponds to the surname and date of birth of a person on the Orange County, California voter registration file. A "match" also occurs when the surname without prefixes (e.g., deletion of "van der" in "van der Meer") and date of birth of a person on the INS database corresponds to the surname without prefixes and date of birth of a person on the Orange County, California voter registration file.

6. "Full name" means first name, middle initial and surname.

7. "Information" means all documents, records, summaries, files or other materials responsive to this subpoena.

Requests

1. Produce in an electronic format a copy of each electronic record sufficient to show, for each person in the relevant INS database (a) whose surname and date-of-birth matches the surname and date-of-birth of any person on the Orange County, California voter registration list and (b) whose record does not show a naturalization date or shows a naturalization date later than the date of that person's voter registration, the following information: full name and available identifying information.

SUBPOENA 2 **Subpena Duces Tecum**

By Authority of the House of Representatives of the Congress of the United States of America

To Doris Meissner, Commissioner, INS

You are hereby commanded to produce the things identified on the attached schedule before the ..... Committee on House Oversight ..... of the House of Representatives of the United States, of which the Hon. Bill Thomas ..... is chairman, by producing such things in Room .....1309..... of the Longworth House Office Building ....., in the city of Washington, on Wednesday, May 21, 1997, at the hour of 12:00 Noon .....

To U.S. Marshall (or any staff member of the Committee on House Oversight) to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this .....14..... day of .....May....., 19 97.

William M. Thomas
Chairman.

Attest:

Robin H. Carle
Clerk.

Subpena for.....

Doris Meissner, Commissioner, INS

before the Committee on the.....

House Oversight

Served I Nicholas C. Parks personally served a copy of the subpoena on Priscilla Green, authorized representative of Doris Meissner, at 3:52 pm on May 14, 1997 at 425 I Street, Room 7048, Washington D.C.

Nick Parks

Staff, Committee on House Oversight

House of Representatives

GPO: 1991 42-417 (m)

SUBPOENA 2

Attachment A

Instructions

1. The INS' response to this subpoena shall include all information within the INS' possession, custody or control including, but not limited to, information in the possession, custody or control of any of INS' current or past servants, employees, agents, attorneys, or other representatives. In complying with this subpoena, the INS is also required to produce information that it has a legal right to obtain, to copy or have access to, and information placed in the temporary possession, custody or control of any third party.

2. If any responsive information has been destroyed or lost, set forth the content of such information, the date such information was destroyed or lost and, if destroyed, the procedures and authority under which it was destroyed, and the identity of the last known custodian of such information prior to its destruction.

3. To the extent that no single document exists or is in the possession, custody or control, of the INS that contains all or part of the information sought, the INS should provide such other documents in its possession, custody or control which are sufficient to show, compute, compile, or explain all of the information sought in the request or as much information as is available.

4. This subpoena requests that the INS use its best efforts to provide the most complete information responsive to this request. If this subpoena cannot be complied with in full, it shall be complied with to the extent possible, which shall include an explanation of why full compliance is not possible.

5. This subpoena requires the INS to produce the technical specifications used to respond to this request, including, but not limited to:
   a) the storage medium (i.e. 9-track, floppy diskette);
   b) whether the file was compressed;
   c) data specification format (i.e. IBM Standard Label or other);
   d) character format (EBCDIC, ASCII or other);
   e) file type (fixed length or variable length); and
   f) blocking factor.

6. This subpoena requires the INS to produce the protocol used to respond to this request, including, but not limited to:
   a) record layout;
      1) beginning and ending position of each data element in the system;
      2) each data element's width; and
      3) each data element's type (i.e. character, numeric with sign embedded, or alphanumeric);
   b) name and phone number of agency official (s) responsible for creating and providing the list;
   c) file name (data set name);
   d) total number of records in the file; and
   e) control totals for important numeric fields.

7. It shall not be a basis for refusal to respond to this subpoena that any other person or entity also possesses the information requested.

8. If any information responsive to this subpoena was, but no longer is, in the possession, custody or control of the INS, identify the information and explain the circumstances by which the information ceased to be in the possession, custody, or control of the INS.

9. If the relevant INS databases described are not accurate, but the actual relevant INS databases are known or are otherwise apparent from the context of the request, production is required of all responsive information notwithstanding the error.

10. The INS is under a continuing obligation to promptly provide additional information responsive to this subpoena.

Definitions

1. "Relevant INS databases" means the electronic databases entitled or known as CIS (Central Indexing System), CLAIMS (Computer Linked Application Information Management System), DACS (Deportable Alien Control System), ENFORCE (Enforce), NACS (Naturalization Casework System), RAPS (Refugees, Asylum and Parole System), STSC (Students and Schools System), and NAILS (National Automated Immigration Lookout System).

2. "INS" means the Immigration and Naturalization Service.

3. "Electronic format" means a format which can be accessed via computer.

4. "Identifying information" means: date of birth, street address (es), gender, phone number, alien registration number, date of naturalization.

5. "Full name" means first name, middle initial and surname.

6. "Date of last recorded update to record" means the most recent date that the INS made updates to the file.

7. "Information" means all documents, records, summaries, files, or other materials responsive to this subpoena.

Requests

1. Produce in an electronic format a copy of each electronic record sufficient to show, for each person in the relevant INS databases, the following information: full name, available identifying information, date of last recorded update to record, and relevant INS database(s) in which the person appeared.

CONTESTED ELECTION TASK FORCE
FOR THE 46TH DISTRICT OF CALIFORNIA

TASK FORCE RESOLUTION

REQUEST FOR COMMITTEE SUBPOENAS

(Adopted on October 24, 1997)

Whereas, The Committee authorized the issuance of interrogatories to Michael Farber and Nativo Lopez on September 24, 1997.

Whereas, by letters dated October 8, 1997 Michael Farber and Nativo Lopez declared that they would not respond to said interrogatories.

Be it therefore Resolved, that the Task Force requests that the Chairman of the Committee on House Oversight issue subpoenas to Michael Farber and Nativo Lopez. This request is made pursuant to the Committee Resolution adopted by the full Committee on February 11, 1997, that delegated to the Chairman, in consultation with the Ranking Minority Member, the power to authorize and issue subpoenas for the purpose of gathering information for any contested election or voter fraud investigation.

Congress of the United States
House of Representatives
COMMITTEE ON HOUSE OVERSIGHT
1309 L[illegible] House Office B[illegible]
202 225-8281
Washington, DC 20515-0[illegible]

November 12, 1997

Custodian of Records
Heramandad Mexicana Nacional
825 North Broadway
Santa Ana, CA 92706

Dear Sir:

Attached you will find a subpoena.

If you have any questions, please contact John Kelliher, Assistant Counsel, at (202) 225-8281.

Sincerely,

William M. Thomas

William M. Thomas
Chairman

Subpena Duces Tecum

By Authority of the House of Representatives of the Congress of the United States of America

To Hermandad Mexicana Nacional, Custodian of Records

You are hereby commanded to produce the things identified on the attached schedule before the ..... Committee on House Oversight ..... of the House of Representatives of the United States, of which the Hon. Bill Thomas ..... is chairman, by producing such things in Room 1309 ..... of the Longworth ..... Building ....., in the city of Washington, on December 1, 1997 ....., at the hour of 1 p.m.

To U.S. Marshall or any staff member of the Committee on House Oversight to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 12 day of November 19 97

William M. Thomas
Chairman.

Attest:

Robin H. Carle
Clerk.

Subpena for.....

Hermandad Mexicana Nacional

.....

Custodian of Records

.....

.....

before the Committee on the.....

House Oversight

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Served.....

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.....House of Representatives

GPO: 1991 42-417 (m)

HERMANDAD MEXICANA NACIONAL

ATTACHMENT "A"

1. All documents that identify the names and addresses of all officers, directors and employees of Hermandad Mexicana Nacional (hereinafter "HMN") for the period November 9, 1994 to November 5, 1996.
2. HMN's Articles of Incorporation.
3. HMN's Bylaws.
4. HMN's Minutes of Board of Directors' meetings, including all special meetings, that relate to voter registration, vote fraud, the 1996 election and/or the Contest of Election filed by Robert K. Dornan for the period November 9, 1994 to present.
5. HMN's client and/or student list(s) and/or roster(s) in Orange County for the period November 9, 1994 to November 5, 1996.
6. All telephone records for HMN for the period November 9, 1994 to the present.
7. All documents that relate to the tax status of HMN for the period November 9, 1994 to November 5, 1996.
8. All documents that relate to the contractual relationship between the United States Immigration and Naturalization Service, Naturalization Assistance Service, and HMN for the period November 9, 1994 to November 5, 1996.
9. All documents that relate to the income received by HMN for the period November 9, 1994 to November 5, 1996.
10. All documents that relate to savings, checking and/or expense accounts maintained by HMN or any subsidiary or affiliate thereof including passbooks, monthly statements,

canceled checks, cash withdrawal slips, cash deposit slips, transfer forms, income statements, cash flow statements, profit and loss statements and financial accounting and loan documentation, including applications for the period November 9, 1994 to November 5, 1996.

11. All documents that relate to incentives, promotions, raffles and/or lotteries that were promoted by or participated in by HMN and/or Nativo Lopez for School Board, or anyone or any entity acting on their behalf, for the period November 9, 1994 to November 5, 1996.

12. All documents related to voter registration in Orange County including, but not limited to, lists of registered voters in your possession including, but not limited to voter registration affidavits, (including blank and completed affidavits), and any items detached from voter registration affidavits for the period November 9, 1994 to November 5, 1996.

13. All documents that relate to lists of persons who have been registered to vote by HMN in Orange County with the assistance of for the period November 9, 1994 to November 5, 1996.

14. All documents that relate to absentee voter ballots from Orange County that were handled or processed by HMN, or by anyone employed by, associated with or volunteering through HMN for the period November 9, 1994 to November 5, 1996.

15. All documents that relate to the procedures used by HMN to ensure that only eligible voters registered and/or requested absentee ballots with the assistance of HMN in Orange County for the period November 9, 1994 to November 5, 1996.

16. All documents that relate to documented and/or undocumented aliens registering to vote or voting in Orange County for the period November 9, 1994 to November 5, 1996.

17. All documents that relate to HMN's employees, associates or volunteers who engaged in the effort to register voters or encourage persons to vote in Orange County for the period November 9, 1994 to November 5, 1996.

18. All documents that relate to payments, bounties, incentives, or any other remuneration paid to anyone as compensation for enlisting persons to register to vote or vote in Orange County for the period November 9, 1994 to November 5, 1996.

19. All documents that relate to plans, strategies, tactics and/or efforts by HMN or anyone acting on its behalf in connection with the registration of voters or assisting persons to vote in Orange County for the period November 9, 1994 to November 5, 1996.

20. All documents that relate to naturalization, citizenship services and/or citizenship classes offered by HMN or anyone acting on their behalf in Orange County for the period November 9, 1994 to November 5, 1996.

21. All documents including, but not limited to, lists that identify the names, dates of birth, addresses, telephone numbers, naturalization dates and/or place of national origin of all persons to whom HMN has provided services regarding naturalization and/or citizenship services and/or citizenship classes in Orange County for the period November 9, 1994 to November 5, 1996.

22. All audio and video tapes prepared by or utilized by HMN in connection with naturalization and/or citizenship classes, and/or voter registration and voting services

provided through HMN in Orange County for the period November 9, 1994 to November 5, 1996.

23. All documents that relate to Robert K. Dornan and/or the Dornan for Congress campaign, or anyone acting on their behalf, for the period November 9, 1994 to November 5, 1996.

24. All documents that relate to the Loretta Sanchez and/or the Loretta Sanchez for Congress campaign, or anyone acting on their behalf, for the period November 9, 1994 to November 5, 1996.

25. All documents that relate to Nativo Lopez for School Board Campaign, or anyone acting on its behalf, for the period November 9, 1994 to November 5, 1996.

26. All documents that relate to the Immigration and Naturalization Service and/or Citizenship USA, or anyone acting on their behalf, for the period November 9, 1994 to November 5, 1996.

27. All documents that relate to Southwest Voter Registration Project in Orange County for the period November 9, 1994 to November 5, 1996.

28. All documents that relate to One-Stop Immigration and Education Center in Orange County for the period November 9, 1994 to November 5, 1996.

29. All documents that relate to Active Citizenship Project in Orange County for the period November 9, 1994 to November 5, 1996.

30. All documents related the California Republican Party, the national Republican Party, the Orange County Republican Party and/or affiliated committees for the period November 9, 1994 to November 5, 1996.

31. All documents that relate to the California Democratic Party, the national Democratic Party, the Orange County Democratic Party and/or affiliated committees for the period November 9, 1994 to November 5, 1996.

32. All documents that relate to Michael Farber for the period November 9, 1994 to November 5, 1996.

33. All documents that relate to Dump Dornan, for the period November 9, 1994 to November 5, 1996.

34. All documents that relate to Guttenburg Group, for the period November 9, 1994 to November 5, 1996.

35. All documents that relate to Citzens' Forum, for the period November 9, 1994 to November 5, 1996.

36. All documents that relate to Rancho Santiago College, for the period November 9, 1994 to November 5, 1996.

37. All documents that relate to the Carpenter's Union or any local thereof in Orange County for the period November 9, 1994 to November 5, 1996.

38. All documents that relate to the Laborer's Union or any local thereof in Orange County for the period November 9, 1994 to November 5, 1996.

39. All documents that relate to interviews HMN has conducted with anyone regarding the November 5, 1996 election and/or the Election Contest filed by Robert K. Dornan.

40. All documents that advise, counsel or encourage persons or entities to not cooperate with the current investigation of vote fraud in the 46th Congressional District of California.

41. All documents that relate to the issues of voter fraud, illegal voting, or any malconduct or irregularity regarding voter registration or voting in Orange County for the period November 9, 1994 to November 5, 1996.

MARK S. ROSEN
ATTORNEY AT LAW
2700 NORTH MAIN STREET
SUITE 630
SANTA ANA, CALIFORNIA 92705
TELEPHONE (714) 972-8040
FAX (714) 285-9840

December 1, 1997

HAND-DELIVERED

Representative William M. Thomas
Chairman, House Oversight Committee
1309 Longworth House Office Building
Washington, D.C. 20515

Re: Subpoena for Hermandad Mexicana Nacional

Dear Chairman Thomas:

This letter and the documents contained in the box labeled as documents from Hermandad Mexicana Nacional constitute Hermandad Mexicana Nacional's response to the subpoena issued by the Committee and dated November 12, 1997.

Most of the documents which would have been responsive to the subpoena were seized by the District Attorney for the County of Orange on January 14, 1997. These documents have not yet been returned to Hermandad Mexicana Nacional, with very limited exceptions. These documents remain the property of Hermandad Mexicana Nacional but are not in Hermandad's custody, possession, or control

As a general matter, we object to each and every category to the extent that it seeks to subpoena documents which are covered by the attorney-client or attorney-work product privileges, or any other privileges under the law of California or the United States. Where a response to a request would include published newspaper, newsletter, or magazine accounts, we have not produced those published accounts.

We will now respond on a category-by-category basis to the subpoena:

1. We object to the request because it contains within it documents which are outside the jurisdiction of the House Oversight Committee and is therefore overbroad. Notwithstanding this objection, and without waiving it, the documents supplied in response to Category #4 contain this information.

2. We object to this request because the information is not germane to the election contest and is therefore not germane.

3. We object to this request because the information is not germane to the election contest and is therefore not germane.

4. We object to this request because the information is not germane to the election contest and is therefore not germane. Notwithstanding this objection, and without waiving it, minutes for board meetings for the calendar year 1996 are provided.

5. We object to this request because it infringes upon the privacy and associational rights of Hermandad Mexicana Nacional and its clients and students as set forth in the First Amendment and other provisions of the United States Constitution. Hermandad Mexicana Nacional will not voluntarily produce any documents which identify its members, clients, or students.

6. We object to this request because it infringes upon the privacy and associational rights of Hermandad Mexicana Nacional as set forth in the First Amendment and other provisions of the United States Constitution. The request is also overbroad because it encompasses many communications which are clearly beyond the scope and authority of the Committee's investigation. The Committee has failed to limit its subpoenas to specific phone numbers.

7. We object to this request because it infringes upon the privacy and associational rights of Hermandad Mexicana Nacional as set forth in the First Amendment and other provisions of the United States Constitution. Tax records and documents prepared under compulsion of the federal or state government are privileged documents not subject to disclosure. We further object because the tax status of

Hermandad is not germane to an election contest.

8. Documents falling within this category that Hermandad has in its possession, custody, or control, are produced.

9. We object to this request because it infringes upon the privacy and associational rights of Hermandad Mexicana Nacional as set forth in the First Amendment and other provisions of the United States Constitution. The request is also overbroad because it requests many documents which are clearly beyond the scope and authority of the Committee's investigation.

10. We object to this request because it infringes upon the privacy and associational rights of Hermandad Mexicana Nacional as set forth in the First Amendment and other provisions of the United States Constitution. The request is also overbroad because it requests many documents which are clearly beyond the scope and authority of the Committee's investigation.

11. Hermandad has no such documents in its possession, custody, or control.

12. Hermandad has no such documents in its possession, custody, or control.

13. The request is illiterate as written. Assuming the request to be for documents relating to lists of persons registered to vote by Hermandad in Orange County, deleting the incomplete phrase "with the assistance of", Hermandad has no such documents in its possession, custody, or control.

14. The ORIGINALS of all such documents in the possession, custody, or control of Hermandad are produced herewith.

15. Hermandad produces an instruction of November 2, 1996, instructing that only United States citizens were permitted to vote. The Committee already is in possession of the return declaration of the Orange County District Attorney in which numerous instances are set forth in which Hermandad advised callers that only United States citizens could vote.

16. Hermandad has no such documents in its possession, custody, or control.

17. See No. 15.

18. Hermandad has no such documents in its possession, custody, or control.

19. See No. 15.

20. We object to this request because it infringes upon the privacy and associational rights of Hermandad Mexicana Nacional and its clients as set forth in the First Amendment and other provisions of the United States Constitution. The request is also overbroad because it requests many documents which are clearly beyond the scope and authority of the Committee's investigation. See No. 5.

21. We object to this request because it infringes upon the privacy and associational rights of Hermandad Mexicana Nacional and its clients as set forth in the First Amendment and other provisions of the United States Constitution. The request is also overbroad because it requests many documents which are clearly beyond the scope and authority of the Committee's investigation. See No. 5.

22. Hermandad has no such items in its possession, custody or control.

23. The only such known items would be references to Dornan or Dornan for Congress in the newspaper Union Hispana, which are available to the public and which are not germane to this election contest. Publications in a newspaper are also constitutionally and statutorily protected from inquiry or investigation. It would be excessively burdensome and time consuming to search through files in which Dornan's office might have been contacted for casework for clients, and would be an invasion of the rights of those clients.

24. The only such items would be references to Loretta Sanchez or her campaign in the newspaper Union Hispana, and Hermandad objects to production of newspaper issues for the reasons set forth in Category 23.

25. Hermandad has no such items in its possession, custody or control.

26. Hermandad has no such items in its possession, custody or control.

27. Hermandad has no such items in its possession, custody or control.

28. Hermandad has no such items in its possession, custody or control.

29. Hermandad has no such items in its possession, custody or control.

30. Hermandad has no such items in its possession, custody or control.

31. Hermandad has no such items in its possession, custody or control.

32. Hermandad has no such items in its possession, custody or control.

33. Hermandad has no such items in its possession, custody or control.

34. Hermandad has no such items in its possession, custody or control.

35. Documents falling within this category are produced.

36. Hermandad has no such items in its possession, custody or control.

37. Hermandad has no such items in its possession, custody or control.

38. Hermandad has no such items in its possession, custody or control.

39. We object to the extent that the request seeks to inquire into interviews that any Hermandad officials or spokespersons have given to the media, as an infringement upon its First Amendment rights. Hermandad further objects to the extent that the request infringes upon the attorney-client or attorney work-product privilege. Subject to this objection, Hermandad has no such items in its possession, custody or control.

40. If this request is intended to inquire about advisories provided that persons have a right to counsel and the right not to incriminate themselves under circumstances where they have been harassed and threatened by the media, by Dornan and his representatives, and by the Orange County District Attorney, Hermandad objects to the characterization that informing people of their constitutional and statutory rights constitutes advising, counseling, or encouraging them not to cooperate with the current investigation of "vote fraud".

41. Hermandad objects that this category is vague, ambiguous and overbroad, and could include within its scope documents that are privileged or protected under each of the privileges and protections cited in this letter, and Hermandad therefore objects to this category in its entirety.

Very truly yours,

MARK S. ROSEN

Congress of the United States
House of Representatives
COMMITTEE ON HOUSE OVERSIGHT
1309 [illegible] House Office Building
202-225-8281
Washington, DC 20515-0157

November 12, 1997

Mr. Edward Munoz
Munoz & Associates
1717 South State College Blvd
Suite 125
Anaheim, CA 92806

Dear Mr. Munoz:

Attached is a subpoena for Mr. Nativo Lopez.

If you have any questions, please contact John Kelliher, Assistant Counsel, at (202) 225-8281.

Sincerely,

William M. Thomas

William M. Thomas
Chairman

Subpena Duces Tecum

By Authority of the House of Representatives of the Congress of the United States of America

To Mr. Nativo Lopez

You are hereby commanded to produce the things identified on the attached schedule before the ..... Committee on House Oversight ..... of the House of Representatives of the United States, of which the Hon. Bill Thomas ..... is chairman, by producing such things in Room 1309 ..... of the Longworth ..... Building ....., in the city of Washington, on December 1, 1997 ....., at the hour of 1 p.m. .....

To U.S. Marshall or any staff member of the Committee on House Oversight to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 12 ..... day of November ....., 19 97 .....

William M. Thomas
Chairman.

Attest:

Robin H Carle
Clerk.

Subpena for.....

Mr. Nativo Lopez

before the Committee on the.....

House Oversight

Served.....

.....House of Representatives

GPO: 1991 42-417 (m)

NATIVO LOPEZ

ATTACHMENT "A"

1. All document that relate to voter registration in Orange County including, but not limited to, lists of registered voters in your possession including voter registration affidavits (including blank and completed affidavits) and any items detached from voter registration affidavits for the period November 9, 1994 to November 5, 1996.
2. All documents that relate to lists of persons in Orange County who have been registered to vote with the assistance of Nativo Lopez, or any person or any entity acting on his behalf, for the period November 9, 1994 to November 5, 1996.
3. All documents that relate to voter absentee ballot requests in Orange County that were handled or processed in any way by Nativo Lopez, or any person or any entity acting on his behalf, for the period November 9, 1994 to November 5, 1996.
4. All documents that relate to incentives, promotions, raffles and/or lotteries that were designed to induce people to register and/or vote in connection with the November 5, 1996 election, promoted by or participated in by Nativo Lopez, or anyone or any entity acting on his behalf, from November 9, 1994 to November 5, 1996.
5. All audio and video tapes prepared by or utilized by Nativo Lopez, or anyone or any entity acting on his behalf, in connection with naturalization, citizenship and/or voter registration and voting services in Orange County for the period November 9, 1994 to November 5, 1996.
6. All documents that relate to payments, bounties, incentives, or any other remuneration paid to anyone as compensation for enlisting persons to register to vote

or vote at anytime in Orange County for the period November 9, 1994 to November 5, 1996.

7. All documents that relate to any guidelines, rules and/or procedures followed or disseminated by Nativo Lopez, or anyone or any entity acting on his behalf, with respect to voter registration, voting at the polls, or voting by absentee ballot in Orange County for the period November 9, 1994 to November 5, 1996.
8. All documents that relate to the procedures used by Nativo Lopez, or anyone or any entity acting on his behalf, to ensure that only eligible voters registered and/or requested absentee ballots with the assistance of HMN in Orange County for the period November 9, 1994 to November 5, 1996.
9. All documents that relate to plans, strategy, tactics and/or efforts of Nativo Lopez, or anyone or any entity acting on his behalf, or anyone acting on their behalf, in connection with the registration of voters or assisting persons to vote in Orange County for the period November 9, 1994 to November 5, 1996.
10. All documents that relate to Nativo Lopez, or anyone or any entity acting on his behalf, participating in the effort to register persons or assist persons to vote in Orange County for the period November 9, 1994 to November 5, 1996.
11. All telephone records of Nativo Lopez relating to telephone conversations to or from Nativo Lopez, or anyone or any entity acting on his behalf, and any other entity or person relating to voter registration, absentee voting and/or encouraging persons to vote for the period November 9, 1994 to the present.
12. All message slips and/or notes relating to telephone conversations to or from Nativo Lopez, or anyone or any entity acting on his behalf, and any other entity or person

relating to voter registration, absentee voting and/or encouraging persons to vote for the period November 9, 1994 to November 5, 1996.

13. All documents that relate to documented and/or undocumented aliens registering to vote or voting in Orange County for the period November 9, 1994 to November 5, 1996.

14. All documents that relate to Robert K. Dornan and/or the Dornan for Congress Campaign, or anyone acting on their behalf for the period November 9, 1994 to November 5, 1996.

15. All documents that relate to Loretta Sanchez and/or the Committee for Loretta Sanchez, or anyone acting on their behalf for the period November 9, 1994 to November 5, 1996.

16. All documents that relate to Michael Farber for the period November 9, 1994 to November 5, 1996.

17. All documents that relate to the Nativo Lopez for School Board campaign for the period November 9, 1994 to November 5, 1996.

18. All documents that relate to Hermandad Mexicana Nacional for the period November 9, 1994 to November 5, 1996.

19. All documents that relate to the national Republican Party, the California Republican Party and/or the Orange County Republican Party for the period November 9, 1994 to November 5, 1996.

20. All documents that relate to the national Democratic Party, the California Democratic Party, and/or the Orange County Democratic Party for the period November 9, 1994 to November 5, 1996.

21. All documents that relate to Southwest Voter Registration Project in Orange County for the period November 9, 1994 to November 5, 1996.

22. All documents that relate to One-Stop Immigration and Education Center in Orange County for the period November 9, 1994 to November 5, 1996.

23. All documents that relate to Active Citizenship Project in Orange County for the period November 9, 1994 to November 5, 1996.

24. All documents that relate to the Laborers Union or any local thereof in Orange County for the period November 9, 1994 to November 5, 1996.

25. All documents that relate the Carpenters Union or any local thereof in Orange County for the period November 9, 1994 to November 5, 1996.

26. All documents that relate to Dump Dornan, for the period November 9, 1994 to November 5, 1996.

27. All documents that relate to the Guttenburg Group, for the period November 9, 1994 to November 5, 1996.

28. All documents that relate to Citizens' Forum, for the period November 9, 1994 to November 5, 1996.

29. All documents that relate to Rancho Santiago College, for the period November 9, 1994 to November 5, 1996.

30. All documents that relate to the Immigration and Naturalization Service and/or Citizenship USA, or anyone acting on their behalf, for the period November 9, 1994 to November 5, 1996.

31. All documents that relate to Nativo Lopez, or anyone or any entity acting on his behalf, and any independent expenditure for voter registration in Orange County in the November 5, 1996 election .

32. Nativo Lopez for School Board's employee, associate and/or volunteer list(s) or roster(s), for the period November 9, 1994 to November 5, 1996.

33. All documents that relate to savings, checking and/or expense accounts maintained by Nativo Lopez for School Board or any subsidiary or affiliate thereof including passbooks, monthly statements, canceled checks, cash withdrawal slips, cash deposit slips, transfer forms, income statements, cash flow statements, profit and loss statements and financial accounting and loan documentation, including applications for the period November 9, 1994 to November 5, 1996.

34. All writings, correspondence and memoranda authored or received by Nativo Lopez, or anyone or any entity acting on his behalf, addressing the issues of voter fraud, illegal voting or any malconduct or irregularity regarding voter registration or voting for the period November 9, 1994 to November 5, 1996.

35. All documents that relate to any investigation and/or interviews Nativo Lopez, or anyone or any entity acting on his behalf, has conducted with anyone regarding the November 5, 1996 election.

36. All documents that advise, counsel or encourage persons or entities to not cooperate with the investigation of vote fraud in the 46th Congressional District of California.

MUÑOZ & ASSOCIATES
ATTORNEYS AT LAW
1717 SOUTH STATE COLLEGE BOULEVARD
SUITE 125
ANAHEIM, CALIFORNIA 92806-6024
TEL.: (714) 978-6989 • FAX: (714) 978-3210

EDWARD R. MUÑOZ

97 NOV 21 PM 2:13

November 25, 1997

Representative William M. Thomas
Chairman, House Oversight Committee
1309 Longworth House Office building
Washington, D.C. 20515

RE: Subpoena Duces Tecum Directed to Mr. Nativo Lopez

Dear Chairman Thomas:

In response to the subpoena duces tecum issued to Mr. Nativo Lopez on November 12, 1997, our response shall be on a category by category basis. In responding Mr. Lopez understands that the subpoenas's request for documents has been addressed to him in his individual capacity, as opposed to being addressed to him in the capacity of "custodian of records" for Hermandad Mexicana Nacional, Inc.

As a general objection, Mr. Lopez objects to each and every category to the extent that it seeks to discover documents which are covered by attorney-client, attorney-work product, privacy or fifth-amendment privileges and rights. Any such documents, if they exist, have been excluded from these responses.

Naturally, all media accounts, regardless of medium or source, have also been excluded.

Mr. Lopez responds as follows:

1.) The information requested in this category is not in the individual possession of Mr. Lopez. We respectfully invite your attention to attachment "A" in furtherance of our response.

2.) To the extent that this request pertains to Mr. Lopez' school board campaign effort, those documents are provided. To the extent that this request pertains to documents separate and apart from the school board campaigns, such documents are not in the individual possession of Mr. Lopez. (SEE: Attachment "A")

3.) In response to this category we refer to the response given in category No. 2, above.

4.) These documents are not in the individual possession of Lopez. (SEE: Attachment "A")

5.) These items, if they exist, are not in the individual capacity of Mr. Lopez. (SEE: Attachment "A")

6.) As to that portion of the category which pertains to, "Renumeration paid to anyone as compensation for enlisting persons to register to vote", we respond by stating that if such documents do exist, they are not in the possession of Mr. Lopez.

As to that portion of the category which pertains to, "or vote at anytime in Orange County", if such documents exist, they are not in the individual possession of Mr. Lopez. (SEE: Attachment "A")

7.) Such documents are not in the individual possession of Mr. Lopez. (SEE: Attachment "A")

8.) Same response as above in category No. 7.

9.) As to that portion of the category which pertains to Nativo Lopez for school board, those documents are provided.

As to that potion which pertains to any other aspect of voter registration, such documents are not in the individual possession of Mr. Lopez. (SEE: Attachment "A")

10.) As to that portion of the category which pertains to Nativo Lopez for school board, those documents are provided.

As to that portion which pertains to any other aspect of voter registration, such documents are not in the individual possession of Mr. Lopez. (SEE: Attachment "A")

11.) To the personal knowledge of Mr. Nativo Lopez, the documents requested in this category do not exist.

12.) To the personal knowledge of Mr. Nativo Lopez, the documents in this category do not exist.

13.) Such documents are not in the individual possession of Mr. Lopez. (SEE: Attachment "A")

14.) Same response as above in category No. 13.

15.) Same response as above in category No. 14.

16.) To the extent that Mr. Lopez possesses any such documents in his individual capacity they are provided.

17.) Same response as above in category No. 16.

18.) We object to this category on the grounds that the category is over broad and would include matters not germane to the scope of this inquiry.

19.) We object to this request on the ground the requested information is not germane to the election contest and is therefore not germane. Further, without waiving this objection, Mr. Lopez responds that he does not posses such documents in his individual capacity. (SEE: Attachment "A")

20.) We object to this request because the information is not germane to the election contest and is therefore not germane. Further, without waiving this objection, Mr. Lopez responds that he does not posses such documents in his individual capacity. (SEE: Attachment "A")

21.) Mr. Lopez does not possess any such documents.

22.) Same response as given above in category No. 21.

23.) Same response as given above in category No. 22.

24.) Same response as given above in category No. 23.

25.) Same response as given above in category No. 24.

26.) Same response as given above in category No. 25.

27.) The documents requested have been interpreted to pertain to Nativo Lopez for school board efforts and as such are provided. Any interpretation of boarder scope is objected to as being overly broad and not germane to the scope of this inquiry.

28.) Mr. Lopez does not possess any such documents in his individual capacity. However, such documents have been provided on behalf of Hermandad Mexicana Nacional, Inc.

29.) Mr. Lopez does not posses any such documents.

30.) Mr. Lopez does not posses any such documents in his individual capacity. However, such documents have been provided on behalf of Hermandad Mexicana Nacional, Inc.

31.) Same response as given above in category No. 30.

32.) To his personal knowledge, Mr. Lopez does not posses any such documents.

33.) These documents are provided.

34.) To the extent that these documents are not privileged, they are provided.

35.) All such documents in the possession of Mr. Lopez are provided.

36.) To the personal knowledge of Mr. Lopez no such documents exist.

Respectfully Submitted,

DATED: November 25, 1997

Edward R. Muñoz,
Attorney for Nativo Lopez

ERM:arp

MARK S. ROSEN
ATTORNEY AT LAW
2700 NORTH MAIN STREET
SUITE 830
SANTA ANA, CALIFORNIA 92705
TELEPHONE (714) 972-8040
FAX (714) 265-8840

June 16, 1997

BY FIRST CLASS MAIL AND TELEFAX: 714/978-3210

Edward Munoz, Esq.
1717 S. State College Blvd,
Suite 125
Anaheim, CA 92806

Re: Dornan v. Sanchez Election Contest

Dear Mr. Munoz:

I represent Hermandad Mexicana Nacional and corporations affiliated with it. I understand that you represent an individual employee of Hermandad Mexicana Nacional who has been subpoenaed for a deposition and has been requested to produce records.

My client will determine who the proper custodian of records is for any deposition in which any individual is subpoenaed as "Custodian of Records". Where an individual has been subpoenaed in his or her individual capacity, and not as custodian of records, that individual has no right to take records belonging to Hermandad Mexicana Nacional. If the individual has records of Hermandad Mexicana Nacional in his or her possession, those records should be returned to Hermandad Mexicana Nacional. Just because a particular individual employee of Hermandad Mexicana Nacional may have physical access to records at the business location, this does not mean that the person may exercise custody, control, or possession of those records.

Finally, my client has spent a lot of time and money to protect the sanctity of its records, and the privacy of its clients, and no individual employee may waive any of Hermandad's rights with respect to those records.

Very truly yours,

MARK S. ROSEN

MSR/pl

PROOF OF SERVICE BY MAIL
(1013A (3) C.C.P.)

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of eighteen years and not a party to the within entitled action; my business address is: 1717 South State College Boulevard, Suite 125, Anaheim, CA 92806

On **November 25, 1997,** I personally served the foregoing documents described as **RESPONSE: SUBPOENA FOR MICHAEL FARBER, RESPONSE: SUBPOENA FOR HERMANDAD MEXICANA NACIONAL, RESPONSE: SUBPOENA DUCES TECUM DIRECTED TO MR. NATIVO LOPEZ** on all interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

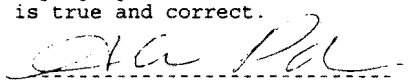
Representative William M. Thomas
Chairman
House Oversight Committee
1309 Longworth House Office Building
Washington, D.C. 20515

I deposited such envelope in the mail at Anaheim, California. The envelope was mailed with postage thereon fully prepaid.

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Anaheim, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more that one day after date of deposit of mailing affidavit.

Executed on **November 25, 1997,** at Anaheim, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



ALMA PASTRANA

Congress of the United States
House of Representatives
COMMITTEE ON HOUSE OVERSIGHT
1309 Longworth House Office Building
202-225-8281
Washington, DC 20515-0517

November 12, 1997

Mr. Mark Rosen
2700 North Main St., Ste. 630
Santa Ana, CA 92705

Dear Mr. Rosen:

Attached is a subpoena for Mr. Michael Farber.

If you have any questions, please contact John Kelliher, Assistant Counsel, at (202) 225-8281.

Sincerely,

William M. Thomas

William M. Thomas
Chairman

Subpena Duces Tecum

By Authority of the House of Representatives of the Congress of the United States of America

To Mr. Michael Farber

You are hereby commanded to produce the things identified on the attached schedule before the ..... Committee on House Oversight ..... of the House of Representatives of the United States, of which the Hon. Bill Thomas ..... is chairman, by producing such things in Room 1309 ..... of the Longworth ..... Building ....., in the city of Washington, on December 1, 1997 ....., at the hour of 1 p.m.

To U.S. Marshall or any staff member of the Committee on House Oversight to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 12 day of November 19 97

William M. Thomas
Chairman.

Attest:

Robin H Carle
Clerk.

Subpena for.....

Mr. Michael Farber

before the Committee on xhe.....

House Oversight

Served.....

.....House of Representatives

GPO 1991 42-417 (m)

MICHAEL FARBER

ATTACHMENT "A"

1. All document that relate to voter registration in Orange County including, but not limited to, lists of registered voters in your possession including voter registration affidavits (including blank and completed affidavits) and any items detached from voter registration affidavits for the period November 9, 1994 to November 5, 1996.
2. All documents that relate to lists of persons in Orange County who have been registered to vote with the assistance of Michael Farber, or any person or any entity acting on his behalf, for the period November 9, 1994 to November 5, 1996.
3. All documents that relate to voter absentee ballot requests in Orange County that were handled or processed in any way by Michael Farber, or any person or any entity acting on his behalf, for the period November 9, 1994 to November 5, 1996.
4. All documents that relate to incentives, promotions, raffles and/or lotteries that were designed to induce people to register and/or vote in connection with the November 5, 1996 election, promoted by or participated in by Michael Farber, or anyone or any entity acting on his behalf, from November 9, 1994 to November 5, 1996.
5. All audio and video tapes prepared by or utilized by Michael Farber, or anyone or any entity acting on his behalf, in connection with naturalization, citizenship and/or voter registration and voting services in Orange County for the period November 9, 1994 to November 5, 1996.
6. All documents that relate to payments, bounties, incentives, or any other remuneration paid to anyone as compensation for enlisting persons to register to vote

or vote at anytime in Orange County for the period November 9, 1994 to November 5, 1996.

7. All documents that relate to any guidelines, rules and/or procedures followed or disseminated by Michael Farber, or anyone or any entity acting on his behalf, with respect to voter registration, voting at the polls, or voting by absentee ballot in Orange County for the period November 9, 1994 to November 5, 1996.
8. All documents that relate to the procedures used by Michael Farber, or anyone or any entity acting on his behalf, to ensure that only eligible voters registered and/or requested absentee ballots with the assistance of HMN in Orange County for the period November 9, 1994 to November 5, 1996.
9. All documents that relate to plans, strategy, tactics and/or efforts of Michael Farber, or anyone or any entity acting on his behalf, or anyone acting on their behalf, in connection with the registration of voters or assisting persons to vote in Orange County for the period November 9, 1994 to November 5, 1996.
10. All documents that relate to Michael Farber, or anyone or any entity acting on his behalf, participating in the effort to register persons or assist persons to vote in Orange County for the period November 9, 1994 to November 5, 1996.
11. All telephone records of Michael Farber relating to telephone conversations to or from Michael Farber, or anyone or any entity acting on his behalf, and any other entity or person relating to voter registration, absentee voting and/or encouraging persons to vote for the period November 9, 1994 to the present.
12. All message slips and/or notes relating to telephone conversations to or from Michael Farber, or anyone or any entity acting on his behalf, and any other entity or person

relating to voter registration, absentee voting and/or encouraging persons to vote for the period November 9, 1994 to November 5, 1996.

13. All documents that relate to documented and/or undocumented aliens registering to vote or voting in Orange County for the period November 9, 1994 to November 5, 1996.

14. All documents that relate to Robert K. Dornan and/or the Dornan for Congress Campaign, or anyone acting on their behalf for the period November 9, 1994 to November 5, 1996.

15. All documents that relate to Loretta Sanchez and/or the Committee for Loretta Sanchez, or anyone acting on their behalf for the period November 9, 1994 to November 5, 1996.

16. All documents that relate to Nativo Lopez for the period November 9, 1994 to November 5, 1996.

17. All documents that relate to the Nativo Lopez for School Board campaign for the period November 9, 1994 to November 5, 1996.

18. All documents that relate to Hermandad Mexicana Nacional for the period November 9, 1994 to November 5, 1996.

19. All documents that relate to the national Republican Party, the California Republican Party and/or the Orange County Republican Party for the period November 9, 1994 to November 5, 1996.

20. All documents that relate to the national Democratic Party, the California Democratic Party, and/or the Orange County Democratic Party for the period November 9, 1994 to November 5, 1996.

21. All documents that relate to Southwest Voter Registration Project in Orange County for the period November 9, 1994 to November 5, 1996.

22. All documents that relate to One-Stop Immigration and Education Center in Orange County for the period November 9, 1994 to November 5, 1996.

23. All documents that relate to Active Citizenship Project in Orange County for the period November 9, 1994 to November 5, 1996.

24. All documents that relate to the Laborers Union or any local thereof in Orange County for the period November 9, 1994 to November 5, 1996.

25. All documents that relate the Carpenters Union or any local thereof in Orange County for the period November 9, 1994 to November 5, 1996.

26. All documents that relate to Dump Dornan, for the period November 9, 1994 to November 5, 1996.

27. All documents that relate to the Guttenburg Group, for the period November 9, 1994 to November 5, 1996.

28. All documents that relate to Citizens' Forum, for the period November 9, 1994 to November 5, 1996.

29. All documents that relate to Rancho Santiago College, for the period November 9, 1994 to November 5, 1996.

30. All documents that relate to the Immigration and Naturalization Service and/or Citizenship USA, or anyone acting on their behalf, for the period November 9, 1994 to November 5, 1996.

31. All documents that relate to Michael Farber, or anyone or any entity acting on his behalf, and any independent expenditure for voter registration in Orange County in the November 5, 1996.

32. All writings, correspondence and memoranda authored or received by Michael Farber, or anyone or any entity acting on his behalf, addressing the issues of voter fraud, illegal voting or any malconduct or irregularity regarding voter registration or voting for the period November 9, 1994 to November 5, 1996.

33. All documents that relate to any investigation and/or interviews Michael Farber, or anyone or any entity acting on his behalf, has conducted with anyone regarding the November 5, 1996 election.

34. All documents that advise, counsel or encourage persons or entities to not cooperate with the investigation of vote fraud in the 46th Congressional District of California.

MARK S. ROSEN
ATTORNEY AT LAW
2700 NORTH MAIN STREET
SUITE 630
SANTA ANA, CALIFORNIA 92705
TELEPHONE (714) 972-8040
FAX (714) 285-9840

97 NOV 21 PM 2:12

December 1, 1997

HAND-DELIVERED

Representative William M. Thomas
Chairman, House Oversight Committee
1309 Longworth House Office Building
Washington, D.C. 20515

Re: Subpoena for Michael Farber

Dear Chairman Thomas:

This letter and the documents contained in the box labeled as documents from Michael Farber constitute Mr. Farber's response to the subpoena issued by the Committee and dated November 12, 1997.

As a general matter, we object to each and every category to the extent that it seeks to subpoena documents which are covered by the attorney-client or attorney-work product privileges, or any other privileges under the law of California or the United States. Where a response to a request would include published newspaper, newsletter, or magazine accounts, we have not produced those published accounts.

We will now respond on a category-by-category basis to the subpoena:

1. We object to the request to the extent that it seeks proprietary information of voter registration lists that are used by Mr. Farber as part of his commercial business and which would have no value in this election contest, as such information was purchased from the Orange County Registrar of Voters. This is the same list, or a version of the same list, that was testified to by Michael Schroeder and Rosalyn Lever at the field hearing held on April 19, 1997. As for voter registration affidavits, or detachments therefrom, Mr. Farber has no such documents in

his possession, custody, or control.

2. There are no such documents in his possession, custody, or control.

3. There are no such documents in his possession, custody, or control.

4. One Citizens Forum brochure is produced.

5. No such items exist.

6. Assuming the request pertains to such payments by Mr. Farber, no such documents exist.

7. Assuming that the request pertains to internal guidelines (as opposed to the content of mailings), no such items exist.

8. No such items exist.

9. No such items exist.

10. No such items exist as to Mr. Farber's efforts other than as a commercial printer doing printing work. Printing done for Citizens Forum is produced under No.28. Printing as to other entities, unrelated to Hermandad Mexicana Nacional, is objected to for the reasons set forth in the response to No.27.

11. We object to the item to the extent that it seeks telephone records unrelated to the election contest. With regard to the description of the content of the calls, no such records exist.

12. No such items exist.

13. Assuming the request pertains to Mr. Farber's alleged involvement with documented and/or undocumented aliens registering to vote or voting in Orange County for the period November 9, 1994, to November 5, 1996, no such documents exist.

14. Assuming the request pertains to Mr. Farber's interaction with Robert K. Dornan or Doran for Congress, we are producing the following:

1. A letter written by Robert K. Dornan to Michael Farber's wife, Gail Farber, after the 1994 election, referring, among other things, to Congressman Fazio;

2. Literature produced by Dump Dornan, also responsive to No.26.

3. A book entitled "`Shut Up Fag!' Quotations from the files of Congressman Bob Dornan the Man Who Would Be President"

15. Assuming the request pertains to Mr. Farber's interaction with Loretta Sanchez or her campaign committee, no such documents exist. One Dump Dornan letter refers to Loretta Sanchez (See No.26).

16. Assuming the request pertains to Mr. Farber's interaction with Nativo Lopez, no such documents exist except for those covered under Categories No. 17 and 28.

17. Assuming the request pertains to Mr. Farber's interaction with Nativo Lopez for School Board, campaign literature prepared by Mr. Farber for Mr. Lopez's school board campaign is enclosed. See also Category No. 26, wherein a produced document references this school board campaign.

18. Assuming the request pertains to Mr. Farber's interaction with Hermandad Mexicana Nacional, invoices are enclosed herein. Other documents are covered under Category No.28. Mr. Farber objects to the extent that the request calls for proprietary information utilized by Mr. Farber for the purpose of doing mailings for Citizens Forum.

19. Assuming the request pertains to Mr. Farber's interaction with the national Republican Party, the California Republican Party and/or the Orange County Republican Party, Mr. Farber objects to this request because it infringes upon his First Amendment right of freedom of association and his constitutional right of privacy. The request is also impermissibly overbroad and vague, and therefore violates Mr. Farber's rights under the Due Process clause. Mr. Farber also objects because the category seeks documents which are not germane to the election contest and the subject matter of the investigation before the House Oversight Committee. Hon.

Notwithstanding this objection, and without waiving it, no such documents exist.

20. Assuming the request pertains to Mr. Farber's interaction with the national Democratic Party, the California Democratic Party and/or the Orange County Democratic Party, Mr. Farber objects to this request because it infringes upon his First Amendment right of freedom of association and his constitutional right of privacy. The request is also impermissibly overbroad and vague, and therefore violates Mr. Farber's rights under the Due Process clause. Mr. Farber also objects because the category seeks documents which are not germane to the election contest and the subject matter of the investigation before the House Oversight Committee. Notwithstanding this objection, and without waiving it, Mr. Farber might have received standardized candidate documents from one or more Democratic party entities while he was a candidate for Congress in 1996, but no longer has any such documents in his custody, possession or control.

21. Assuming the request pertains to Mr. Farber's interaction with the organization, no such documents exist.

22. Assuming the request pertains to Mr. Farber's interaction with the organization, no such documents exist.

23. Assuming the request pertains to Mr. Farber's interaction with the organization, no such documents exist.

24. Assuming the request pertains to Mr. Farber's interaction with the organization, no such documents exist.

25. Assuming the request pertains to Mr. Farber's interaction with the organization, no such documents exist.

26. Mr. Farber objects to this request to the extent that it seeks records which are not required to be disclosed under the Federal Elections Act, and which would infringe upon the privacy rights of contributors of less than $200. Mr. Farber encloses herein his filings with the Federal Electons Commission for the period in question. Mr. Farber also produces Dump Dornan campaign pieces.

27. Mr. Farber objects to the request as being overbroad and therefore a denial of due process. The request is so broad that it encompasses records which are not germane to the election contest or any proper subject

of the Committee on House Oversight's jurisdiction. The Gutenberg Group is a private printing business that has commercial and private clients, and political clients. Many of these clients do not wish their identities or their private business to be publicly disclosed. It is an invasion of Mr. Farber's privacy rights as well as the privacy rights of his clients to request this kind of disclosure, and therefore a violation of the First Amendment and other constitutional provisions. Invoices from the Gutenberg Group to Hermandad Mexicana Nacional are produced herein.

28. Brochures prepared by Citizens Forum are enclosed herein.

29. Assuming the request pertains to Mr. Farber's interaction with the organization, no such documents exist.

30. Assuming the request pertains to Mr. Farber's interaction with the organization, no such documents exist.

31. No such documents exist. All produced independent expenditure documents are referenced in No.26.

32. No such documents exist.

33. Mr. Farber objects to the extent that the request seeks to inquire into interviews that Mr. Farber has given to the media, as an infringement upon his First Amendment rights. Subject to this objection, no such documents exist.

34. Assuming the request pertains to Mr. Farber's interaction with the subject matter, no such documents exist.

Very truly yours,

MARK S. ROSEN

MSR/rr



UNITED STATES MARSHALS SERVICE

Office of Congressional Affairs

600 Army Navy Drive
Suite 1280
Arlington, Virginia 22202-4210
Office: (202) 307-9220, Facsimile: (202) 307-5228

TO: Nicki Parks

FROM: Gisele Barkley

DATE:

NUMBER OF PAGES: 3 EXCLUDING COVER SHEET

COMMENTS: Attached are 3 Khmer Service

WARNING: MANY FACSIMILE MACHINES PRODUCE COPIES ON THERMAL PAPER. THE IMAGE PRODUCED IS HIGHLY UNSTABLE AND WILL DETERIORATE SIGNIFICANTLY IN A FEW YEARS. IT SHOULD BE COPIED ON A PLAIN PAPER COPIER PRIOR TO FILING AS A RECORD.

Subpena for.....
Hermendad Mexicanz Nacionel
.....
Custodian of Records
.....
.....
before the Committee on the.....
House Oversight
.....
.....

Served JAY LINDSEY, DIRECTOR
OF OPERATIONS
11-13-92 AT 12:00PM
.....
BY AGENT ROBERT ALEXANDER

.....
.....House of Representatives

GPO 1991 (2-417 [m])

Subpena for.....

Mr. Michael Farber

before the Committee on~~the~~.....

House Oversight

Served MARK ROSEN

ON 11-13-97 AT 12:20PM

BY SGT. ROBERT ALEXANDER

.....House of Representatives

GPO 1981 42-417 (es)

Subpena for.....

Mr. Nativo Lopez

before the Committee on the.....

House Oversight

Served EDWARD MUNOZ

ON 11-13-97 AT 12:40PM.

BY DUSTIN LEIGHT ALEXANDER

.....House of Representatives

GPO 1986 42-419 (rev)



UNITED STATES MARSHALS SERVICE

Office of Congressional Affairs

600 Army Navy Drive
Suite 1280
Arlington, Virginia 22202-4210
Office: (202) 307-9220, Facsimile: (202) 307-5028

TO: Nicia Parks

FROM: Gisela Dulcey

DATE:

NUMBER OF PAGES: 3 EXCLUDING COVER SHEET

COMMENTS: Attached are 3 letters of service

WARNING: MANY FACSIMILE MACHINES PRODUCE COPIES ON THERMAL PAPER. THE IMAGE PRODUCED IS HIGHLY UNSTABLE AND WILL DETERIORATE SIGNIFICANTLY IN A FEW YEARS. IT SHOULD BE COPIED ON A PLAIN PAPER COPIER PRIOR TO FILING AS A RECORD.

Subpena for.....
Hermandad Mexicana Nacional
.....
Custodian of Records
.....
.....
before the Committee on the.....
House Oversight
.....
.....

Served JAY LINDSEY, DIRECTOR
OF OPERATIONS
11-13-92 AT 12:00pm
.....
By ASSM ROBERT ALEXANDER

.....
.....House of Representatives

GPO 1991 O-417 (rev)

Subpena for

Mr. Michael Farber

before the Committee on

House Oversight

Served MARK Risen

ON 11-13-07 AT 12:20 PM

BY Deputy ROBERT ALEXANDER

House of Representatives

GPO 1981 42-411 (45)

Subpena for

Mr. Nativo Lopez

before the Committee on the

House Oversight

Served EDWARD MUNOZ

ON 11-13-97 AT 12:40PM.

BY DEPUTY ROBERT ALEXANDER

House of Representatives

GPO 1991 41-493 (rev)



UNITED STATES MARSHALS SERVICE

Office of Congressional Affairs

600 Army Navy Drive
Suite 1280
Arlington, Virginia 22202-4210
Office: (202) 307-9220, Facsimile: (202) 307-5028

TO: Nick Parker

FROM: Cybele Bailey

DATE:

NUMBER OF PAGES: 2 EXCLUDING COVER SHEET

COMMENTS: attached are the return of service and Mark Rosen's waiver of acceptance. We have not heard from HMN re: his acceptance.

WARNING: MANY FACSIMILE MACHINES PRODUCE COPIES ON THERMAL PAPER. THE IMAGE PRODUCED IS HIGHLY UNSTABLE AND WILL DETERIORATE SIGNIFICANTLY IN A FEW YEARS. IT SHOULD BE COPIED ON A PLAIN PAPER COPIER PRIOR TO FILING AS A RECORD.

Subpena Duces Tecum

By Authority of the House of Representatives of the Congress of the United States of America

To Mr. Michael Farber

You are hereby commanded to produce the things identified on the attached schedule before the Committee on House Oversight of the House of Representatives of the United States, of which the Hon. Bill Thomas is chairman, by producing such things in Room 1309 of the Longworth Building, in the city of Washington, on December 1, 1997, at the hour of 1 P.m.

To U.S. Marshall or any staff member of the Committee on House Oversight to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this ..... day of ..... 19.....

William M. Thomas
Chairman

Attest:

Robin H. Carle
Clerk.

I have accepted via fax for Michael Farber.

[illegible] Attorney

Subpena for.....
Mr. Michael Farber

before the Committee on the.....
House Oversight

Served 11/10 via fax
Mark Raxen, original
sent via fedx
Cybele K. Daley
USMS/OEA

.....House of Representatives

GPO: 1991 42-617 (ms

HERMANDAD MEXICANA NACIONAL

BATES NUMBER	DESCRIPTION
000001-000007	Statement of Understanding for the Naturalization Out-Reach program
000008-000015	Lopez acceptance of statement of understanding
000016-000028	Propaganda forms from Citizen Forum
000029-000030	Citizens' Forum Voter Questionnaire (in Spanish)
000031-000042	Registration form for swearing in
000043-000051	Criteria for HMN's Citizens' Forum
000052	Lopez congratulatory letter to Sanchez
000053	Lopez memo to staff on elections (in Spanish)
000054-000057	Lopez memo on classes (in Spanish)
000058-000070	Office and General Services Agreement Summary and Definition of Terms (signed by Michael Farber)
000071-000081	Office and General Services Agreement Summary and Definition of Terms (signed by Scott Moxley and dated 4/18/95)
000082-000083	HMN educational election letters
000084-000120	Absentee ballot list
000121	Lopez memo regarding registration
000122-000145	Completed Absent Voter Ballot Applications
000146-003347	Completed Absent Voter Ballot Applications

MICHAEL FARBER

BATES NUMBER	DESCRIPTION
003957- 003969	Office and General Services Agreement Summary and Definition of Terms
003970- 004035	Purchase Order Forms, Novaless Printing Receipts and Misc. Accounting Papers
004936- 004040	Citizen's Forum Absent Voter Ballot Application
004041- 004042	Citizen's Forum Voter Questionnaire
004043- 004044	Citizen's Forum Voter Questionnaire
004045- 004046	Citizen's Forum Absent Voter Ballot Application
004047- 004050	Citizen's Forum Recruitment Letter and Absent Voter Ballot Application
004051- 004052	Citizen's Forum Win-a-car Advertisement
004053- 004086	Santa Ana School Board Campaign Literature
004087- 004109	Dump Dornan Statement of Organization
003940- 003956	Dornan letter to Gail Farber
008272	"Shut Up Fag!"

NATIVO LOPEZ

FILE NUMBER	BATES NUMBER	DESCRIPTION
0068094 (352-435)	006104-006135	Voter Identification Sheets
Loose Sheets	006136-006216	Voter, Address and Phone Identification
0068091 (538-593)	006217-006274	Voter, Address and Phone Identification
0068137 (440-538)	006275-006374	Maps; Voter, Address and Phone Identification
0068132 (594-673)	006375-006455	Voter Identification Sheets
Unmarked Folder	006456-006480	Fidelity Federal Bank Activity Receipts, Statement and Checks
Loose Sheets	006481-006559	Voter, Address and Phone Identification
Loose Sheets w/ rubber band	006560-006853	Voter Party Identification
0068107 (81-177)	006854-006953	Voter, Address and Phone Identification
0068177 (177-263)	006954-007042	Voter, Address and Phone Identification
0068083 (263-352)	007043-007134	Map; Voter, Address and Phone Identification
0068060 (1-81)	007135-007217	Map; Voter, Address and Phone Identification
68106	007218-007240	Voter, Address and Phone Identification
68106- AB	007241-007271	Map; Voter, Address and Phone Identification
Unmarked Folder	007272-007274 007275-007278 007279-007291	Donation Thank You Letter Soliciting Contribution Letter Lopez School Board Campaign Literature and Propaganda
Loose Sheets w/ rubber band	007292-007588	Statement of Economic Interests; Checks; Search Warrant; Novaless Printing Invoice; Contribution and Loan Records
Unmarked Folder	007589-007599	Office and General Services Agreement Summary and Definition of Terms
Unmarked Folder	007600-007611 007612-007620 007621-007630 007631-007655 007656-007661 007662-007681 007682-007684	Gutenberg Group Invoice (11/14/96) Gutenberg Group Invoice (9/12/96) Kids & Parents for Lopez Checks Job Summary Computer Printouts Lopez Check's to Gutenberg Group Novaless Printing Invoice Kids & Parents for Lopez Checks
68-114 AB	007685-007731	Maps; Voter, Address and Phone Identification
006814	007732-007778	Voter, Address and Phone Identification

0068119 (535-616)	007779-007858	Voter, Address and Phone Identification
0068331 (435-535)	007861-007960	Voter, Address and Phone Identification
0068-078 (326-401)	007961-008035	Map; Voter, Address and Phone Identification
68-166 AB	008119-008180	Voter, Address and Phone Identification
0068996 (93-183)	008181-008271	Map; Voter, Address and Phone Identification
0068-302 (240-326)	Unreadable	Voter, Address and Phone Identification

NATIVO LOPEZ

FILE NUMBER	BATES NUMBER	DESCRIPTION
Citizen Forum Piece (3) 0068293 (763-843)	004110- 004190	Maps; Voter, Address and Phone Identification
0068115 (238-319)	004191- 004275	Maps; Voter, Address and Phone Identification
0068330 (319-429)	004276- 004375	Maps; Voter, Address and Phone Identification
0068098 (1-100)	004376- 004476	Maps; Voter, Address and Phone Identification
0068061 (195-299)	004477- 004583	Maps; Voter, Address and Phone Identification
0068183 (348-452)	004584- 004687	Voter, Address and Phone Identification
006848 0048-048 (351-440)	004688- 004779	Maps; Voter, Address and Phone Identification
68-156 AB	004780- 004829	Maps; Voter, Address and Phone Identification
0068103 (1-92)	004830- 004873	Voter, Address and Phone Identification
0068150 (92-155)	004874- 004940	Maps; Voter, Address and Phone Identification
0068162 (155-238)	004941- 005009	Voter, Address and Phone Identification
0068128 (499-575)	005010- 005087	Voter, Address and Phone Identification
0068130 (104-197)	005088- 005166	Maps; Voter, Address and Phone Identification
Loose sheets	005167- 005214	Voter, Address and Phone Identification
06815 (430-528)	005215- 005268	Maps; Voter, Address and Phone Identification
0068086 (299-348)	005317- 005370	Maps; Voter, Address and Phone Identification
0068104 (575-651)	005371- 005447	Voter, Address and Phone Identification
Lopez, Nativo (Boe #1) 0068179 (673-763)	005448- 005540	Maps; Voter, Address and Phone Identification
68-077	005541- 005561	Maps; Voter, Address and Phone Identification
0068096 (651-739)	005562- 005652	Maps; Voter, Address and Phone Identification
0068052 (759-825)	005653- 005741	Maps; Voter, Address and Phone Identification
0068131 (1-104)	005742- 005845	Maps; Voter, Address and Phone Identification
68-123 AB	005846- 005950	Maps; Voter, Address and Phone Identification
0068297	005951- 006006	Maps; Voter, Address and Phone Identification
The Gutenberg Group 0068129 (100-195)	006007- 006103	Maps; Voter, Address and Phone Identification

ORANGE COUNTY DISTRICT ATTORNEY'S HERMANDAD MEXICANA NACIONAL SIEZED DOCUMENTS

Box #	Bates #s	Description
	000001-000745	Citizenship Exam Papers
	000746-001322	Citizenship Exam Papers
	001323-001859	Citizenship Exam Papers
	001851-002540	Citizenship Exam Papers
	002541-002949	Citizenship Exam Papers
	002950-003413	Citizenship Exam Papers
	003414-003808	Citizenship Exam Papers
	003809-004481	Checks Payable to Legal Services; HMN Applications; Questionnaires; Citizenship Exam Papers
	004485-005137	Checks Payable to Legal Services; HMN Applications; Questionnaires; Citizenship Exam Papers
	005138-005704	HMN Applications; Questionnaires; Citizenship Exam Papers
	005705-006052	Citizenship Exam Papers
	006053-006199	Citizenship Exam Papers; HMN Materials
	006200-006302	Handwritten Notes; Roster Attendance Sheets; Promotional Material; Telephone Messages
	006303-006317	HMN Mission/ History; English/Citizenship Exam
	006318-006941	HMN Personnel Manual; Internal Financial Statements; Meeting Agendas; Expense Reports; Memorandums
	006942-007026	Propaganda Materials; Memorandums; Budget Items; Demographic Info.; Handwritten Notes; Bylaws;
	007027-007094	Absentee Ballot Forms; Citizenship Exam Answers; Envelopes to Registrar of Voters
	007095-007158	Internal Operations Documents; NAS Standardized Test Ad. Procedures Manual;
	007159-007193	HMN Info. Material; Organizational Charts; Voter Registration Forms
	007194-007203	Alien Preparation Information
	007204-007206	Lopez Memo on Elections
	007207-007214	Registration forms
	007215-007224	Registration Information Related to Legal Center
	007225-007228	Propaganda Materials for Election
	007229-007286	Roster Attendance Sheets; Handwritten Notes
	007287-007296	Handwritten Notes; Manifest Sheets
	007297-007334	Telephone Scripts and Logs
	007335-007549	Voter and Telephone Information
	007550-007633	Legal Center Payroll Checks
	007634-008048	Raffle Ticket Information and Materials
	008049-008594	Raffle Ticket Information and Materials; Checks Payable to Legal Center
	008595-008597	Raffle Ticket Information
	008598-008632	HMN Citizen Informational Materials
	008633	HMN National Board of Directors
	008634-008723	Raffle Tickets and Handwritten Notes
	008724-009161	Raffle Tickets
	009162-009168	Contribution Numbers and Lists
	009169-009490	Checks Payable to Legal Services; Roster Attendance Sheets; Status Reports; Internal Memos
	009491-010097	Handwritten Notes; Citizenship Interviews; Internal Operations Documents; Employment Records

	010099-010821	Citizenship Exam Papers; Voter Registration Cards; Roster Attendance Sheets; Address, Telephone and Precinct Info.; Phone Messages; Photos.
	010823-10994	Class Materials; Identification Materials
	010995-011025	Absent Voter Ballots
	011026-011532	Class Materials; Identification Materials
	011533-012025	Names and notification of INS interviews
	012026-012847	Contribution lists; Contact Report; Spouse Information

APPENDIX F: INVESTIGATIONS BY STATE AND LOCAL AUTHORITIES

THE ORANGE COUNTY DISTRICT ATTORNEY

In December, 1996 the Orange County District Attorney Michael Capizzi announced that his office would begin an investigation into allegations of voter fraud in the November 1996 elections held in Orange County, California. As part of this investigation, Capizzi examined Hermandad Mexicana Nacional for possible violations of state election law. At the center of his investigation was the allegation that Hermanadad Mexicana Nacional had knowingly and willfully registered large numbers of non-citizens to vote in 1996. On January 14, 1997 the office of the District Attorney conducted a raid of Hermandad Mexicana Nacional, impounding many pieces of potential evidence, including computers, files, and organization records. In early December 1997, after a year long investigation, an Orange County grand jury declined to indict several individuals who coordinated the Hermandad Mexicana Nacional voter registration effort. At least one witness who had worked for Hermandad fled to Mexico early in 1997, making the investigation more difficult. Although the District Attorney failed to bring indictments, his research, together with that completed by the Secretary of State, did prove that 61% percent of Hermandad's registrations were illegal.

THE CALIFORNIA SECRETARY OF STATE

In December, 1996 California Secretary of State Bill Jones announced that his office would begin an investigation into allegations of voter fraud in the November 1996 elections held in Orange County, California. With the initial cooperation of the INS's Los Angeles district office, the Secretary of State announced on April 9, 1997 that of 1,100 persons enrolled in Hermandad citizenship classes, 490 documented non-citizens had registered to vote in CA 46. Of these, 303 actually voted illegally in CA 46, and 69 individuals had no record in INS files. On September 15, 1997 the Committee wrote to the California Secretary of State, in his capacity as the chief election officer of the State of California, to request that he review and verify the results of the Committee's voter analysis. One month later, the Secretary of State confirmed which of the individuals identified by the Committee as non-citizens had voted in the November 1996 election.

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BILL JONES
Secretary of State
State of California

March 14, 1997

Mr. Richard K. Rogers
District Director
UNITED STATES IMMIGRATION & NATURALIZATION SERVICE
300 North Los Angeles Street, Room 8118
Los Angeles, CA 90012

Dear Mr. Rogers:

My Office has been conducting an investigation in Orange County, California regarding allegations of election fraud and voter registration fraud for the past several months. Our investigation, conducted in cooperation with the Orange County District Attorney's Office, has focused primarily upon the voter registration activities of a Santa Ana-based group, Hermandad Mexicana Nacional (hereinafter "HMN").

The results of our investigation, thus far, are very disturbing. Based upon data analysis performed by INS, the Orange County District Attorney's Office, and my staff, we have been able to discern, with a significant level of accuracy, that HMN appears to have registered a very significant number of people, who, by virtue of their citizenship status, are ineligible to both register to vote and to vote. We have determined, at this point, that 721 of the 1160 persons registered to vote by HMN appear not to have been United States citizens at the time they registered to vote and, as a consequence, were ineligible to register to vote under California law. (See Elections Code § 2101) Of those 721 unlawfully registered individuals, 442 of them voted in the November 1996 general election.

The citizenship status of an additional 169 persons, who declared a foreign place of birth on their voter registration affidavits, cannot be ascertained from INS Central Index System records. Some of these persons may be U.S. citizens born abroad. My Office is currently undertaking efforts to check these 169 names against vital statistics records in order to determine which, if any, of the individuals are U.S. citizens born abroad. It is possible that a significant portion of the remainder of these 169 individuals, who registered to vote, may be foreign nationals illegally present in the United States

Thus, the number of unlawful registrants and the number of unlawful voters may possibly increase substantially in the weeks and months ahead, as our investigation continues. The following table summarizes our findings thus far:

SUMMARY OF CITIZENSHIP STATUS OF 1160 HMN REGISTRANTS

	Voted	Not Voted	Total
Total Lawful Registrations	212	58	270
Total Unlawful Registrations	442	279	721
Total Unverified Registrations	105	64	169
Total HMN Registrations	759	401	1160

As California's chief elections officer, the integrity of the elections process is my highest priority. In view of our findings thus far, I am gravely concerned that the integrity of the Orange County voter registration file has been seriously compromised by the significant number of unlawful registrants, whose names were added to the Orange County voter file in the months prior to the last general election. As matters stand, it appears that a substantial number of persons, not qualified to vote under California law, are currently registered voters in Orange County. The integrity of the Orange County voter file must be immediately examined and corrective action taken before the next major election.

Moreover, I have concluded that it is essential, at this point, to determine whether any other individuals or organizations were engaged in an organized effort in Orange County to unlawfully register unqualified persons to vote prior to the 1996 general election. Conspiracy to unlawfully register unqualified individuals to vote and solicitation of unqualified persons to vote are felonies under California law.[1] Although our current investigation clearly indicates that a substantial number of unqualified individuals registered to vote who may or may not have had an intention to defraud, it is a felony to fraudulently register to vote or to fraudulently vote in an election.[2] If there has been an effort on the part of any individual or group to compromise the integrity of the elections process in Orange County or unqualified individuals registered to vote with fraudulent intent, I have an obligation to investigate such matters and, if my investigation determines that a crime has been committed, to ensure that the wrongdoers are brought to justice.

Accordingly, for these reasons, I have concluded that substantial probable cause now exists to examine the integrity of the *entire* Orange County voter registration file in order to fully and accurately assess the extent of unlawful registrations resident in the system and to identify the sources of such unlawful registrations. One substantial

[1] Penal Code § 182; Elections Code § 18561.
[2] Elections Code § 18100(a); Elections Code § 18560

component of this examination will involve identifying the number and identity of persons, who by virtue of their citizenship status, were not eligible to register to vote.

As our experience in the HMN investigation has so clearly demonstrated, the only practical and feasible means of identifying persons currently registered to vote, who are unqualified to vote because of their citizenship status, is to make a computerized comparison between the identifying information pertaining to registered voters included in the Orange County voter registration file and the identifying information of persons whose records are included in INS's Central Index System, SDSC, RAPS, DACS and NACS databases. There is simply no other feasible means of verifying citizenship status. Without such a verification, criminal investigation of voter registration fraud and election fraud felony cases would be virtually impossible. Moreover, there is no other means of assessing the degree to which the registration of unqualified, non-citizens has corrupted the Orange County voter file. Obviously, this is an issue which needs to be immediately addressed and, certainly, resolved before the June 1998 primary election.

As Secretary of State, I am charged with the responsibility of insuring the integrity of all aspects of the elections process in California, including the investigation of crimes relating to the elections process.[3] Therefore, pursuant to the authority vested in me by California Government Code Section 12172.5 and California Elections Code Section 10, I hereby request, in accordance with Section 552a, subsections (b)(7) and (b)(3) of Title 5 of the United States Code, that the United States Immigration and Naturalization Service compare the identifying information pertaining to *every person* registered to vote in the County of Orange with the identifying information contained in the Central Index System and provide us with a list of persons, whose names appear on INS's Central Index System and its subsystems as non-citizens.

In making this request, I would like to recognize and express my deep gratitude for the exceptional cooperation INS has provided to assist our efforts in this important voter fraud investigation. To date, the INS has rendered invaluable assistance by providing a carefully-researched, official list of presumed non-citizens, who are believed to be among the 1160 persons registered to vote by HMN prior to the 1996 election. Additionally, the Information Technology Division of my office appreciates your efforts to assist in a feasibility assessment of automating database comparisons for our new project to create a centralized voter registration database (CALVOTER). Our efforts to date have demonstrated the technical feasibility of performing automated data comparisons to detect non-eligible voters. The similarity of our automation systems (i.e., IBM mainframe, database format, database dictionary, etc.) demonstrates that there is a straightforward technically feasible approach for these projects. We eagerly look forward to further cooperation with your office in these endeavors.

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[3] Elections Code § 10; Government Code § 12172.5.

It is our intention to commence examining the entirety of the Orange County voter file within the next thirty (30) days. Hence, your attention to this matter is urgently requested. Please feel free to contact me or Undersecretary Rob Lapsley if you require additional information. Any legal inquiries or matters should be directed to my Chief Counsel, James Sweeney.

Very truly yours,

BILL JONES
Secretary of State
State of California

cc: Hon. Michael Capizzi, District Attorney, County of Orange
Rosalyn Lever, Registrar of Voters, County of Orange
Hon. William M. Thomas, Chairman, House Oversight Committee
Hon. Vic Fazio, Ranking Member, House Oversight Committee
Hon. Dan Burton, Chairman, Government Reform & Oversight Committee
Hon. Henry Waxman, Ranking Member, Government Reform & Oversight Committee
Hon. Henry Hyde, Chairman, House Judiciary Committee
Hon. John Conyers, Ranking Member, House Judiciary Committee
Hon. Lamar Smith, Chair, Immigration Subcommittee
Hon. Melvin Watt, Ranking Member, Immigration Subcommittee
Hon. J. Dennis Hastert, Chairman, Subcommittee on National Security, International Affairs and Criminal Justice
Hon. Thomas M. Barrett, Ranking Member, Subcommittee on National Security, International Affairs and Criminal Justice
✓All Members of the California Congressional Delegation

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Secretary of State
State of California

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(916) 653-7244
1500 - 11th STREET
SACRAMENTO, CA 95814

April 9, 1997

The Honorable William M. Thomas
Chairman
HOUSE OVERSIGHT COMMITTEE
1309 Longworth House Office Building
Washington, D.C. 20515-6230

Re: House Oversight Committee Hearing Regarding the 46th Congressional District

Dear Chairman Thomas:

In an effort to provide the House Oversight Committee with timely information regarding our findings in our investigation into allegations of elections fraud in the 46th Congressional District, I am able to forward to you the data summarizing the current state of our analysis of Orange County voter registration and election information. This data pertains solely to registrations attributable to Hermandad Mexicana Nacional, which has been previously released to the public.

For the entire County of Orange, we have determined the following:

	Voted	Not Voted	Total
Total Lawful Registrations	212	58	270
Total Unlawful Registrations	442	279	721
Totality Unknown Legality Registrations	105	64	169
Total HMN Registrations for All of Orange County	**759**	**401**	**1160**

As to the 46th Congressional District, we have not previously released the political subdivision breakdown of the countywide data to the media or the public. However, our analysis shows the following for those same registrations:

	Voted	Not Voted	Total
Total Lawful Registrations	183	49	232
Total Unlawful Registrations	303	187	490
Totality Unknown Legality Registrations	69	36	105
Total HMN Registrations (46th CD)	**555**	**272**	**827**

Please note that this information pertains *only* to our investigation regarding voter registrations originated by the Santa Ana branch of Hermandad Mexicana Nacional. It does *not* reflect any information received by my office in response to my recent request to the INS to check the Orange County voter file against INS records. Although INS is currently processing our request, we have not yet received any data from them pertaining to that computerized check of the Orange County voter file. I hope that these numbers prove helpful to you and your staff as your Committee prepares for its April 19th hearing.

Finally, with regard to April 19th, I encourage you to continue with your plan to hold the hearing in Orange County. As you are undoubtedly aware, our investigation of allegations of voter fraud in the 46th Congressional District, jointly conducted with the Orange County District Attorney, has been the subject of great public interest and concern throughout California and, particularly, in southern California. The people of Orange County deserve the opportunity to observe the proceedings firsthand and, in a peaceful and orderly fashion, have their voices heard. While the personal safety of *all* parties involved in the hearing is obviously an important factor to consider, this hearing is of great importance to all of the citizens of Orange County and should be held in the community most directly affected by its outcome.

If I can be of further assistance to you, please feel to contact me at your earliest convenience.

Sincerely,

Bill Jones
Secretary of State

BJ/

cc: Richard Rogers, District Director
United States Immigration & Naturalization Service

GERALDINE R. GENNET
GENERAL COUNSEL

KERRY W. KIRCHER
DEPUTY GENERAL COUNSEL

MICHAEL L. STERN
SENIOR COUNSEL

CAROLYN BETZ
ASSISTANT COUNSEL

U.S. HOUSE OF REPRESENTATIVES
OFFICE OF THE GENERAL COUNSEL
219 CANNON HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515-6532
(202) 225-9700
FAX: (202) 226-1360

MEMORANDUM

TO: The Honorable William M. Thomas
Chairman
Committee on House Oversight

THRU: Geraldine R. Gennet GRG
General Counsel

FROM: Michael L. Stern MLS
Senior Counsel

Carolyn Betz
Assistant Counsel

DATE: September 18, 1997

RE: Sharing of Information Received by Committee

Your staff has asked whether the Committee on House Oversight (the "Committee") may share, in the course of its investigation, information obtained by congressional subpoena from an executive branch agency. Specifically, the Committee has obtained information from the "alien files" of the Immigration and Naturalization Service regarding the citizenship and immigration status of various individuals, and it wishes to share this information with a state governmental entity that can provide the Committee with assistance in the conduct of its investigation, including advice on the application of state voting laws to individuals in question.

We understand that the information was not received by the Committee in executive session, nor did the INS seek to place any limitations on the Committee's subsequent use or disclosure of the information. We also understand that the Committee is not proposing at this time to make the information public, but simply to share the information, pursuant to a confidentiality agreement, with a state governmental agency.

Based on these understandings and for the reasons that follow, we conclude that neither the Privacy Act nor any other provision of law precludes the Committee from sharing the information with the state agency.

I. The Privacy Act Does Not Apply

The Privacy Act prohibits federal agencies from "disclos[ing] any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains . . . ." 5 U.S.C. § 552a. The Act defines "record" as

> any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

5 U.S.C. § 552a(a)(4). The Act's definition of "agency" is limited to executive branch agencies, therefore excluding the legislative branch from coverage.[1] Thus, the Privacy Act simply does not apply to records compiled by Congress or congressional offices. See 1 J. Franklin & R. Bouchard, The Freedom of Information and Privacy Acts § 2.04[2] (1997).

Moreover, the civil remedy provisions of the Act apply only to an "agency" as therein defined. 5 U.S.C. § 552a(g)(1). Thus, the civil remedy provisions are inapplicable not only to congressional offices, but also to private individuals, state agencies and state or local officials. See Unt v. Aerospace Corp., 765 F.2d 1440, 1447 (9th Cir. 1985) (private individuals, state agencies and state or local officials cannot be held liable under the Privacy Act even if they are alleged to have received private information from a federal agency).

Clearly, therefore, the Privacy Act does not prohibit or restrict in any way a congressional committee's sharing of information with a state agency, even if the information was obtained by the committee from an executive branch agency. Indeed, this would be true even if there were a question as to whether the Privacy Act prohibited the initial disclosure of the information from the executive branch agency. Since the Privacy Act explicitly permits such disclosure, however, even that question does not arise. See 5 U.S.C. § 552a(b)(9) (exemption from Privacy Act for disclosure to "either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof").

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[1] The Act refers to 5 U.S.C. 552(e) for its definition of "agency," but the definition of agency actually appears in § 552(f).

II. Federal Law Specifically Permits Disclosure of Information Regarding Citizenship Status

Federal law specifically provides that, "[n]otwithstanding any other provision of Federal, State, or local law," any "Federal, State, or local government entity" may, with respect to "information regarding the immigration status, lawful or unlawful, of any individual," (1) request or receive such information from the INS; (2) maintain such information; and (3) exchange such information with any other Federal, State, or local government entity. 8 U.S.C. § 1373. Thus, even if some prohibition otherwise existed under federal or state law, it appears that the Committee would be entitled to share the information in question with a state agency.

III. Congress has Broad Constitutional Authority to Disclose Information in the Course of Conducting its Legislative Activities

Even if some provision of federal or state law purported to bar the sharing of information proposed by the Committee here and even if such sharing were not explicitly authorized by 8 U.S.C. § 1373, the Speech or Debate Clause of the Constitution would likely protect this sharing of information. See U.S. Const., art. I, § 6, cl. 1 ("for any Speech or Debate in either House, they [the Representatives and Senators] shall not be questioned in any other place."). The protections of the Speech or Debate Clause apply to all activities

> within the "legislative sphere". . . even though the[] conduct, if performed in other than legislative contexts, would in itself be unconstitutional or otherwise contrary to criminal or civil statutes.

Doe v. McMillan, 412 U.S. 306, 312-13 (1973) (quoting Gravel v. U.S., 408 U.S. 606, 624-25 (1972)). The "legislative sphere" includes all activities that are

> "an integral part of the deliberative and communicative processes by which Members participate in committee and House proceedings with respect to the consideration and passage or rejection of proposed legislation or with respect to other matters which the Constitution places within the jurisdiction of either House."

Eastland v. United States Servicemen's Fund, 421 U.S. 491, 504 (1975) (quoting Gravel, 408 U.S. at 625). Moreover, the Speech or Debate Clause "applies not only to a Member but also to his aides insofar as the conduct of the latter would be a protected legislative act if performed by the Member himself." Gravel, 408 U.S. at 618.

The Supreme Court has found that limited disclosure of otherwise confidential or

protected information in order to carry out the "due functioning of the legislative process" is protected by the Clause. Doe v. McMillan, 412 U.S. 306 (1973) (citing United States v. Brewster, 408 U.S. 501, 516 (1972)). The Court noted, however, that the Clause does not protect Members or their staff from "general, public distribution beyond the halls of Congress and the establishment of its functionaries . . . ." Id.

Here the Committee proposes to share information with a state agency for the purpose of conducting an investigation which is clearly within its jurisdiction. It does not propose to make the information public or to disseminate it beyond what is necessary for its investigatory purposes. Thus, it is likely that the Speech or Debate Clause would apply to and protect this activity.[2]

IV. Conclusion

For the reasons stated above, we conclude that the Committee's proposed sharing of information with a state agency is lawful.

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[2] We note that the House of Representative has historically maintained that "the judgment of the House with respect to its records is an exercise of its absolute, and unreviewable, constitutional prerogatives." H.R. Rep. 100-1054, Records of the House 6 (1988). The courts have also recognized the broad discretion of congressional committees to determine how it will use or disclose documents that it receives in the course of investigations. See, e.g., Federal Trade Commission v. Owens-Corning Fiberglass Corp., 626 F.2d 966, 970 n. 8 (D.C. Cir. 1980); Ashland Oil, Inc. v. FTC, 548 F.2d 977, 979 (D.C. Cir. 1976).

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(916) 653-7244
1500 - 11th STREET
SACRAMENTO, CA 95814

To: WMT
FR: Julie
(Copy faxed to Julie etc.
copy: John K.
Roman
Jason
Cathy

November 5, 1997

Honorable William Thomas
U.S. House of Representatives
2208 RHOB
Washington, D.C. 20515-0521

Dear Congressman Thomas:

As California's Secretary of State, I have approached my job as chief elections officer with two inter-dependent goals: achieve 100 percent voter participation by all eligible citizens with a zero tolerance for voter fraud of any kind. We are committed to achieving these critical goals, but to do so we need your help. Issues such as declining voter participation, allegations of voter fraud and the overall integrity of the elections system are very real to the voters of California, which is why I am writing today to seek your assistance and support for the federal and state election reforms that are essential to accomplish these twin goals.

California currently has more than 14 million people registered to vote, of which an estimated 10-to-20 percent is what we call "deadwood" – the duplicate names, erroneous or obsolete address information and names of nonexistent and ineligible persons still listed in the active voter file. Deadwood directly skews or undercuts voter turnout by providing an unrealistic universe of voters and creating an increased potential for fraud. Yet the ability for state elections officials to remove deadwood from the voter files is severely restricted as a result of the National Voter Registration Act (NVRA).

When the NVRA was implemented in 1995, we welcomed the many new opportunities for voters to participate in the elections process. But with those opportunities came other challenges for voters and elections officials. While I agree that the elections process – registration and voting – should be easy and accessible to all, we must make sure that our efforts produce the results we want. Simply adding more and more names to a voter file does not ensure more participation. It's no mystery why California had the highest number of voters registered and the lowest turnout ever in 1996.

California's elections professionals are in agreement that in order to ensure the integrity of our elections we must have clean voter rolls. And we have taken the necessary steps to do just that. Thanks to a bill approved by the state Legislature (SB 1313, 1996), elections officials have been able to move more than 500,000 names, from just six counties to date, to an inactive voter file – saving hundreds-of-thousands of dollars in mailing costs and reducing the potential for fraud.

And as a *Los Angeles Times* editorial from earlier this week notes, "The rolls are not just diminishing, either; they are being replenished with active voters. More than 700,000 people have registered or re-registered since February under the new NVRA, the motor voter law."

Yet as we in the states continue to maximize the positive voter registration benefits of the NVRA, we are under attack for trying to maintain clean, accurate voter rolls. The lawsuit just filed by the U.S. Department of Justice is an unacceptable intrusion into a process that is producing amazing results in the area of file maintenance and is not unduly burdening or disenfranchising any current or potential voter.

The Justice Department's assault on our ability to clean the voter file is but the latest example to underscore the urgent need for Congress to amend the NVRA. State elections officials need more not fewer tools at their disposal in order to remove troublesome deadwood from the voter file.

To do this, California needs to be allowed to use, for official use only, a registrant's social security number as a unique identifier to separate one person from another. In addition, by amending the postal laws to permit return of undeliverable official election materials at no charge, elections officials would have another tool to identify voters who are no longer at the location indicated on their registration, and do so with substantial cost savings for California's taxpayers.

Congress' support for additional common-sense reforms such as a requirement for voter identification at the polling place will help protect and improve the security of the election process.

While your assistance is critical at the federal level, I am equally committed to securing necessary reforms at the state level. We will continue to pursue the reforms needed to eliminate the problems associated with the use of "bounty hunters," those individuals who are paid to obtain voter registrations or gather initiative petition signature, including licensing requirements and increased penalties for fraud and abuse.

Other reforms we are aggressively pursuing include: requiring identification at the time of voting; clarifying the current definitions of domicile and residency in the elections code; establishing a mandatory citizenship check-off box on the voter registration form; prohibiting gifts for voting and any lottery used as an incentive for or based on registration or voting; enacting additional felony provisions for fraudulent registration; and limiting where and by whom an absentee ballot may be delivered on election day.

I appreciate your past support for legislative and administrative actions and look forward to working with you on these reforms, which are critical in order to provide California's officials the tools necessary to administer our elections and, in turn, enhance the public's confidence and desire to participate in the electoral process.

For your convenience, I have attached a copy of my proposed federal and state reforms. If you need additional information or would like to personally discuss these reforms, please do not hesitate to contact me.

Sincerely,

BILL JONES
Secretary of State

Enclosures

SECRETARY OF STATE BILL JONES
FEDERAL REFORMS PACKAGE

I. Amend NVRA to Clearly and Unequivocally Permit File Maintenance.

- NVRA should be amended to empower local elections officials the ability to clean "deadwood" off the files. (This would involve an amendment to NVRA, 42 U.S.C. § 1973gg-6 (3) and (4))
- Build in the alternate residency confirmation process (SB 1313) expressly into NVRA (42 U.S.C. 1973gg-6).

II. Permit the Use of a Social Security Number on Voter Registration Affidavits.

- The Congress needs to amend all applicable federal laws to permit elections officials to require persons registering to vote to provide their social security number.
- Include a provision that use of the registrant's social security number shall be for official use only by elections officials, the Secretary of State and law enforcement.

III. Require the Presentation of Photo Identification at the Polling Place.

- Require the presentation of photo identification at the polling place as a prerequisite to voting in a federal election.
- The identification may consist of a driver's license or photo voter registration card issued at no cost to registrant's who lack or cannot afford a driver's license.

IV. Establish a System for Local Elections Officials to Ascertain and Determine the Status of Federal Felons on Probation or Parole.

V. Amend the Postal Code to Permit the Return of Undeliverable Official Elections Materials without Charge to Elections Officials.

- Amend the Postal laws to provide that undeliverable, returned official elections material may be retrieved by elections officials from the Postal Service without charge.
- Note: This would eliminate "buy-backs" and permit file maintenance activities based upon returned mail to be free of charge.

EXECUTIVE SUMMARY
SECRETARY OF STATE BILL JONES
STATE ELECTIONS REFORM LEGISLATION

I. Bounty Hunters:

- Provides for SOS licensing of paid bounty hunters, who receive payment for circulating initiative petitions and voter registration affidavits.
- Prohibits the payment of bounty hunters on a per signature or per registration basis and requires that all paid signature gatherers be paid hourly.
- Creates statewide central registry of bounty hunters, including photos and fingerprint cards, for use by local elections officials and law enforcement.
- Requires the licensed paid bounty hunter to provide his or her license number and signature on each original affidavit of registration or circulation collected.
- Provides that the affidavit of registration include a set check-boxes to indicate whether the person who registered the elector is a volunteer or a paid bounty hunter.
- Provides specific grounds for denial and revocation of license.
- Requires all bounty hunters to display their permit while gathering signatures.
- Entitles the SOS to enact regulations setting licensing fees.
- Provides for SOS licensing of petition signature gathering contractors.
- Establishes specific grounds for denial and revocation of contractors' licenses.
- Requires contractors to maintain records as to the signatures gathered and the bounty hunters employed by the contractors.
- Provides SOS the right to inspect contractor records as a condition of licensure.
- Provides that bounty hunting and bounty hunter contracting without a license are wobbler felonies.
- Provides that a bounty hunter who fails to display his license while gathering signatures is a misdemeanor on the first offense and a felony on the fourth offense.

II. Identification at the Polls:

- Requires voters to present any one of the enumerated forms of identification at his polling place.
- Allows voters without identification to vote a provisional ballot.

III. Domicile/Residency Clean-up Language:

- Provides that the residence where a person resides constitutes their residence for purposes of voting.

- Provides that persons having more than one address specify the address that they consider as their permanent residence.
- Provides for the use of specified records to demonstrate permanent residence.
- Prohibits use of P.O. box as principal residence for purposes of voting.

IV. Social Security Number on Registration Affidavit:

- Requires voter registration affidavit to include a field for the registrant's social security number, if permitted under federal law.
- Requires that the person registering to vote provide a social security number on the registration form.
- Provides that the Secretary of State and local elections officials may undertake negotiations and efforts with the Social Security Administration to obtain electronic access to the Social Security Administration's electronic database for purposes of obtaining SSA information to verify voter identification data.

V. Include Citizenship Verification Field on Registration Card.

- Would include the citizenship check-box in the required text of the voter registration card. Currently the citizenship check-box is an optional portion of the registration card, which is not mandatory.

VI. Gifts for Voting:

- Enacts amends the Elections Code provisions prohibiting gifts for voting.

VII. Fraudulent Registration Felony Provision:

- Amends 18100 to include "attempt to register" in the parameters of the offense. This will clean-up potential proof problems related to the offense being caught by a registrar who notices the fraudulent registration and refuses to add the registration to the voter file.
- Adds a provision to the Penal Code provisions governing the Grand Jury to permit the Secretary of State to present investigative information, take evidence and request subpoenas from the county grand jury, pursuant to the grand jury's civil oversight authority.

VIII. Procuring Fraudulent Registrations and Fraudulent Causing Aliens to Register to Vote:

- Provides that procuring fraudulent voting is a non-wobbler felony punishable by a sentence range dependent upon the number of fraudulent votes induced.
- Expressly includes a provision that fraudulently ***procuring*** registrations from non-citizens is a felony. Establishes the penalty based upon the number of non-citizens registered to vote by the perpetrator.

IX. Rebuttable Presumption:

- Creates a rebuttable presumption that the intent to defraud is established if the unqualified registrant signed the declaration under penalty of perjury.

X. Running a Lottery Based Upon Registration or Voting:

- Expressly criminalizes the running of a lottery or other game of chance as an inducement to vote, not vote, register or not register to vote.

XI. Absentee Voting:

- Would limit the delivery of absentee ballots on election day to the voter's designated precinct or to the office of the county elections official.
- Would require that the immediate family member delivering the absentee ballot provide identification and sign a roster at the polling place, indicating his or her name and address.

Residency Confirmation Mailings

County	Nov-96 Registration	# Moved to Inactive by SB 1313	Corrected Registration	% of Voter File Moved to Inactive	Nov-96 Turnout (%)	Corrected Turnout (%)	Difference (%)	County Cost Savings per Election
Fresno	332,739	16,000	316,739	4.8%	65.0%	68.3%	3.3%	48,000 - 80,000
Orange	1,275,775	109,785	1,165,990	8.6%	68.5%	75.0%	6.5%	329,000 - 549,000
San Bernardino	742,975	113,275	629,700	15.2%	57.2%	67.5%	10.3%	340,000 - 566,000
San Francisco	482,541	38,618	443,923	8.0%	61.9%	67.3%	5.4%	116,000 - 193,000
Santa Clara	807,767	96,800	710,967	12.0%	66.3%	75.3%	9.0%	290,000 - 484,000
Sacramento	617,964	48,000	569,964	7.8%	67.4%	73.0%	5.7%	144,000 - 240,000
Santa Cruz	148,663	17,000	131,663	11.4%	70.0%	79.1%	9.0%	51,000 - 85,000
AVERAGE				**10.0%**	65%	**72%**	**7%**	
TOTAL	4,408,424	**439,478**	3,968,946					**1,318,000 - 2,197,000**

NOTE: LA (200k); Alameda (90k); Tulare (15k) = 305k which will be moved to inactive in late 1997/early 1998
[k = 1,000]

August 27, 1997
SB1313JMS.xls

Los Angeles Times

DATE: 11·3·97
PAGE 1 OF 1
SECTION: B
LOCATION: 4

LOS ANGELES TIMES EDITORIALS

Needed Update for Voter Rolls

State program, although under attack, offers solid benefits

Secretary of State Bill Jones and county election officials have done a commendable job of removing the deadwood from California's voter registration files under recent state legislation. Jones says more than 500,000 names were deleted from rolls because people had moved and failed to re-register, had died or were registered in more than one place.

Political party officials have complained in the past that legitimate voters might be denied their franchise through such voter "purges." And the U.S. Department of Justice is challenging California under a federal law that prohibits election officials from striking people from the rolls merely for failing to vote. The Justice Department appears to be off base in its contention. As Jones argues, nonvoting alone does not disqualify anyone in California from voting but merely triggers a search to determine whether the registration is accurate.

Postcards are sent to find whether voters still live at their recorded addresses and to ask whether they wish to remain registered. Those who don't respond are put into an inactive file but are not stricken from the voter list unless they fail to vote in two subsequent elections.

Success has been spectacular in San Bernardino County, where the records of 113,710 former voters—22% of total registration—were either updated or put on inactive status.

The procedure saves tax dollars because fewer election workers are needed to staff the polls. Candidates benefit by not having to mail campaign materials to ineligible voters. And the potential for voter fraud—as alleged in the 1996 Orange County congressional victory of Loretta Sanchez—is reduced by having more accurate registration records. Another benefit is that officials get a truer reading of voter turnout. The 1996 San Bernardino County turnout would have been nearly 70% with the updated list rather than the 57% reported at the time.

The rolls are not just diminishing, either; they are being replenished with active voters. Jones also reported that 767,000 people had registered or re-registered since February under the new National Voter Registration Act, the motor voter law. The system in California is working well and fairly, a fact the Justice Department should recognize.

San Jose Mercury News

DATE: 10-30-97

PAGE: 1 OF 2

Purge procedure challenged

Justice Department: Courts asked to kill legislation Santa Clara County used to remove names from voting rolls.

BY JENNIFER LAFLEUR
Mercury News Washington Bureau

The US Department of Justice has asked the courts to strike down the law under which Santa Clara, Santa Cruz and five other California counties have removed more than 500,000 potentially invalid registrants from their voter rolls.

In a legal motion filed quietly last Tuesday, the Department of Justice argues that the state's "purge procedure" — which identifies inactive voters and removes them from the rolls unless they object — violates the National Voter Registration Act by penalizing people who want to be registered but not necessarily to vote.

Acting under California's new law, Santa Clara County recently moved more than 95,000 voters to an inactive file, and Santa Cruz shifted 17,000 registration records. Jurisdictions in both of those counties are holding elections Tuesday — the first to be held using purged voter rolls. The Department of Justice did not ask the court to block the use of the rolls.

Voter roll purges have three benefits: They make it more difficult to commit voter fraud, which could occur through the manipulation of invalid registrations; they reduce the cost of elections; and they increase the accuracy of voter turnout figures. But they have long been a concern that, purged or not, they can make it more difficult for people to vote, simply because

See PURGE, Page 5A

Justice is really off-base on this issue.

—Secretary of State Bill Jones

San Jose Mercury News

DATE: 10-30-97

PAGE: 2 OF 2

Purging of voter rolls called breach of federal legislation

■ PURGE

From Page 1B

they haven't chosen to vote recently.

For that reason, the Department of Justice reviewed the 1996 California law authorizing the purges early on. In August, the California Secretary of State's Office advised local election officials that the proposed process had received "pre-clearance," but that the department had reserved the right to oppose the process later.

Nevertheless, last Thursday's legal motion came as a surprise. It was not announced, and most California election officials were not aware of the federal court filing until this week.

"Justice is really off-base on this issue," said Secretary of State Bill Jones. "In our approach, we have cost savings, increase in turnout and we're still registering people all the time."

Jones and other proponents argue that California's process includes many safeguards to protect voters' rights. Here's how it worked in Santa Clara County:

In August, the county registrar sent confirmation cards to 100,000 registrants who hadn't voted in the two most recent general elections, or within four years. The card asked if the recipient wanted to remain registered.

If there was no response, the registrar moved the person to an inactive list. More than 95,000 registrants were moved, either because they did not wish to be registered, were no longer eligible to vote in Santa Clara County or did not respond to the mailing.

As a result, those people did not receive sample ballots for the Nov. 4 election and will not for future elections, as long as they remain on the inactive list. People on the inactive list can vote if they show up at their polling place with a valid identification.

"We've put a lot of money into printing sample ballots (in the past)," said Dwight Beattie, Santa Clara County Registrar of Voters. "Ninety thousand sample ballots were sent to people who weren't there. We need a way to deal with that, and this was an attempt to deal with that."

The Department of Justice says these safeguards fall short of what the law requires. "One of the purposes of (the National Voter Registration Act) is to ensure that once a citizen is registered to vote, he or she should remain on the voting list so long as he or she remains eligible to vote in that jurisdiction." The Department of Justice says that because non-voting is the trigger for California's procedure it violates the act.

The Department of Justice also takes issue with California's provisions for voters who move within a county and congressional district, but who don't re-register. In California, such voters can vote if they show proper identification and proof of residency. The Department argues that the poor tend to have more trouble coming up with such "proper identification."

California's method with dealing with voter rolls is also under scrutiny by voting rights groups. "NVRA (National Voter Registration Act) specifically prohibits persons to be purged for not voting," said Nancy Stuart from the Lawyer's Committee for Civil Rights of the San Francisco Bay Area. "We're sensitive to the need for clean voter rolls, but there are ways to do that without disenfranchising people who choose not to vote."

However, it is also true that the procedures used before the new purge left the voter rolls riddled with inaccuracy. A Mercury News review this year turned up numerous duplicate registrations and hundreds of registrants who remained on the rolls for years after their death.

The Justice Department's complaint is scheduled to be heard on December 8 in U.S. District Court in San Jose.

Jones said he is confident the dispute will not invalidate any elections, regardless of which way the courts decide. "It's still the law in California, and I don't think that will impact the election one way or another," Jones said. "We were pre-cleared on it from Justice. We were following the laws passed by the state Legislature."

COUNTIES THAT CLEARED ROLLS

Seven California counties have removed inactive and possibly invalid registrants from their voter rolls, in amounts ranging from 5 percent to 15 percent of the total. Had these "purged" voters not been registered in the November 1996 election, turnout would have been up to 10.3 percent higher in those counties. Here is how the purging affected registration and turnout:

	Original registration	Purged from rolls number	Purged from rolls percent	1996 original turnout	Adjusted turnout
Fresno	332,739	16,000	4.8%	69.3%	66.0%
Orange	1,275,775	109,785	8.6%	75.0%	68.5%
San Bernardino	742,975	113,275	15.2%	67.5%	57.2%
San Francisco	492,541	38,618	8.0%	67.3%	61.9%
Santa Clara	807,757	95,349	11.9%	75.3%	66.3%
Sacramento	517,864	48,000	7.8%	73.0%	67.1%
Santa Cruz	148,663	17,000	11.4%	79.1%	70.0%

Source: California Secretary of State's Office, Santa Clara County Registrar of Voters

MERCURY NEWS

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EXECUTIVE OFFICE
(916) 653-7244
1500 - 11th STREET
SACRAMENTO, CA 95814

BILL JONES
Secretary of State
State of California

OPINION OF THE SECRETARY OF STATE OF THE STATE OF CALIFORNIA
OPINION NO. 97-01
JUNE 16, 1997

Requested by: The Honorable Vernon Ehlers, Member of Congress
Chairman, Task Force on the Contested Election in the 46th Congressional District of California, Committee on House Oversight.

Opinion by: BILL JONES, Secretary of State
James F. Sweeney, Chief Counsel

THE HONORABLE VERNON EHLERS, MEMBER OF CONGRESS AND CHAIRMAN OF THE TASK FORCE ON THE CONTESTED ELECTION IN THE 46TH CONGRESSIONAL DISTRICT OF CALFORNIA OF THE COMMITTEE ON HOUSE OVERSIGHT, has requested the opinion of the Secretary of State as to the following questions:

Question 1:

May a person who is not a U.S. citizen, but in the process of becoming naturalized, lawfully register to vote in anticipation of becoming naturalized before the next election day?

Short Answer: No. California law plainly states that a person "shall be a United States citizen" in order to qualify to register to vote.

Question 2:

Is a person, who has unlawfully registered to vote prior to becoming a U.S. citizen, entitled to vote after being naturalized without first validly re-registering?

Short Answer: No. The law is clear: only United States citizens may register to vote. California law provides that only persons lawfully registered to vote may vote in California.

Question 3:

Do the statutory voter registration requirements, which mandate that qualified electors register to vote, abrogate the fundamental constitutional right of qualified electors to exercise the franchise?

Short Answer: No. Courts have long held that voter registration requirements, specifically California's 29 day registration system, serve a compelling governmental interest.

Question 4:

Does either the Constitution of the United States or the Constitution of the State of California require that every vote cast by an elector be counted, regardless of whether such a vote was cast in accordance with the laws regulating the manner by which elections are conducted?

Short Answer: No. There is no constitutional right to cast an "illegal vote." Courts routinely discount votes, which were cast in violation of the provisions of the Elections Code.

ANALYSIS & DISCUSSION:

I. ONLY UNITED STATES CITIZENS MAY REGISTER TO VOTE.

The process of registering qualified electors to vote has been required under California law for well over a century. Voter registration serves an indispensable purpose in safeguarding the integrity of the electoral process: "to prevent illegal voting by providing, in advance of election, an authentic list of the qualified electors."[1] Under California law, only United States citizens may vote.[2] Persons, who are not United States citizens, are not defined as "electors" under the California Constitution and its implementing statutes and, accordingly, may not register to vote in California.[3]

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[1] *Welch v. Williams* (1892) 96 Cal. 365 [31 P. 222]; cited in *Bergevin v. Curtz* (1899) 127 Cal. 86 [59 P. 12]. See also *People v. Darcy* (1943) 59 Cal.App.2d 342, 349 [139 P.2d 118, 123]; overruled on other grounds in *Murgia v. Municipal Court* (1975) 15 Cal.3d 286 [540 P.2d 44, 124 Cal. Rptr. 204]; accord. *Minges v. Board of Trustees* (1915) 27 Cal. App. 15, 18 [148 P. 816].

[2] Constitution of the State of California, Article II, § 2; Elections Code §§ 321, 2000, and 2101.

[3] Elections Code § 2000.

A. The California Constitution Establishes the Minimum Qualifications for Exercising the Right to Vote as an "Elector" Under California Law.

The Constitution of the State of California prescribes the *minimum* requirements applicable to exercising the right to vote in California.[4] Article II, Section 2 of the California Constitution provides that "[a] United States citizen 18 years of age and resident in this state may vote."[5] Consequently, in implementing the Constitution's minimum qualification requirements, Elections Code § 321 defines an "elector" as "any person who is a United States citizen 18 years of age or older and a resident of an election precinct at least 29 days to an election."

An "elector," as defined in Elections Code § 321 and Article II, Section 2 of the California Constitution, is distinct from a "voter." Elections Code § 359 defines a "voter" as "any elector who is registered under this code." As one court aptly observed:

> The words "elector" and "voter" are often used interchangeably but there is a difference in meaning. An elector is one who has the qualifications to vote but may not have complied with the legal requirements, that is, the conditions precedent to the exercise of his right to vote.[6]

The California Supreme Court, nearly one hundred years ago, opined that "[t]he voter is the elector who votes—the elector in the exercise of his franchise or privilege of voting—and not he who does not vote."[7] The distinction becomes crucial when

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[4] *Otsuka v. Hite* (1966) 64 Cal.2d 596, 600 [414 P.2d 412, 415, 51 Cal. Rptr. 284, 287]; citing *Carrington v. Rash* (1965) 380 U.S. 89 [13 L.Ed.2d 675, 85 S. Ct. 775]; also citing *Lassiter v. Hampton County Board of Elections* (1959) 360 U.S. 45 [3 L.Ed.2d 1072, 79 S.Ct 985].

[5] Proposition 7, approved at the November 7, 1972 general election, amended Article II of the California Constitution to include Sections 2 and 3 in their present form, which brought the California Constitution into conformance with decisions of the United States Supreme Court and California Supreme Court regarding durational residency requirements. (See generally *Dunn v. Blumstein* (1972) 405 U.S. 330, [92 S. Ct. 995, 31 L.Ed.2d 274]; *Young v. Gnoss* (1972) 7 Cal.3d 18 [496 Cal. Rptr. 533, 496 P.2d 445][cert. den., 409 U.S. 915 (34 L.Ed.2d 176, 93 S.Ct. 236)].)

[6] *People v. Darcy, supra*, 59 Cal.App.2d 342, 349 [139 P.2d 118, 123]; also *Kagan v. Kearney* (1978) 85 Cal.App.3d 1010, 1015 [149 Cal. Rptr. 869, 876]; see *Bergevin v. Curtz, supra*, 127 Cal. 86, 89; cf. *Schaaf v. Beattie* (1968) 265 Cal.App.2d 904, 72 Cal. Rptr. 79.

[7] *Bergevin v. Curtz, supra*, 127 Cal. 86.

determining whether a person may lawfully register to vote. Indeed, one may be an "elector" on election day but not be a "voter" because that person has failed to comply with the legal requirements necessary in order to exercise his or her right to vote.[8] For example, many people possess all of the requisite constitutionally prescribed minimum qualifications for exercising the right to vote—i.e., they are "electors"—yet they are not "voters" because they have not registered to vote as required by law. Although these persons are "electors"—but not "voters"—on election day, they may not lawfully vote.[9]

B. The California Constitution and the California Elections Code Provide for the Registration of Qualified "Electors" and Persons Under 18 Years of Age Who Will Be Qualified "Electors" on the Next Election Day.

With the solitary exception of persons who will reach the age of 18 by election day, registration is limited to "electors", who are not imprisoned or on parole. Section 3 of Article II of the California Constitution provides that "[t]he Legislature shall define residence and provide for registration and free elections." California Elections Code § 2101 sets forth the qualifications for registering to vote in California. Section 2101 provides:

> A person entitled to register to vote shall be a United States citizen, a resident of California, not in prison or on parole for the conviction of a felony, and at least 18 years of age at the time of the next election.

The language of Section 2101 is clear. In order to register to vote, a person *must*:[10]

(1) *be* a U.S. citizen;
(2) *be* a resident of California;
(3) *not be* in prison or on parole for the conviction of a felony; and,
(4) *be* at least 18 years of age at the time of the next election.

If the person seeking to register to vote can attest to each of these four facts under penalty of perjury, he or she is entitled to register to vote under California law.[11] Once an

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[8] *People v. Darcy, supra,* 59 Cal.App.2d 342, 349; cf. also *Kagan v. Kearney, supra,* 85 Cal.App.3d 1010, 1015; see *Bergevin v.* Curtz, *supra,* 127 Cal. 86, 89; also *Schaaf v. Beattie, supra,* 265 Cal.App.2d 904.

[9] See Elections Code §§ 359, 2000.

[10] The use of the term "shall" indicates that the Legislature intended that the qualifications prescribed as a condition precedent for registration are *mandatory* requirements. (See Elections Code § 354.)

elector truthfully attests to each of these four facts, under penalty of perjury, using the prescribed form affidavit of registration and lodges his or her registration affidavit with the local elections official, that elector is then validly registered to vote and becomes a qualified "voter" under California law.[12] Obviously, if the person seeking registration cannot truthfully attest to each of these four facts, he or she is not entitled to register to vote and may not lawfully vote in an election.

1. The Requirement of Registration Serves an Important Public Policy Goal.

Many courts, including the United States Supreme Court, have recognized that the process of requiring qualified electors to register to vote is an important means of preventing voter fraud and ensuring the integrity of the electoral process.[13] "The object of the registration law is to prevent illegal voting by providing, in advance of election, an authentic list of the qualified electors."[14] "It is to effect this purpose that...information is required to be given under oath, and it serves as a basis for an investigation of qualifications of a person who registers."[15]

Indeed, California courts have long acknowledged that voter registration is a constitutionally permissible process, which the Legislature is empowered to implement in order to prevent illegal voting. To this end, one court noted that:

> "The constitution thus determines the qualifications of an elector and it was held, in *Bergevin v. Curtz*, that registration is not a qualification of an elector and cannot add to the qualifications fixed by the constitution; but it is to be regarded as a reasonable regulation by the legislature for the

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[11] Elections Code § 2102 provides that "[n]o person shall be registered as a voter except by affidavit of registration." Elections Code § 2150, subd. (a)(1) requires that the affidavit of registration to demonstrate "facts necessary to establish the affiant *as* an elector. (See also Elections Code § 2150, subd. (b); also Elections Code § 321.) To this end, the standard affidavit of registration used throughout California requires that the affiant state, under penalty of perjury, that "I am a U.S. Citizen. I will *be* 18 years old on or before the next election. I am not in prison or on parole for a felony conviction."

[12] Elections Code §§ 359, 2102.

[13] See generally *Dunn v. Blumstein, supra*, 405 U.S. 330, 353-54; *Bergevin v. Curtz, supra*, 127 Cal. 86, 88-89; *Welch v. Williams, supra*, 96 Cal. 365, 367; *Minges v. Board of Trustees* (1915) 27 Cal. App. 15, 18.

[14] *Welch v. Williams, supra*, 96 Cal. 365, 367; cited in *Bergevin v. Curtz, supra*, 127 Cal. 86, 89.

[15] *People v. Darcy, supra*, 59 Cal.App.2d 342, 349.

purpose of ascertaining who are qualified electors in order to prevent illegal voting.[16]

Consistent with purpose, it logically follows that persons registering to vote possess the requisite qualifications as electors at the time they lodge their affidavit of registration with their local elections official.[17] The result of the registration process is the generation, in each of California's 58 counties, of a list of persons qualified to vote in each county on election day. Registration has long been recognized to be the principal mechanism under California law for preventing election fraud by providing a means to verify that the registrant is a lawful elector under California law.[18] Registration is intended to permit elections officials to distinguish qualified electors entitled to vote from persons lacking the requisite qualifications to vote. Permitting persons, who lack one or more of the qualifications to be an elector under California law, to register to vote would contradict the very purpose of the registration requirement. It would render registration to be meaningless, resulting in the absurd result of registration serving no logical purpose.

2. *The Elections Code Includes One Specific Exception For Permitting the Registration of U.S. Citizens Who Will Reach the Age of Eighteen By Election Day.*

With the ratification of the 26th Amendment to the Constitution of the United States, the franchise right was extended to include citizens 18 years of age and older.[19] Consequently, the Elections Code includes a provision permitting the registration of persons who will reach the age of 18 years by the next election day.[20] It is the *only* exception to the general principle that the person seeking registration possess all of the qualifications of an elector at the time of registration.

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[16] *Minges v. Board of Trustees*, *supra*, 27 Cal. .App. 15, 17.

[17] As noted in greater detail below, Election Code § 2101 creates a single exception for persons who will reach the age of 18 years by the next election day.

[18] In the same vein, the California Supreme Court has noted that "preventing electoral fraud is a compelling governmental interest," observing that the United States Supreme Court has held that this compelling interest is "adequately served...by the oath requirement of the state's voter registration system, coupled with the threat of prosecution for violation of penal statutes prohibiting voter fraud." (*Young v. Gnoss* (1972) *supra*, 7 Cal. 3d 18, 22-23; citing *Dunn v. Blumstein* (1971) *supra*, 405 U.S. 330, 353-54.)

[19] United States Constitution, Amendment XXVI.

[20] In establishing the qualifications for registration to vote, California Elections Code § 2101 provides for the registration of persons "*at least 18 years of age at the time of the next election.*"

An examination of the legislative history of Section 2101 establishes that the provision permitting registration of persons reaching 18 years of age by election day is the only portion of the statute which permits the registration of a person who is not fully a qualified elector at the time of registration.[21] Current Section 2101[22] was added to the Elections Code by Assembly Bill 619 in 1989.[23] The analysis of AB 619, prepared by the Assembly Committee on Elections, Reapportionment, and Constitutional Amendments, states that:

> Currently, a person who will become 18 years of age after the close of registration but on or before the date of an election is eligible to register and vote. However, that is nowhere clearly stated in the Elections Code. This bill would specify this.[24]

As the Committee analysis states, Section 2101 was added to expressly permit the registration of persons under the age of 18 who would reach 18 years of age— i.e., voting age—by the next election day.[25] It does not extend this limited exception to the requirement that the elector seeking registration be a United States citizen nor is there any support in the legislative history for such an assertion.[26]

The provision permitting registration of persons who will reach the age of 18 years by the next election day is consistent with the purpose of the registration laws. Age

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[21] It has been erroneously suggested that the phrase "at the time of the next election" applies to all of the qualifications for registration set forth in Election Code § 2101. This assertion is contradicted by the legislative history of the statute, which clearly establishes that this language was intended by the Legislature to apply only to the qualification that the elector be 18 years of age.

[22] Election Code § 2101 is a reenactment of former Election Code § 300.5. Senate Bill No. 1547 (1993-1994 Reg. Sess.); Stats. 1994, ch. 920, p. 21.

[23] Assembly Bill No. 619 (1989-1990 Reg. Sess.); Stats. 1989, ch. 365, pp. 1504-1505.

[24] Assembly Committee on Elections, Reapportionment and Constitutional Amendments (May 17, 1989) page 2; see also Bill Analysis of the California Secretary of State (June 7, 1989) pp. 1-2 [the bill was sponsored by the Secretary of State]; accord. Senate Committee on Elections, Reapportionment and Constitutional Amendments (July 19, 1989) p.2.

[25] *Ibid.*

[26] *Ibid.* As discussed at length below, the Legislature separately addressed the issue of permitting new citizens to register to vote, after the close of registration, by enacting specific provisions for the registration of newly naturalized citizens up to seven days prior to election day. (See Elections Code §§ 3500 et seq.)

is neither contingent nor prospective. Either the person seeking registration will reach the age of 18 years by election day or he or she will not. There are no intervening factors—other than death itself—which would interfere with this qualification being realized by election day. By contrast, naturalization is, under the best of circumstances, a contingency which may be prevented from coming to fruition by a myriad of intervening causes.[27] Thus, the legislative history of Election Code § 2101, allowing for the registration of persons under the age of 18 years, is entirely consistent with the purpose of registration.

3. The Elections Code Includes Express Provisions for the Registration of New United States Citizens Naturalized After the Close of Registration.

The Legislature has enacted specific statutory provisions dealing with the registration of new United States citizens, naturalized after the close of registration but prior to election day.[28] Under the provisions of Elections Code § 3500, "new citizens" — that is, persons naturalized after the close of registration—may register to vote after the close of registration, provided that they do so at least seven days prior to election day and that they fully comply with the specific statutory requirements for "new citizen" registration.[29]

Elections Code § 3500 provides:

> Any new citizen is eligible to register and vote at the office of the county elections official at any time beginning on the 28th day before an election and ending on the seventh day prior to election day.

Elections Code § 331 provides:

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[27] Until the applicant for naturalization takes the oath of citizenship, he or she is *not* a citizen of the United States. The process of naturalization is a lengthy and complex endeavor with many variables at play. Until the oath of citizenship is actually administered many different contingencies can delay or, in some cases, preclude naturalization, such as a subsequent felony conviction, denial of application for citizenship, the institution of deportation proceedings and the like.

[28] Elections Code §§ 331 and 3500 et seq. were enacted as part of Assembly Bill 2590 (Stats 1992 (Reg. Sess.), ch. 358, p. 2). There were no votes against AB 2590 in either house of the Legislature. Governor Wilson signed the bill on July 24, 1992.

[29] See Elections Code § 3501.

> "New citizen" means any person who meets all requirements of an elector of, and has established residency in, the State of California, *except that he or she will become a United States citizen* after the 29th day prior to an election but on or before the seventh day prior to that election. [Emphasis Added]

The Elections Code makes express provision for the registration of newly naturalized United States citizens so as to enable them to exercise the right to vote as soon as possible after becoming citizens. Obviously, the Legislature recognized the importance of facilitating the participation of newly naturalized U.S. citizens in the free elections system, while, at the same time, maintaining the integrity of the registration process. Consequently, by reducing the registration cutoff for "new citizens" to seven days prior to an election, the Elections Code permits such "new citizens" to register to vote *after the general close of registration* and, more importantly, *after naturalization.* It should be emphasized that the general close of registration rules are suspended specifically to permit registration after naturalization. The Elections Code provisions dealing with "new citizens" do *not* create, either expressly or by implication, an exception for registration *prior to or in anticipation of naturalization.*

Once again, the "new citizen" registration procedures set forth in Elections Code §§ 331 and 3500 et seq. are entirely consistent with the fundamental policy objectives underlying the registration requirement. Citizenship and the right to vote are intimately interrelated. The right to vote is perhaps the most fundamental—perhaps even defining—characteristic of citizenship. As one court aptly observed:

> Citizenship is a material factor in the right to register, and subsequently to vote. If registrants were permitted to make false statements [pertaining to the registrant's name and country of birth] with impunity, election frauds would be furthered.[30]

Recognizing both the fundamental nature of the right to vote and the importance of registration to the integrity of the electoral process, the Legislature has expressly limited registration to vote to United States citizens.[31] As the law so clearly indicates,

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[30] *People v. Darcy, supra*, 59 Cal.App.2d 342, 349.

[31] The Legislature is not empowered to extend the right to vote to persons not included in the constitutional provisions pertaining to the persons qualified to exercise that right. (*Spier v. Baker* (1898) 120 Cal. 370, 376 [52 P. 659, 662].) Because the constitution expressly limits the franchise to United States citizens, any legislation which would expressly or impliedly extend the right to vote to non-citizens would be invalid as

persons who are not United States citizens may not, *under any circumstances*, register to vote under California law.

II. ONLY VALIDLY REGISTERED ELECTORS MAY LAWFULLY VOTE IN AN ELECTION.

It is well settled that only validly registered electors may lawfully vote in an election.[32] Persons who are not validly registered may not vote in an election.

California Elections Code § 2000, subsection (a), provides:

> Every person who qualifies under Section 2 of Article II of the California Constitution and who complies with this code governing the registration of electors may vote at any election held within the territory within which he or she resides and the election is held.

Thus, pursuant to Elections Code § 2100, subsection (a), if an elector fails to comply with the legal requirements governing the registration of electors, he or she may not vote. The First District Court of Appeal dealt with this issue directly in *Kagan v. Kearney*. In *Kagan*, plaintiffs were two electors, who were registered in one precinct but moved to another precinct in the same county prior to the close of registration. Plaintiffs failed to re-register in their new precinct or to file a notice of change of address, as required by the Elections Code in effect at the time. On being informed that they would consequently be ineligible to vote in either precinct, plaintiffs sought a preliminary injunction seeking to enjoin the local elections official from preventing them from voting. The trial court denied plaintiffs' motion for preliminary injunction. Plaintiffs appealed the denial of their motion.

The Court of Appeal affirmed the trial court's denial of plaintiffs' motion for preliminary injunction. The court held that plaintiffs, though they were qualified as electors, were properly denied the right to vote because of their failure to comply with registration requirements of the Elections Code.[33] In so holding, the court observed:

> Pursuant to the Constitution, the Legislature has provided in the Elections Code a system whereby a citizen who is qualified to vote must be properly registered before being able to vote. Elections Code section 100 provides:

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the Legislature lacks the power *per se* to enlarge franchise rights enumerated in the California Constitution.

[32] Elections Code § 2100; *Kagan v. Kearney, supra*, 85 Cal.App.3d 1010.

[33] *Kagan v. Kearney, supra*, 85 Cal.App.3d 1010, 1014-15.

> "Every person who qualifies under the provisions of Section 1 [since renumbered § 2] of Article II of the Constitution of this state and who complies with the provisions of this code governing the registration of electors is entitled to vote at any election held within the territory within which he resides and the election is held."
>
> Section 17 defines an elector as a United States citizen 18 years of age or older who is "a resident of an election precinct at least 29 days prior to an election." A voter is defined as an elector "who is registered under the provisions of this code." [citation omitted] "An elector is one who has the qualifications to vote but may not have complied with the legal requirements, that is, the conditions precedent to the exercise of his right to vote." (*People v. Darcy* (1943) 59 Cal.App.2d 342, 349 [139 P.2d 118].) In short, only a person qualified as an elector under the Constitution and as a voter under the code may vote. [citation omitted] Under California law appellants were clearly electors but were not voters.[34]

As does the Elections Code itself, the *Kagan* court clearly drew a distinction between electors and voters. Although the plaintiffs were electors, they failed to comply with the Elections Code provisions governing the registration of electors and, hence, were not voters.[35] Therefore, the trial court quite properly denied the plaintiffs' motion for preliminary injunction enjoining the elections official from permitting them to vote.

Accordingly, in view of Elections Code § 2100 and *Kagan v. Kearney*, only lawfully registered electors may vote in an election in California. Unregistered electors and invalidly registered electors may not vote in an election.

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[34] *Ibid.*

[35] Had plaintiffs merely re-registered or filed a notice of change of address, as the Elections Code required, they would have been eligible to vote. Because their existing registrations were invalid, the court concluded that they could not vote.

III. CALIFORNIA'S REGISTRATION REQUIREMENT, AS A PREREQUISITE TO EXERCISING THE FUNDAMENTAL RIGHT TO VOTE, HAS BEEN REPEATEDLY HELD TO SERVE A COMPELLING GOVERNMENTAL INTEREST AND DOES NOT VIOLATE ANY CONSTITUTIONAL RIGHT.

The principle that qualified electors register to vote, as a prerequisite to exercising the right to vote, has been judicially scrutinized and consistently held to be constitutional when the reviewing court is satisfied that the requirement is narrowly tailored to serve the compelling governmental interest of preventing elections fraud. Indeed, both the United States Supreme Court and the California Supreme Court have consistently affirmed and re-affirmed the principle that registration of qualified voters serves the compelling governmental interest of preventing elections fraud.[36]

The United States Supreme Court has long held that states are empowered, under the United States Constitution, to impose registration requirements as a prerequisite to voting. Sixty-five years ago, in a case dealing with reapportionment, the Court held that a state legislature is empowered, under Article I, Section 4 of the Constitution of the United States,[37] to enact legislation governing the manner by which congressional elections are conducted, noting that:

> It cannot be doubted that these comprehensive words embrace authority to provide a complete code for congressional elections, not only as to times and places, but in relation to notices, *registration*, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns; in short, to enact the numerous requirements as to procedure and safeguards which experience shows are necessary in order to enforce the fundamental right involved. And these requirements would be nugatory if they did not have appropriate sanctions in the definition of offenses and punishments. All this is comprised in the

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[36] *Dunn v. Blumstein*, *supra*, 405 U.S. 330, 345-47, [92 S. Ct. 995, 31 L.Ed.2d 274]; *Young v. Gnoss*, *supra*, 7 Cal.3d 18, 22-23 [496 Cal. Rptr. 533, 496 P.2d 445]; also *Kagan v. Kearney*, *supra*, 85 Cal.App.3d 1010, 1017-19; see *Bergevin v. Curtz*, *supra*, 127 Cal. 86, 89; cf. *Schaaf v. Beattie*, *supra*, 265 Cal.App.2d 904 [72 Cal. Rptr. 79].

[37] Article I, Section 4 provides that " [t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof..."

> subject of "times, places and manner of holding elections" and involves lawmaking in its essential features and most important aspect.[38]

Consistent with this interpretation, California courts have held that:

> It is well settled that the "legislature has the power to enact reasonable provisions for the purpose of requiring persons who are electors and who desire to vote to show that they have the necessary qualifications, as by requiring registration, or requiring an affidavit or oath as to qualifications, as a condition precedent to the right of such electors to exercise the privilege of voting."[39]

Thus, the Legislature is constitutionally empowered under both the Constitution of the United States and the Constitution of the State of California to enact registration requirements as a prerequisite to electors exercising the right to vote.[40]

Both the United States Supreme Court and the California Supreme Court have held "that preventing electoral fraud is a compelling governmental interest."[41] In *Young v. Gnoss*, the California Supreme Court held that, although California's 90 day durational residency and 54 day precinct residency requirements were not necessary means of achieving this compelling governmental interest, "[t]hat purpose is adequately served...by the oath requirement of the state's voter registration system, coupled with the threat of prosecution for violation of penal statutes prohibiting voter fraud."[42] Hence, if the restrictions, imposed by registration requirement, do not unnecessarily burden or restrict the right to vote, are drafted with "precision" and are "tailored" to serve the compelling governmental interest of prohibiting voter fraud, the registration requirement satisfies the Constitution's Fourteenth Amendment equal protection guarantees.[43]

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[38] *Smiley v. Holm* (1932) 285 U.S. 355, 366 [76 L.Ed. 795, 800, 52 S.Ct. 397].

[39] *Kagan v. Kearney, supra*, 85 Cal.App.3d 1010, 1019.

[40] U.S. Const., art. I, § 4; Cal. Const., art. 2, § 3; *Kagan v. Kearney, supra*, 85 Cal.App.3d 1010, 1019; *Smiley v. Holm, supra*, 285 U.S. 355, 366 [76 L.Ed. 795, 800].

[41] *Young v. Gnoss, supra*, 7 Cal.3d 18, 22-23 [cert. den., 409 U.S. 915 (34 L.Ed.2d 176, 93 S.Ct. 236)]; citing *Otsuka v. Hite, supra*, 64 Cal.2d 596, 603 [51 Cal.Rptr. 284, 414 P.2d 412]; *Dunn v. Blumstein, supra*, 405 U.S. 330, 345-47.

[42] *Young v. Gnoss, supra*, 7 Cal.3d 18, 22-23; citing *Dunn v. Blumstein, supra.*, 405 U.S. 330, 345-47.

[43] *Dunn v. Blumstein, supra.*, 405 U.S. 330, 342-43 [31 L.Ed.2d 274, 284, 92 S.Ct. 995]; citing *NAACP v. Button* (1963) 371 U.S. 415, 438 [9 L.Ed.2d 405, 421, 83 S.Ct. 328]; also citing *Shapiro v. Thompson* (1969) 394 U.S. 618, 631 [22 L.Ed.2d 600, 613,

The issue as to whether enforcement of the 29 day close of registration statute violates constitutional guarantees under the equal protection clause of the Fourteenth Amendment was also specifically addressed in *Kagan v. Kearney*.[44] In *Kagan*, the two plaintiff electors challenged the statutory voter registration requirements and contended that, since the right to vote is fundamental, the state must show a compelling governmental interest to support a registration law which limits the exercise of that right.[45] Consequently, the state was required to demonstrate that California's 29 day period of residence and registration within one precinct was necessary to promote a compelling governmental interest. [46] The *Kagan* court applied both *Young v. Gnoss*, *supra*, and *Dunn v. Blumstein, supra*, to conclude that "the statutory scheme adopted by the Legislature for the durational residence requirement for voting and the concomitant closing date for voter registration is reasonable and within the constitutional limits prescribed in *Young v. Gnoss*."[47]

Thus, a California appellate court has already reviewed the constitutional propriety of California's registration statute, specifically including the 29 day residency requirement, and determined that it wholly comports with Fourteenth Amendment due process guarantees under the United States Constitution, as interpreted in both state and federal case law. It is of particular interest that the constitutional challenge in the *Kagan* case arose in the context of an action for preliminary injunction commenced by two invalidly registered electors seeking to enjoin a local elections official from prohibiting them from voting in an election. The court found no constitutional problems with prohibiting otherwise qualified, but invalidly registered, electors from voting when such electors failed to comply with statutory registration requirements.

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89 S.Ct. 1322]; *Keane v. Mihaly* (1970) 11 Cal.App.3d 1037, 1041-43; cited with approval in Young *v. Gnoss*, *supra*, 7 Cal.3d 18, 22.

[44] *Kagan v. Kearney, supra*, 85 Cal.App.3d 1010, 1014-15.

[45] *Kagan v. Kearney, supra*, 85 Cal.App.3d 1010, 1017-18.

[46] As was the case in 1978 when *Kagan, supra*, was decided, the Elections Code permits late registration in the case of new California residents and to allow a person to vote in his or her former precinct where such a person has moved from one precinct to another after the close of registration. (See Elections Code § 2035 [Procedure for registered electors having a residence change within 28 days prior to an election]; Elections Code §§ 3400-3408 [Registration procedures for new California residents arriving after the 29 day close of registration])

[47] *Kagan v. Kearney, supra*, 85 Cal.App.3d 1010, 1019.

IV. THERE IS NO CONSTITUTIONAL REQUIREMENT THAT "ILLEGAL VOTES" BE COUNTED.

California Courts—including a recent decision of the California Supreme Court—have long permitted the deduction of "illegal votes" cast in an election in determining the outcome of contested elections.[48] "Illegal votes are votes which have not been cast in the manner provided by law."[49] "In addition, votes cast in violation of the criminal provisions of the Elections Code, and votes cast by persons who received their absentee ballots in an improper manner are also illegal votes."[50]

Justice Kennard, in her dissent on other grounds, succinctly observed:

> An "illegal" vote is simply a ballot cast in violation of the procedures established by the Elections Code. A ballot may be illegally cast even though the voter, or the persons assisting the voter, did not intend to subvert the elections process. Thus, a well-meaning voter may cast an illegal vote through ignorance or inadvertence rather than a conscious attempt to circumvent elections laws or to give any candidate an unfair advantage. Assume, for example, that a major civic organization such as the League of Women Voters, in a well-intended but misguided attempt to increase voter turnout, agreed to mail in absentee ballots of a number of voters. The ballots mailed in this fashion would be "illegal," even though neither the League of Women Voters nor the voters themselves intended to undermine the electoral process.[51]

None of these courts have ever expressed any constitutional concerns regarding the deduction of "illegal votes"—including quite specifically those cases where the "illegal votes" were cast by qualified electors with no intent to undermine the integrity of

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[48] *Gooch v. Hendrix* (1993) 5 Cal.4th 266, 279-80; *Bush v. Head* (1908) 154 Cal. 277, 281; *Stebbins v. Gonzales* (1992) 3 Cal.App.4th 1138, 1142-43; *Hardeman v. Thomas* (1989) 208 Cal.App.3d 153, 168-69 [256 Cal. Rptr. 158, 167-168]; *Jacobson v. Glidden* (1978) 84 Cal.App.3d 748, 752 [148 Cal. Rptr. 825, 827].

[49] *Gooch v. Hendrix, supra*, 5 Cal.4th 266, 279-80; citing *Bush v. Head, supra*, 154 Cal. 277, 281.

[50] *Hardeman v. Thomas, supra*, 208 Cal.App.3d 153, 168; citing *Jacobson v. Glidden, supra*, 84 Cal.App.3d 748, 751.

[51] *Gooch v. Hendrix, supra*, 5 Cal.4th 266, 288.

the electoral process. Indeed, there is a recognition in these cases that "preservation of the integrity of the election process" is an extremely important policy consideration.[32] Thus, it is incorrect, as a matter of law, to state that every vote cast by an elector must be counted, as "illegal votes" are lawfully discounted by courts adjudicating election contests.

V. CONCLUSION.

California law is very clear that only United States citizens may register to vote. Moreover, only validly registered electors may lawfully vote in an election. As to due process guarantees in the Fourteenth Amendment to the Constitution of the United States, California's registration requirement, as a prerequisite to exercising the fundamental right to vote, has been repeatedly held to serve a compelling governmental interest and does not violate any constitutional right. Finally, there is no constitutional requirement that "illegal votes" be counted.

Date: June 16, 1997

BILL JONES
Secretary of State

JAMES F. SWEENEY
Chief Counsel to the Secretary of State

[32] See, e.g., *Gooch v. Hendrix*, *supra*, 5 Cal.4th 266, 278; also *Fair v. Hernandez* (1981) 116 Cal.App.3d 868, 881 [172 Cal. Rptr. 379, 385].

WILLIAM M. THOMAS, CALIFORNIA
CHAIRMAN

...CONNECTICUT
RANKING MINORITY MEMBER

Congress of the United States
House of Representatives
COMMITTEE ON HOUSE OVERSIGHT
1309 LONGWORTH HOUSE OFFICE BUILDING
(202) 225-8281
Washington, DC 20515-0515

MEMORANDUM OF UNDERSTANDING

The Task Force for the Contested Election in the 46th Congressional District of California (hereinafter "the Task Force") of the Committee on House Oversight of the Unites States House of Representatives and the California Secretary of State (hereinafter "the Secretary") hereby enter into this memorandum of understanding concerning the Committee's 1997 written request to the Secretary, as the chief election officer of the State of California, for the Secretary's assistance in verifying the status of votes cast in the November 1996 general election in California's 46th Congressional District in Orange County, California.

Whereas Section 10 of the California Elections Code provides that "the Secretary of State is the chief elections officer of the state." The powers and duties in this regard are enumerated in California Government Code Section 12172.5, which provides in pertinent part that:

> The Secretary of State is the chief elections officer of the state, and shall administer the provisions of the Elections Code. The Secretary of State shall see that elections are efficiently conducted and that state elections laws are enforced.

Whereas the Task Force is considering an election contest, filed pursuant to the Federal Contested Elections Act, 2 U.S.C. § 381-396, pertaining to the November 5, 1996 General Election in the 46th Congressional District of California.

Whereas on September 15, 1997, the Committee requested ("the Committee Request") by letter, attached hereto as Appendix "A" and incorporated herein by reference, that the Secretary "review, analyze, and verify the enclosed information compiled by the Committee on House Oversight and report to the Task Force on the number and identities of individuals which the Secretary believes illegally registered and voted in November 1996" in the 46th Congressional District of California.

Whereas the Task Force and the Secretary understand that the INS has the capability, through manual review of its records, to determine the citizenship status of individuals whose names appear on the registered voter list of Orange County.

Whereas the Task Force and the Secretary agree that any investigation into illegal voter registration activities should be conducted so as not to unfairly burden the privacy and voting rights of any citizen, including newly-naturalized citizens, nor to discourage any eligible citizen from registering to vote and voting in elections held in California;

Therefore, in recognition of the principles and circumstances described above, the parties agree as follows:

Terms of Agreement

A. The Task Force shall provide to the Secretary a Task Force database of registered voters who may not have been citizens at the time they registered in the November 1996 general election in the 46th Congressional District of California. The database shall be in electronic form using a Microsoft Excel spreadsheet format. The spreadsheet format shall include three blank columns: (1) "U.S. Citizen?" (2) "Naturalization Date, If Applicable" and (3) "Interview Date". Unless specifically agreed to by the Task Force and the Secretary, no copies of files received by the Task Force from the INS shall be transmitted by the Task Force to the Secretary of State.

B. Subject to the limitations of paragraph A with regard to INS files, the Task Force may augment this information as additional material becomes available to the Task Force.

C. Information obtained from the Task Force will be handled by the Secretary with the strictest confidence, and data appearing in such database will not be disclosed nor be distributed to any individual or entity other than the following:

1. INS District Director, Los Angeles;
2. The Orange County District Attorney;
3. The Orange County Registrar of Voters;
4. The Attorney General of the State of California;
5. The Members of the Committee on House Oversight
6. The Staff of the Committee on House Oversight and the Staffs of Members of the Committee on House Oversight, upon execution of a confidentiality agreement. (Appendix "B")

D. The Secretary shall undertake measures to ensure the confidentiality and security of the information obtained from the Task force. The Committee Chairman, the Ranking Minority Member, the Task Force Members, and their staff shall ensure the confidentiality and security of information received from the Secretary and from the INS unless or until such information is presented on the public record at a meeting of the Task Force or the Committee.

E. Pursuant to the request of the Task Force, the Secretary will work with the INS in conducting a review of the list of names contained in the Task Force information.

F. The Secretary and the Task Force agree that they will work cooperatively to facilitate the review process as quickly as possible.

G. Upon completion of the Secretary's review of the manual search results received from the INS, the Secretary will analyze the data and report to the Task Force the number of registrations and votes in the 46th Congressional District which the Task Force has provided and which fall into the following six categories: (1) Confirmed legal vote; (2) Confirmed illegal vote; (3) Unable to determine legal status of vote; (4) Confirmed legal registration; (5) Confirmed illegal registration and; (6) Unable to determine legal status of registration.

H. The Task Force and the Secretary of State agree to accept, to the extent practicable, the information verified by the INS and provided to the Secretary of State as determinative of the citizenship status of an individual.

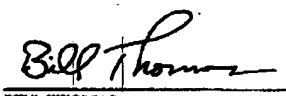
I. The Task Force agrees to accept, to the extent practicable, the certification of the Secretary of State as to the status of a vote.

Miscellaneous Provisions

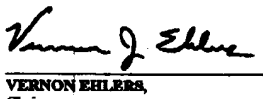
A. This Memorandum of Understanding does not create any rights enforceable under law or create any claim of action.

B. This Memorandum of Understanding represents a complete recitation of the terms upon which the Task Force request will be handled by the Secretary.

C. Changes in or additions to the terms of this agreement shall be in writing and signed by the parties who were original signatories.



BILL THOMAS,
Chairman
Committee on House Oversight
Dated: October 27, 1997



VERNON EHLERS,
Chairman
CA 46 Task Force
Dated: October 27, 1997



BILL JONES,
Secretary of State
State of California
Dated: October 27, 1997

WILLIAM M. THOMAS, CALIFORNIA
CHAIRMAN

ROBERT W. NEY, OHIO
JOHN A. BOEHNER, OHIO
VERNON J. EHLERS, MICHIGAN
KAY GRANGER, TEXAS
JOHN L. MICA, FLORIDA

SAM GEJDENSON, CONNECTICUT
RANKING MINORITY MEMBER

STENY H. HOYER, MARYLAND
CAROLYN CHEEKS KILPATRICK, MICHIGAN

STACY CARLSON
STAFF DIRECTOR
ROBERT J. BASKIN
MINORITY STAFF DIRECTOR

APPENDIX "A"

Congress of the United States

House of Representatives

COMMITTEE ON HOUSE OVERSIGHT
1309 LONGWORTH HOUSE OFFICE BUILDING
(202) 225-8281
Washington, DC 20515-6157

September 15, 1997

The Honorable Bill Jones
California Secretary of State
1500 11th Street
Sacramento, CA 95814-2974

Dear Secretary Jones:

During the course of our investigation of potential voter fraud in the 46th Congressional District of California we have received information from the Immigration and Naturalization Service and from other sources about a substantial number of potentially illegally registered voters and illegal votes cast in the November 1996 general election.

It is critical to a fair determination of the outcome of the 46th District Election Contest that the most accurate information be available to the Committee and to the House on the status of votes cast in the 46th District. In addition, it is important that the roll of registered voters in California you maintain as Chief State Election officer is as accurate and honest as possible.

I therefore request that you, as California's Chief Election Officer, review, analyze, and verify the enclosed information compiled by the Committee on House Oversight and report to us on the number and identity of individuals you believe illegally registered and voted in November 1996 general election in the 46th District in California.

To protect the privacy of the individuals concerned, the information we provide must be kept in strictest confidence within your office, but may be shared with INS officials, or law enforcement officials involved in the investigation of voter fraud in Orange County. Enclosed is a privacy agreement used for this purpose by the Committee for your signature.

If you have any questions please contact Roman Buhler or John Kelliher, counsels to the Committee on House Oversight, at 202-225-8281.

I appreciate your cooperation and commitment to the integrity of California's election process.

Best regards,

Bill Thomas

Bill Thomas
Chairman

APPENDIX "B"

THE COMMITTEE ON HOUSE OVERSIGHT
UNITED STATES HOUSE OF REPRESENTATIVES
105TH CONGRESS

Robert Dornan, Contestant

v.

ELECTION CONTEST
46TH DISTRICT OF CALIFORNIA

Loretta Sanchez, Contestee

CONFIDENTIALITY AGREEMENT

STATE OF _____,

COUNTY OF _____,

I, _____, being duly sworn on oath, state the following:

1. I have read and understand the Memorandum to which this Attachment A is annexed and attest to my understanding that access to information received by the Committee on House Oversight from the INS or the Secretary of State of California may be provided to me and that such access is pursuant to the terms and conditions and restrictions of the Memorandum and I agree to be bound by the terms of the Memorandum and acknowledge Congress' power to enforce it.

2. I shall not disclose to others any information, unless in accordance with the Memorandum. In the event that I am requested or required by legal process or otherwise to disclose any such information, I shall use all reasonable efforts to resist such disclosure, interposing all available defenses. In addition, I shall notify the Committee on House Oversight immediately and allow them to assist in such defense if they so request

3. If I shall fail to abide by the terms of this Confidentiality Agreement or of the Memorandum I understand that I shall be subject to sanctions by way of Contempt of Congress and to separate legal and equitable recourse. I hereby waive any claim of privilege or immunity I may now or hereafter have as a defense to violation or enforcement of the Memorandum or breach of this Confidentiality Agreement.

Dated:_____

Signature:_____

Printed Name:_____

Address:_____

Entity Represented:_____

Subscribed and sworn to
before me this ___ day
of _____ 1997.
Witness my hand and official seal.

_____
Notary Public
My Commission Expires: _____

U.S. Department of Justice
Immigration and Naturalization Service

Office of the Commissioner

425 I Street NW.
Washington, DC 20536

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The Honorable Bill Jones
Secretary of State
State of California
1500 11th Street
Sacramento, California 95814

Dear Secretary Jones:

We understand that you have asked for the views of the Department of Justice concerning a request from the Committee on House Oversight for your assistance in reviewing certain information compiled by the Committee, which includes information provided by the Immigration and Naturalization Service (INS), as well as information from other sources. We appreciate the opportunity you have afforded us to comment on this request.

As you note in your letter of September 18 to Chairman William Thomas, INS has taken great care--in response to your request of March 14 and other requests--to ensure that all disclosures of INS data made in connection with allegations of voter fraud meet the requirements of the Privacy Act. As you know, the Privacy Act generally prohibits the disclosure of agency records containing identifying information about United States citizens and lawful permanent residents without the consent of the individual, unless an exemption to the Act applies. Our offices, together with other Department of Justice attorneys, worked this summer to draft a Memorandum of Understanding governing the disclosure of INS data to your office that was carefully tailored to meet the needs of your investigation, consistent with our legal obligations to safeguard personal information. We remain committed to further cooperation with you as appropriate under the Privacy Act and other relevant legal authority.

With respect to the Committee's inquiry into the contested election in the 46th Congressional District, the INS has been equally mindful of privacy concerns. In light of the Committee's subpoena and the exemption for certain Congressional requests under the Privacy Act, the INS disclosed certain information to the Committee that could not properly be produced directly to your office. The INS has consistently urged the Committee to treat the information being provided with the utmost confidentiality and to guard against disclosure to unauthorized parties to avoid invading individuals' privacy, tainting their reputations, and chilling the legitimate exercise of voting rights by qualified U.S. citizens.

To the extent that the Committee shares information provided by the INS with your office, we urge you to observe these same rigorous standards. We note that Chairman Thomas' September 15 letter to you references a privacy agreement, and we believe that such an agreement should be formulated before any information is exchanged to ensure that it is handled with all due confidentiality and that its use is confined to stated purposes related to articulable law enforcement efforts. If your office would find it helpful, the Department of Justice would be willing to review and comment on such a proposed agreement.

Sincerely,

Doris Meissner

Doris Meissner
Commissioner

cc: The Honorable William M. Thomas
The Honorable Sam Gejdenson

DECLARATION OF ED CONTRERAS

Edward R. Contreras states:

1. I am an investigator with the Office of the Orange County District Attorney and have been so employed for three (3) years. Prior to that I was a police officer with Orange Police Department for twelve (12) years.

2. I am the investigator assigned to investigation of unqualified persons registering to vote through Hermandad Mexicana Nacional (HMN) and thereafter voting in the November, 1996 election.

3. As part of my duties I obtained from the Office of the Registrar of Voters of Orange County a list of persons who had registered on Voter Registration Affidavits issued to Hermandad. I thereafter requested the Immigration and Naturalization Service (INS) in Los Angeles to compare the list obtained from the Registrar of Voters to its files regarding naturalization of citizens in an attempt to determine whether or not persons who registered to vote through Hermandad were in fact eligible to register and to vote. I received from the Immigration and Naturalization Service a copy of the Registrar of Voters data I had given INS, together with handwritten notes from INS officials listing pertinent information regarding naturalization status of the individuals on the list.

4. This list with handwritten notes was attached as an exhibit to a Search Warrant Affidavit which was ordered sealed by Judge James Brooks of the Central Orange County Municipal Court on or about January 14, 1997. Some weeks later, Judge Brooks partially granted a motion by the Los Angeles Times newspaper to unseal the Search Warrant Affidavit. At that time, a redacted copy of the affidavit, without the INS exhibit was submitted to the Court by the Office of the District Attorney for release pursuant to the Court's Order granting the Los Angeles Times motion. Apparently, the Municipal Court Clerk's Office misunderstood Judge Brook's Order and

released both the affidavit and the exhibit containing INS information. That exhibit was subsequently released to a number of persons besides the Los Angeles Times. The exhibit was also attached to an evidentiary appendix filed in the Committee House Oversight of House of Representatives of the United States by William R. Hart, Mr. Dornan's attorney. As such, it appears to be in the public domain.

5. Thereafter, as part of the continuing investigation, the Registrar of Voters list and the Immigration and Naturalization Service information were combined in electronic form to the Office of the District Attorney. The combination has resulted in a database which is capable of being searched. The table attached to this Declaration is a table from that database created by District Attorney Crime Analyst James Tamura from sources already in the public domain.

6. I am attaching hereto a copy of the tabular information created by Mr. Tamura from information given by the Registrar of Voters and the Immigration and Naturalization Service.

7. Our office has conducted over 100 interviews of individuals who INS records show had not completed the naturalization process prior to registering. In a few cases (at the present time I believe them to be less than 5) individuals who were incorrectly identified as being in the naturalization process or for which there were indications that the individuals had not completed naturalization, produced evidence that they were in fact citizens and had been naturalized prior to registering. Numerous other individuals confirmed that Immigration and Naturalization Service records with regard to their citizenship status appeared to be substantially correct.

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6. The investigation is far from complete and not all reports and interviews have yet been submitted.

I declare under penalty of perjury the foregoing is true and correct. Executed this 21st day of March, 1997 at Santa Ana, California

EDWARD R. CONTRERAS

STATEMENT OF FACTS, AFFIDAVIT, AND DECLARATION IN SUPPORT SEARCH WARRANT.

I, **EDWARD R. CONTRERAS**, declare:

I believe the facts in support of the issuance of this Search Warrant are as follows:

AFFIANT

I, EDWARD R. CONTRERAS, have been a police officer in the State of California for approximately fourteen and one half years. I was first employed as a police officer for the City of Orange. During my employment with the Orange Police Department, I spent approximately eight (8) years as an investigator. My investigative experience includes property crimes, crimes against persons, and narcotics. I have been employed as an investigator for the Orange County District Attorney's Office since February 4, 1994.

I possess a Basic, Intermediate, and Advanced Peace Officer Standards of Training Certificate and have a Bachelor of Science Degree in Criminal Justice from California State University, Fullerton.

Since August of 1996, I have been assigned to the Special Assignments Unit investigating officer involved shootings, jail deaths, and political corruption.

FACTS FOR ISSUANCE OF AFFIDAVIT

On November 26, 1996, I was assigned by Orange County District Attorney's Office Supervising Investigator DAN LOUGHLIN to investigate allegations of possible violations of Election Code Section 18100 (Registration of person not entitled to registration) by an organization named HERMANDAD MEXICANA NACIONAL, located at 825 North Broadway, Santa Ana, California. I have driven past this building, and observed it was a large two story building, stretching all the way from Broadway to the next street, which I believe to be Sycamore, and approximately one

hundred feet wide. I did not see other businesses names on the building, and believe HERMANDAD MEXICANA NACIONAL occupies the entire building.

On October 15, 1996, Orange County Assistant Registrar of Voters DON TAYLOR wrote to Orange County Deputy District Attorney GUY ORMES advising him of the possible violation of Election Code Section 18100. I was given a copy of that memo and the attachments, read them, and learned the following. TAYLOR stated in his memo that Registrar of Voters staff member ERNESTINE VEGA (who I have since met and talked to) had been contacted by telephone by a subject who hereinafter in this affidavit will be referred to as Confidential Informant #1 (C.I.#1).

C.I.#1 informed VEGA he/she had been registered to vote by HERMANDAD MEXICANA NACIONAL even though he/she was not a citizen of the United States. C.I.#1 stated he/she was told by an unknown employee of HERMANDAD MEXICANA NACIONAL he/she could register to vote and vote in the November 5, 1996 election, if he/she completed an application for United States citizenship.

After receiving an absentee ballot in the mail and reading the requirements for voting, C.I.#1 realized he/she was not eligible to vote. On October 10, 1996, C.I.#1 went to the Orange County Registrar's office and surrendered his/her absentee ballot and canceled his/her voter registration.

TAYLOR included a copy of C.I.#1's voter registration card and voter data form with his memo to the Orange County District Attorney's Office. I examined the voter registration form for C.I.#1, and observed the handwritten date, July 19, 1996 as the date of registration . C.I.#1's voter registration card has a box checked at the top indicating he/she is a United States citizen.

On November 26, 1996 at 1400 hours, I met with Orange County Registrar of Voters ROSALYN LEVER, Orange County Assistant Registrar of Voters DON TAYLOR, and Registrar

of Voters staff member ERNESTINE VEGA. Also present during the meeting were Orange County Deputy District Attorneys JOHN ANDERSON, GUY ORMES, and Assistant District Attorney WALLY WADE. At that meeting we were provided with a second, subsequent, voter registration card for C.I.#1 and a copy of a Certificate of Naturalization for C.I.#1. I observed on those documents that on October 29, 1996, C.I.#1 returned to the Orange County Registrar of Voters office and re-registered to vote after being sworn in as a citizen of the United States on October 23, 1996.

TAYLOR had earlier sent, with his October 15 memo to the Orange County District Attorney's Office, a copy of a VOTER REGISTRATION CARD STATEMENT OF DISTRIBUTION PLANS. I examined the form and observed, on this form, that on April 26, 1996, NATIVO LOPEZ, representing HERMANDAD MEXICANA NACIONAL, 825 North Broadway, Santa Ana, Ca. 92701, checked out 1,000 blank voter registration cards for the purpose of registering people to vote. The serial numbers of the affidavit's checked out by NATIVO LOPEZ were 30SA370001 to 30SA371000, according to notations written on the form.

I further examined that form, which I saw was signed by NATIVO LOPEZ, and that a box was checked, toward the middle of the VOTER REGISTRATION CARD STATEMENT OF DISTRIBUTION PLANS form, where the following was printed: "I will be collecting completed affidavits of registration. In compliance with Section 18103 of the California Election Code, I agree to return completed affidavits of registration in my possession within three days, excluding Saturdays, Sundays and state holidays to the Registrar of Voters." I also observed the VOTER REGISTRATION CARD STATEMENT OF DISTRIBUTION PLANS form contained the following admonishment (I have duplicated those portions which were bolded, in capitals, and/or underlined):

I DECLARE UNDER PENALTY OF PERJURY THAT I WILL TAKE REASONABLE STEPS TO ENSURE THAT:

(1) The person or persons distributing registration cards will give a registration card to any elector requesting one; and

(2) The persons distributing registration cards will be fully advised that state law imposes **PENALTIES OF IMPRISONMENT** for anyone who knowingly and willfully completes affidavits of registration for **NON-CITIZENS, NON-EXISTENT OR FICTITIOUS PERSONS, OR ANY INELIGIBLE ELECTOR**; and

(3) The voter registration cards will not be defaced or changed in any way; and

(4) The voter registration cards will not be partially or fully filled in by anyone other than the registrant or the person assisting the registrant in completing the form;

(5) Persons entrusted with the distribution or subsequent collection of completed registration forms, will be fully advised of the legal requirements.

At our meeting on November 26, 1996, ROSALYN LEVER provided me with a copy of an active list of individuals who were registered to vote by HERMANDAD MEXICANA NACIONAL. The list consisted of one thousand three hundred twenty two (1,322) names of people who registered to vote on Voter Registration Affidavits accepted by persons representing HERMANDAD MEXICANA NACIONAL. LEVER explained the 1322 names were identified by Voter Registration Form Affidavit numbers. A unique number is printed on each Voter Registration Form, and is tracked by the Registrar's Office.

I observed several Voter Registration Card Statement of Distribution Plans, obtained from the Registrar of Voters where HERMANDAD MEXICANA NACIONAL was filled in near the top

third of the forms after the term, "representing," and above the line under which is printed, "Name of organization distributing cards." The following is a list of the dates, the number of Voter Registration Affidavits requested, and Affidavit serial numbers received by NATIVO LOPEZ, MARIA ROSA IBARRA, and REFUGIO MEJIA, in representing HERMANDAD MEXICANA NACIONAL, according to Display Affidavit Registration Information printouts provided to me by ROSALYN LEVER. I have examined those printouts and observed the following:

- On March 25, 1996, NATIVO LOPEZ was issued 200 affidavits numbered 30SA285801 to 30SA286000.
- On April 26, 1996, NATIVO LOPEZ was issued 1,000 affidavits numbered 30SA370001 to 30SA371000.
- On July 28, 1994, MARIA ROSA IBARRA was issued 300 affidavits numbered 30Q697701 to 30Q698000.
- On July 28, 1994, MARIA ROSA IBARRA was issued 75 affidavits numbered 30SA111376 to 30SA111450.
- On August 28, 1996, REFUGIO MEJIA was issued 1,000 affidavits numbered 30SA413001 to 30SA414000.
- On October 2, 1996, REFUGIO MEJIA was issued 1,000 affidavits numbered 30SA442001 to 30SA443000.

In addition, HERMANDAD MEXICANA NACIONAL is listed as the site on all the printouts, with the address 825 N. Broadway in Santa Ana. I also observed that MARIA ROSA IBARRA was listed on all of these printouts as the "contact."

On December 3, 1996, I went to the Orange County Registrar's office and received a printout

entitled VOTERS RETURNING BALLOTS from Orange County Registrar of Voters ROSALYN LEVER. I had earlier requested such a printout, displaying registrants within the range of affidavits issued to HERMANDAD MEXICANA NACIONAL (which I have enumerated above). She told me this list includes the name, address, date of birth, place of birth, locator number, affidavit number, date voted, method of vote, registration date, party affiliation, and precinct number. LEVER explained that under the method of vote section, the letter "R" means an absentee ballot was returned, the letter "P" means the individual voted at the polling place, the letter "I" means the individual requested an absentee ballot, however, they did not return it, and the letter "M" means a mailed ballot was returned from a mail-in precinct. The list consisted of 1,160 names. A copy of this VOTERS RETURNING BALLOTS list (as annotated, which will be described later) is attached hereto and incorporated herein by reference as Exhibit #1.

I have examined the list and counted 658 subjects who voted by absentee ballot, 88 subjects who voted at a polling location, and 13 subjects who mailed in their ballot from a mail-in voting precinct. The sums total 759 individuals who were registered to vote on forms provided to HERMANDAD MEXICANA NACIONAL, who ultimately voted in the November 5, 1996 election.

On December 3, 1996, I went to the Santa Ana office of the United States Department of Justice Immigration and Naturalization Service, located at 801 Civic Center Drive West #320. I spoke to Supervisory Special Agent BOBBY COLEMAN and asked for assistance in regards to this investigation. COLEMAN stated I needed to make a written request for assistance from the Immigration and Naturalization Service.

On December 5, 1996, COLEMAN referred me to RICHARD ROGERS, Los Angeles District Director, Immigration and Naturalization Service. I spoke to ROGERS over the telephone

and asked for assistance in determining the citizenship status of the subjects listed on the VOTERS RETURNING BALLOTS list I received from the Orange County Registrar's office. ROGERS requested I submit a written request for the information and he would cooperate with the investigation. On December 6, 1996, Orange County Deputy District Attorney GUY ORMES wrote to ROGERS requesting his assistance in the investigation.

On December 6, 1996, I was advised by Orange County District Attorney's Office Supervising Investigator DAN LOUGHLIN that Special Investigator GAYLE PARKER from the California Secretary of State, Election Fraud Unit, would be assisting in this investigation. I met with PARKER, and he told me that he has been a Special Investigator with the Secretary of State for approximately seven (7) months. Prior to current employment, he worked as a California Highway Patrolman for fifteen (15) years; one (1) year Butte County Sheriff's Department; one (1) year Butte County Investigator, Public Defender's Office; and three (3) years Military Police.

PARKER informed me he was investigating a similar matter after his agency received a complaint from the office of United States Congressman ROBERT DORNAN, a copy of which I have read. In the complaint Congressman DORNAN alleged subjects who are not United States citizens registered to vote and voted, in the 46th Congressional District, in the November 5, 1996 election. DORNAN ran for re-election in the 46th District, but lost the election and is no longer a United States Congressman.

On December 9, 1996, I received a telephone call from the secretary of RICHARD ROGERS, Los Angeles District Director, Immigration and Naturalization Service. I was informed my contact for assistance in the investigation would be Immigration and Naturalization Service Investigator JOHN McALLISTER. On December 10, 1996, at approximately 1510 hours, I faxed a copy of the

VOTERS RETURNING BALLOTS (Exhibit #1) list to McALLISTER. I requested McALLISTER to perform a check of Immigration and Naturalization Service records, in order to verify the naturalization status of the people on the list, so I could determine if HERMANDAD MEXICANA NACIONAL had registered non-citizens to vote.

On December 17, 1996, I conducted an interview of the person previously referred to as C.I.#1. C.I.#1 stated he/she applied for United States citizenship through HERMANDAD MEXICANA NACIONAL. This began in February of 1996, after reading an advertisement which indicated HERMANDAD MEXICANA NACIONAL provided the service of assisting individuals in obtaining United States citizenship. C.I.#1 read the advertisement in a newspaper called "Union Hispana," which is published by HERMANDAD MEXICANA NACIONAL. C.I.#1 paid a ninety dollar application fee to the IMMIGRATION and NATURALIZATION SERVICE and a one hundred ten dollar fee to HERMANDAD MEXICANA NACIONAL for processing the naturalization documents.

In February of 1996, C.I.#1 began citizenship classes which were held at the Santa Ana office of HERMANDAD MEXICANA NACIONAL, located at 825 N. Broadway. C.I.#1 eventually took a written test and passed the citizenship class. C.I.#1 stated he/she interviewed with the Immigration and Naturalization Service on June 25, 1996, and completed the final documents for United States citizenship. This interview was conducted at the Santa Ana office of HERMANDAD MEXICANA NACIONAL. C.I. #1 was told by an Immigration official he/she passed his/her interview and would be receiving a date to be sworn in as a citizen within thirty to sixty days. C.I. #1 was told he/she was not yet a United States citizen until being sworn in.

C.I.#1 told me that after he/she completed the interview with the Immigration and

Naturalization Service, he/she was congratulated by employees of HERMANDAD MEXICANA NACIONAL near the entrance of the HERMANDAD MEXICANA NACIONAL building. He/She was then stopped at a location to register to vote. C.I.#1 stated he/she registered to vote at that time, on June 25, 1996.

During my interview with C.I.#1, there was some discrepancy as to the date C.I.#1 was actually registered to vote. I showed C.I.#1 a copy of his/her Voter Registration Form. He/she told me the signature on the form was his/hers, however, his/her printed name, address, and date was not his/her writing. C.I.#1 particularly noticed the number (7) seven written on the date section of the form. He/She stated he/she would never write a (7) seven in the manner it was written on the Voter Registration Form.

I observed that the number (7) seven was written with a line crossing at the center of the number giving it the appearance of a backwards letter "F." I saw that the date written on the Voter Registration Form was "7-19-96."

C.I.#1 was asked if he/she checked the "YES" box at the top of the Voter Registration form, which reads: "ARE YOU A U.S. CITIZEN?" C.I.#1 said he/she did not remember, but, he/she believes someone checked it for him/her because, other than the signature, the writing on the form was not his/hers. C.I.#1 also said he/she was never asked to read the Voter Registration Form prior to signing it.

I showed C.I.#1 a copy of his/her Absentee Ballot application, previously obtained from the Registrar of Voters, and he/she said the signature on the application was his/her, however, the printed name, address and date was not his/her writing. The number (7) seven, which appeared in various places of the application, was written like the (7) seven written on the date of the Voter Registration

Form. However, the printing on the Voter Registration Form and Absentee Ballot application appeared to be different. I observed the date indicated on the Absentee Ballot application was "7-19-96."

During the interview it was noticed that the registration date listed for C.I.#1 on the internal Orange County Registrar of Voters Display Voter Data form, which had been provided by Don Taylor with his October 15, 1996 correspondence to Guy Ormes, indicated a registration date of "7-23-96." C.I.#1 told me he/she signed the two forms and a male Latin employee of HERMANDAD MEXICANA NACIONAL filled out his/her Voter Registration Form. The employee asked C.I.#1 to write his/her personal information on another piece of paper. C.I.#1 complied and gave the piece of paper back to the employee of HERMANDAD MEXICANA NACIONAL.

C.I.#1 told me HERMANDAD MEXICANA NACIONAL personnel registered everyone to vote as they left their interview with the Immigration and Naturalization Service. C.I.#1 stated, "if you investigate, everyone will tell you the same thing." C.I.#1 said approximately thirty subjects exiting their interviews with the Immigration and Naturalization Service were registered to vote by HERMANDAD MEXICANA NACIONAL personnel at the same time he/she was registered.

C.I.#1 stated he/she knew he/she was registering to vote and was made to feel it was alright to register by HERMANDAD MEXICANA NACIONAL employees. C.I.#1 said a few of his/her friends were also registered to vote by HERMANDAD MEXICANA NACIONAL, even though they are not citizens of the United States.

During the interview, I noticed the date on an application completed by C.I. #1 through the Immigration and Naturalization Service, indicated it was completed on June 25, 1996. C.I.#1 stated the document was completed during his/her interview with the Immigration and Naturalization

Service on the same day he/she was registered to vote by HERMANDAD MEXICANA NACIONAL. C.I.#1 indicated the writing on the application for change of name was in fact his/her own handwriting.

C.I.#1 told me the voter registration effort was being coordinated by employees of HERMANDAD MEXICANA NACIONAL known to him as JOSE REFUGIO MEJIA and ROSA IBARRA. I showed C.I.#1 a California Drivers License # N3093404, I had obtained from the Department of Motor Vehicles, which had a photograph of REFUGIO MEJIA. C.I.#1 told me it was the same employee of HERMANDAD MEXICANA NACIONAL involved in registering people to vote on the day he/she was registered to vote. C.I.#1 stated he/she received one ticket for entry into a lottery, to win a car, conducted by HERMANDAD MEXICANA NACIONAL.

C.I.#1 told me he/she lost his/her appointment date to be sworn in as a citizen of the United States and had to contact the Immigration and Naturalization Service to obtain a new date to be sworn in as a citizen.

C.I.#1 stated he began to receive sample ballots in the mail. He/she read the election materials as they came in. After receiving some election materials in Spanish, C.I.#1 realized he/she was ineligible to vote. C.I.#1 went to the Orange County Registrar of Voters office and canceled his/her Voter Registration. C.I.#1 said he/she canceled his/her Voter Registration because he/she realized it was "fraud" to vote without being a citizen.

C.I.#1 stated he/she waited to hear from the Immigration and Naturalization Service for a new appointment, however, it did not come. He/She went to HERMANDAD MEXICANA NACIONAL and spoke to an unknown female. He/She asked some questions regarding some election materials sent to him/her. The female told him/her HERMANDAD MEXICANA

NACIONAL did not send them to him/her. C.I.#1 also questioned his/her eligibility to vote and the female told him/her he/she was ineligible to vote.

On October 23, 1996, C.I.#1 was sworn in as a citizen of the United States. He/She re-registered to vote at the Orange County Registrar's office on October 29, 1996.

C.I.#1 told me he/she has concern for his/her safety because of the information provided to investigators. C.I.#1 stated he/she does not want any problems. C.I.#1 stated he/she fears he/she can be located by HERMANDAD MEXICANA NACIONAL because they have records of him/her on computers which he/she has seen at the Santa Ana office of HERMANDAD MEXICANA NACIONAL.

In examining the documents and interviewing CI#1, I have found a discrepancy between the date (6-25-96) C.I. #1 said he/she registered, and the date (7-19-96) written in the registration date section of CI#1's Voter Registration Form. C.I. #1 says he/she did not write in the date. Election Code Section 18103 states the following: "Any person who knowingly or negligently (a) interferes with the prompt transfer of a completed affidavit of registration to the county elections official, (b) retains a voter's completed registration card, without the voter's authorization, for more than three days, excluding Saturdays, Sunday's, and state holidays, or after the close of registration, or (c) denies a voter the right to return to the county elections official the voter's own completed registration card, is guilty of a misdemeanor punishable by a fine not to exceed one thousand dollars ($1,000)".

On December 20, 1996, I again met with C.I.#1 who gave me a letter he/she received from the Immigration and Naturalization Service. I read the letter and saw that C.I.#1 passed his/her interview on June 25, 1996. C.I.#1 also gave me his/her Registration Form Receipt on which I

observed HERMANDAD MEXICANA NACIONAL stamped as being received by them. C.I.#1 also gave me two ticket stubs which were entries into the lottery held by HERMANDAD MEXICANA NACIONAL.

On November 21, 1996, Orange County Assistant Registrar of Voters DON TAYLOR wrote to Orange County Deputy District Attorney GUY ORMES advising of another possible violation of Election Code Section 18100 (Registration of person not entitled to registration) by HERMANDAD MEXICANA NACIONAL. I read in that correspondence that TAYLOR said Orange County Registrar staff member ERNESTINE VEGA had been contacted, by telephone, on October 29, 1996 by a second subject, who hereinafter in this affidavit will be referred to as C.I.#2. According to the memo from TAYLOR, C.I.#2 told VEGA he/she was registered to vote by HERMANDAD MEXICANA NACIONAL even though he/she was not a citizen of the United States. C.I.#2 further stated he/she had been led to believe that completing his/her citizenship application alone was sufficient to qualify him/her to register to vote.

TAYLOR's memo said C.I. #2 realized he was ineligible to vote after receiving an absentee ballot, and on October 29, 1996, C.I.#2 came to the Orange County Registrar of Voters office and surrendered his/her absentee ballot and canceled his/her incorrect voter registration.

TAYLOR enclosed a copy of C.I. #2's voter registration form, which I examined. It indicated C.I. #2 registered to vote on September 15, 1996. I saw a box was checked at the top of C.I.#2's registration form indicating C.I.#2 was a citizen of the United States. I also observed in the documentation enclosed with TAYLOR's memo an Absent Voter Ballot Application with C.I.#2's name, and an application date of September 15, 1996. We have been unable to arrange an interview with CI#2 to this date.

C.I.#1's voter registration affidavit number and C.I.#2's voter registration affidavit number are both within the range of voter registration affidavit's issued to NATIVO LOPEZ (HERMANDAD MEXICANA NACIONAL) on April 26, 1996. Both numbers are between 30SA370001 and 30SA371000, but were I to state the exact numbers, the identities of C.I.#1 and C.I.#2 would be disclosed.

During the November 26, 1996 meeting at the Registrar of Voters, I was provided with information about two additional persons who called the Orange County Registrar's office questioning the status of their voter registration. ERNESTINE VEGA told me she received a telephone call on October 30, 1996 from a subject who hereinafter will be referred to in this affidavit as C.I.#3. VEGA told me she had a brief conversation with C.I.#3, who said he/she was not yet a citizen of the United States and was registered to vote by HERMANDAD MEXICANA NACIONAL. C.I.#3 told VEGA an employee of HERMANDAD MEXICANA NACIONAL named "FRANCISCO" told him/her it was okay to register to vote. VEGA told C.I. #3 he was ineligible to vote because he/she was not a United States citizen.

I was provided with a copy of C.I. #3's Display Voter Data form during our meeting, and saw October 7, 1996 was the listed registration date. I observed on the Voter Data form that C.I. #3's Voter Registration Affidavit number fell within the range of affidavits signed for by REFUGIO MEJIA on behalf of HERMANDAD MEXICANA NACIONAL on August 28, 1996.

VEGA also told me that on November 1, 1996, she received a telephone call from a subject who hereinafter will be referred to as C.I.#4, who inquired about his/her eligibility to vote after telling VEGA he/she was not a citizen of the United States and had been registered to vote by HERMANDAD MEXICANA NACIONAL. VEGA told C.I. #4 he/she was ineligible to vote.

At the meeting I was also provided with C.I. #4's Display Voter Data Form, on which I observed a registration date of August 19, 1996. The Voter Registration Affidavit number, C.I. #4 registered on, fell within the range of affidavits signed for by NATIVO LOPEZ, representing HERMANDAD MEXICANA NACIONAL, on April 26, 1996.

On December 19, 1996, I conducted an interview of C.I.#3. Prior to conducting the interview, I obtained a copy of C.I.#3's Voter Registration Form and Absentee Ballot application from the Orange County Registrar of Voters office.

C.I.#3 told me he/she was referred to HERMANDAD MEXICANA NACIONAL by a friend who told him/her that he/she could quickly obtain United States citizenship through HERMANDAD MEXICANA NACIONAL. C.I.#3 said that in June of 1996, he/she went to the Santa Ana office of HERMANDAD MEXICANA NACIONAL, located at 825 N. Broadway, and applied for United States citizenship. C.I.#3 also went to citizenship classes which were held at the Santa Ana office of HERMANDAD MEXICANA NACIONAL.

C.I.#3 said that on October 1, 1996, C.I.#3 went to the Santa Ana office of HERMANDAD MEXICANA NACIONAL for an interview with the Immigration and Naturalization Service. C.I.#3 passed his/her interview and completed final documents for United States citizenship. When C.I.#3 exited his/her interview, he/she was told by an unknown female employee of HERMANDAD MEXICANA NACIONAL he/she should register to vote. The female employee was described as a Hispanic who wore glasses and was approximately 40 years old. C.I. #3 told her he/she was not yet a citizen of the United States, but C.I.#3 told me the female subject told him/her to fill out the Voter Registration Form and the Absentee Ballot application and they would hold it until he/she became a citizen. C.I. #3 said he/she was told that once he/she was sworn in as a citizen of the

United States, the documents would be sent in and he/she would be able to vote by mail.

I showed C.I. #3 a copy of his/her Voter Registration Form and he/she indicated he/she filled out the form and signed it on October 1, 1996. I showed him/her a copy of his/her Absentee Ballot and he/she initially said the signature on the document was not his/hers, however, he/she later recalled signing the document. C.I. #3 told me the signature on the Absentee Ballot application was his/hers, however, he/she did not fill out his/her personal information on the form. C.I.#3 recalled that an unknown female employee of HERMANDAD MEXICANA NACIONAL filled out the Absentee Ballot application for him/her. The female employee was described as a Hispanic, approximately 25 years old.

C.I. #3 stated he/she received election materials in the mail and read he/she was ineligible to vote. He/she called HERMANDAD MEXICANA NACIONAL and asked about his/her eligibility to vote. C.I.#3 was told by an unknown employee he/she would have to be sworn as a United States citizen prior to voting.

On November 4, 1996, the day before the election, C.I. #3 told me he/she went to the Santa Ana office of HERMANDAD MEXICANA NACIONAL and spoke to a subject named "FRANCISCO." C.I. #3 indicated "FRANCISCO" is one of the instructors of the citizenship classes held at HERMANDAD MEXICANA NACIONAL. C.I.#3 explained to me that C.I.#3 told "FRANCISCO" he/she received documents to vote, however, he/she had not been sworn as a United States citizen. C.I.#3 told me that "FRANCISCO" told C.I.#3 he/she became a citizen after he/she passed his/her interview with the Immigration and Naturalization Service, and "FRANCISCO" told C.I.#3 he/she could vote.

C.I.#3 stated he/she voted at his/her voting precinct on November 5, 1996. When he/she

arrived to vote, he/she was told he/she could not vote until he/she produced his/her absentee ballot. C.I.#3 returned home, got his/her absentee ballot and returned to the voting precinct. He/she handed over his/her absentee ballot and was allowed to vote.

C.I.#3 told me he/she received a letter from the Orange County Registrar's office, canceling his/her voter registration, after the election. C.I.#3 went to HERMANDAD MEXICANA NACIONAL and spoke to "FRANCISCO." C.I.#3 showed "FRANCISCO" the letter from the Orange County Registrar's office. C.I.#3 told "FRANCISCO" he/she voted because he (FRANCISCO) told him/her that he/she was a citizen. C.I.#3 told me that "FRANCISCO" told C.I.#3 the letter stated he/she could not vote and did not say anything about not being a United States citizen.

C.I.#3 told me he/she did not feel pressured to register to vote. He/she stated he/she believed HERMANDAD MEXICANA NACIONAL was providing a community service by registering people to vote. C.I.#3 stated he/she felt betrayed by HERMANDAD MEXICANA NACIONAL for telling him/her that he/she could register to vote and telling him/her to vote even though he/she was not a United States citizen. C.I.#3 stated he/she did not receive any lottery tickets for the car which was raffled off by HERMANDAD MEXICANA NACIONAL.

C.I.#3 gave me his/her Registration Form Receipt. This was a portion of the Voter Registration Form he/she registered to vote on. He/She also provided me with the top half of the Absentee Ballot application which had been provided by HERMANDAD MEXICANA NACIONAL. I examined the document and observed that the top half of the application for an Absentee Ballot provided the same printed information on the front and back, however, one side was Spanish and the other side was in English. I observed that there are photographs of two (2) subjects on the form.

One person is identified as "MIKE FARBER, Director, Citizens Forum" and the other as "NATIVO LOPEZ, Executive Dir., Hermandad Mexicana Nacional." I read at the top of the form, "CITIZENS FORUM • SANTA ANA, A Project of Hermandad Mexicana Nacional." The main heading reads: **"Vote by mail, win a car!"** I have made a copy of both sides of the top half of the Absentee Ballot application which is attached hereto and incorporated herein by reference as exhibit #2.

C.I. #3 advised me that an unknown female called his/her residence on December 18, 1996 to invite him/her to a Christmas party on December 19, 1996 and also to tell him/her not to talk to anyone who comes to the door asking questions about his/her citizenship. C.I. #3 was told to refer who ever came to the door to HERMANDAD MEXICANA NACIONAL.

On December 6, 1996, at approximately 1430 hours, I conducted an interview of C.I.#4. C.I.#4 stated he/she applied for United States citizenship through HERMANDAD MEXICANA NACIONAL, sometime in January or February of 1996. C.I.#4 began taking citizenship classes at the time he/she applied for citizenship. The classes were held at the Santa Ana office of HERMANDAD MEXICANA NACIONAL, located 825 North Broadway. C.I.#4 eventually finished the classes and passed a written test. C.I.#4 told me the next step in the immigration process was an interview with the Immigration and Naturalization Service, and on July 18, 1996, C.I. #4 had his/her interview with the Immigration and Naturalization Service at the Santa Ana office of HERMANDAD MEXICANA NACIONAL. C.I.#4 stated he/she passed his/her interview and was told by Immigration officials he/she would receive a date to be sworn in as a citizen in the mail.

C.I.#4 said that when C.I. #4 exited his/her interview, he/she was encouraged to register to vote by an unknown employee of HERMANDAD MEXICANA NACIONAL. The HERMANDAD MEXICANA NACIONAL employee told C.I.#4 he/she would be a United States citizen by the time

of the election. C.I.#4 stated persons from HERMANDAD MEXICANA NACIONAL were registering to vote everyone who was exiting their interview with the Immigration and Naturalization Service at the same time. C.I. #4 also told me that he/she signed a Voter registration Form and another document at that time.

C.I.#4 told me that when C.I.#4 received an Absentee Ballot in the mail, he/she called HERMANDAD MEXICANA NACIONAL and questioned his/her eligibility to vote. An unknown female HERMANDAD MEXICANA NACIONAL referred him/her to the Orange County Registrar's office. C.I. #4 called there, and was told by Orange County Registrar of Voters staff member ERNESTINE VEGA, that he/she was ineligible to vote if he/she was not a United States citizen. C.I.#4 said he/she was told to destroy his/her Absentee Ballot by Ms. VEGA. As of December 6, 1996, C.I.#4, said he/she has not been sworn in as a United States citizen.

C.I. #4 told me he/she received two lottery tickets for a Chevrolet Camaro on the day he/she registered to vote. C.I. #4 did not know the reason he/she was given two lottery tickets. C.I. #4 was unable to locate any receipts or documents in reference to this incident.

On December 16, 1996, at approximately 1500 hours, PARKER and I attempted a second interview with C.I.#4. Prior to this date, I obtained a copy of C.I.#4's Voter Registration Form from the Registrar of Voters. I saw the registration date listed on the Voter Registration Form was "8-8-96." I also saw that the "YES" box was checked at the top of the form where it asks "ARE YOU A U.S. CITIZEN." C.I.#4 was uncooperative and told me to contact HERMANDAD MEXICANA NACIONAL when I inquired about this.

I told C.I.#4 I noticed a difference between his name which I observed was printed on the signature line in box 12, and the rest of the printing on his Voter Registration Form. C.I. #4 told me

he/she did not fill out the forms, but printed his/her name on the signature line of the two forms and an unknown employee of HERMANDAD MEXICANA NACIONAL filled out the forms.

I asked C.I.#4 to confirm the date he was registered to vote. C.I.#4 stated he/she was registered to vote on July 18, 1996, after his/her interview with the Immigration and Naturalization Service. I asked C.I.#4 to look at a copy of his/her Voter Registration Form because the registration date indicated was 8-8-96. C.I.#4 refused to look and walked away, and I did not attempt to ask C.I.#4 any more questions.

I also received a copy of C.I.#4's Absentee Ballot application from the Orange County Registrar of Voters. I saw the form was dated 8-8-96, and I noticed the printing of C.I. #4's name on both the Absentee Ballot application and Voter Registration Form signature line, appeared the same. However, the printing of the personal information on other sections of the forms appeared to me to differ from each other.

I also noticed box #13 on C.I.#4's Voter Registration Form was blank. C.I. #4 told me that an employee of HERMANDAD MEXICANA NACIONAL filled out the Voter Registration Form him/her. I read the instructions for box #13 on a blank Voter Registration form provided by the Registrar of Voters Office, and saw the following printed: "Any person who helps someone fill out this form must include in Box 13 his/her signature and date." I also read in that instructions section, "Any person who takes back the completed form to turn it in for you must fill out the receipt stub (below) and give it to you." In addition, I read, "Any person who is paid to take back and turn in this completed form must **sign and also** include in Box 13 the telephone number of the person or organization making the payment." An admonishment is also written in Spanish and English on the actual Voter Registration Form at box 13, directing persons to the instructions for box 13.

On December 23, 1996, I conducted an interview of an individual who hereinafter in this affidavit will be referred to as Confidential Informant (C.I.) #5. C.I.#5 told me he/she attended citizenship classes, which were held at the Santa Ana office of HERMANDAD MEXICANA NACIONAL, approximately one and a half years ago. C.I. #5 failed his/her first interview with the Immigration and Naturalization Service. In August of 1996, C.I.#5 told me he/she passed his/her second interview with the Immigration and Naturalization Service and completed final documents for United States citizenship.

Sometime after passing his/her interview, C.I.#5 told me he/she received a Voter Registration Form in the mail from HERMANDAD MEXICANA NACIONAL. C.I.#5 stated he/she filled out the Voter Registration Form, however, he/she did not send it in right away. I showed C.I. #5 a copy of his/her Voter Registration Form, dated 10-7-96, which I had earlier obtained from the Registrar of Voters Office, and asked if the signature and writing on the form was his/hers. C.I.#5 stated the signature and writing was in fact his/hers.

C.I.#5 told me he/she called HERMANDAD MEXICANA NACIONAL and spoke to an unknown female subject. C.I.#5 told her he/she had received the Voter Registration Form, however, he/she had not been sworn as a United States citizen. CI#5 told me that the female told C.I.#5 it did not matter he/she was not a sworn citizen, but to mail in his/her Voter Registration Form immediately, because "time was running out." C.I.#5 was told by this female he/she needed to mail in the Voter Registration form "that night" or it would be too late to vote. C.I.#5 does not know what date he/she spoke to the female from HERMANDAD MEXICANA NACIONAL. After his/her conversation with the female subject from HERMANDAD MEXICANA NACIONAL, C.I.#5 told me he/she sent his/her child to mail his/her Voter Registration Form.

C.I.#5 later received his/her voting information and told me he/she voted in the November 5, 1996 election even though he/she was not a sworn citizen of the United States. I had C.I.#5 read the "Voter Declaration" on the Voter Registration Form. He/She read it and said he/she understood it. C.I.#5 stated he/she read the "Voter Declaration" on the Voter Registration Form in box 12 before signing it, and that was the reason he/she called HERMANDAD MEXICANA NACIONAL. He/She called them because he/she was not a citizen. However, he/she had confidence in what they told him/her about being able to vote. C.I.#5 said HERMANDAD MEXICANA should be at fault for his/her having voted because they told him/her he/she could vote.

C.I.#5 stated he/she has recently moved and believes all of his/her correspondence with HERMANDAD MEXICANA NACIONAL was thrown into the trash, however, he/she will contact me if he/she finds any documents pertaining to this issue. C.I.#5 stated he/she was sworn in as a United States citizen on November 22, 1996. He/She has not spoken to anyone from HERMANDAD MEXICANA NACIONAL since prior to the election and does not know if they have tried to contact him/her because he/she has moved from the residence which was listed on his/her Voter Registration Form.

In addition, C.I.#5 told me HERMANDAD MEXICANA NACIONAL sent him/her a Voter Registration Form about one and a half years after he/she attended citizenship classes at their facility. I believe this indicates HERMANDAD MEXICANA NACIONAL keeps records of people who go to them for their services.

Congressman DORNAN's complaint also included allegations that HERMANDAD MEXICANA NACIONAL violated federal law and California law by conducting a lottery to encourage subjects to register to vote and also to vote. Attached to Congressman DORNAN's

complaint, was an advertisement from HERMANDAD MEXICANA NACIONAL promoting the lottery of a 1996 Chevrolet Camaro. I have previously mentioned lottery tickets which some of the informanants had been given. The advertisement was in Spanish, which I am able to speak, read and understand. I am fluent in the Spanish language and have so been certified in the Courts of this state.

PARKER told me he requested LAURA EASTMENT, who is a holder of a certificate from the United States District Courts and a certified United Nations Interpreter and Translator in Spanish, to translate the advertisement. The following is EASTMENT'S translation of the HERMANDAD MEXICANA NACIONAL advertisement (which identifies HERMANDAD MEXICANA NACIONAL as the National Mexican Brotherhood), concerning the ways a person may enter the lottery :

1. Filling out an application for United States citizenship.
2. Becoming a member of the National Mexican Brotherhood.
3. Registering to vote.
4. Request to vote by mail.
5. Submitting proof of having voted in the March 26, 1996 and/or November 5,1996 elections.
6. Renew membership in the National Mexican Brotherhood.
7. Buy additional tickets for $10.00 each.
8. Present an immigration request for a family member or other legal services.

A copy of the advertisement sent by Congressman ROBERT DORNAN and a copy of the translated version is attached hereto and incorporated herein by reference as exhibits #3A and #3B, respectively. I have reviewed EASTMAN'S translation and have found it to be accurate.

The Orange County District Attorney's Office received a written complaint from Congressman ROBERT DORNAN on November 21, 1996, which I have examined, and found to be very similar to that submitted to the Secretary of State.

PARKER told me he requested California Secretary of State office assistant ROSA MILLER to telephone HERMANDAD MEXICANA NATIONAL and ascertain who won the lottery of the 1996 Chevrolet Camaro. MILLER told PARKER that an unknown employee of HERMANDAD MEXICANA NATIONAL told MILLER the lottery was won by LORENZO VILLANUEVA from the city of Fullerton, California. This conversation was conducted in Spanish. MILLER is a California State certified Spanish speaker, PARKER told me.

PARKER told me he went to the Santa Ana office of HERMANDAD MEXICANA NACIONAL on December 5, 1996, to speak with NATIVO LOPEZ who is the Director of HERMANDAD MEXICANA NACIONAL. However, PARKER was told by an HERMANDAD MEXICANA NATIONAL staff member that LOPEZ was out of town. While in the HERMANDAD MEXICANA NACIONAL building, PARKER saw a newspaper titled "Union Hispana." I have examined copies of this publication and determined it is a Spanish language newspaper which is published by HERMANDAD MEXICANA NACIONAL and is free of charge. PARKER told me he took one of the newspapers which had a photograph of the lottery winner standing by a Chevrolet Camaro. The winner's family was also in the photograph.

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I examined the newspaper and saw the caption for the photograph read: **"Felicidades familia Villanueva ! Ganadores de un Camaro 96 en la Gran Rifa Anual DE HERMANDAD MEXICANA NACIONAL."**. Translated into English, the caption reads: **Congratulations Villanueva family ! Winners of a 96 Camaro in the Annual Grand Raffle of HERMANDAD MEXICANA NACIONAL.**

On the front paper license plate of the vehicle in the picture, I could read "GUARANTY CHEVROLET," which I know to be a dealership located in the City of Santa Ana. The photograph appeared to have been taken in front of the Guaranty Chevrolet dealership.

PARKER told me he went to GUARANTY Chevrolet, 711 East 17th Street, Santa Ana, and spoke to General Manager BRUCE HAMLIN. PARKER told me that HAMLIN said the location of the photograph was in fact the front of the GUARANTY Chevrolet dealership, however, he did not know anything about a lottery involving HERMANDAD MEXICANA NACIONAL or the purchase of a Camaro by the organization. PARKER told me HAMLIN said that a search of the dealerships records was completed, but they were unable to locate a vehicle purchased by HERMANDAD MEXICANA NACIONAL or LORENZO VILLANUEVA.

PARKER inquired about the price of a 1996 Chevrolet Camaro and was informed the price ranged from eighteen thousand ($18,000) to twenty thousand ($20,000) dollars. HAMLIN was shown the photograph of the red Chevrolet Camaro from the Union Hispana newspaper and could not determine if the vehicle was a 1995 or 1996 model.

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PARKER told me he returned to HERMANDAD MEXICANA NACIONAL and spoke to staff member JAY LINDSEY. LINDSEY stated he could not provide PARKER with any information regarding the lottery. LINDSEY told PARKER he would have to speak with NATIVO LOPEZ about the lottery, however, LOPEZ was out of town.

PARKER was unable to identify LORENZO VILLANUEVA and went to the Fullerton Police Department to ascertain if they were familiar with him. PARKER said he contacted Sergeant BONNIE CLANIN who told him she was familiar with VILLANUEVA from prior contacts with him. Sergeant CLANIN identified VILLANUEVA from the photograph in the newspaper "Union Hispana."

PARKER told me that he and Sergeant CLANIN located an address for VILLANUEVA, 431 W. West Avenue, Fullerton, California on December 6, 1996. PARKER located VILLANUEVA at this address and conducted an interview, which he told me about. VILLANUEVA told PARKER he was the winner of the lottery held by HERMANDAD MEXICANA NACIONAL. PARKER asked VILLANUEVA for information on the Chevrolet Camaro he had won. VILLANUEVA told PARKER he got a twelve thousand dollar ($12,000) credit for winning the lottery, and purchased a 1990 Chevrolet Astro van with the proceeds. VILLANUEVA produced the vehicle identification documents and showed them to PARKER.

PARKER told me VILLANUEVA told PARKER he received the winning lottery ticket when he registered to vote at HERMANDAD MEXICANA NACIONAL. PARKER asked VILLANUEVA if he voted in the November 5, 1996 election, and VILLANUEVA said he did not because he was not a United States citizen. VILLANUEVA provided PARKER with a photocopy of the winning lottery ticket #03987 and the ticket stub dated April 25, 1996.

On December 9, 1996, PARKER obtained a copy of VILLANUEVA's Voter Registration Form from the Orange County Registrar of Voters office, and showed it to me. I examined the affidavit, and saw that it was affidavit number 30SA370693, and listed the name of LORENZO VILLANUEVA MILLAN. The listed address and personal information matched that of LORENZO MILLAN VILLANUEVA, where PARKER interviewed him. The Voter Registration Affidavit number 30SA370693, which VILLANUEVA registered to vote on, falls within the range of affidavits taken by NATIVO LOPEZ of HERMANDAD MEXICANA NACIONAL on March 26, 1996.

On VILLANUEVA's Voter Registration Form I observed a date of "8-8-96" written as the date of registration. PARKER said VILLANUEVA told him during their interview, that he received a ticket for the car lottery on the day he registered to vote. I read, in a December 10, 1996, Orange County Register article concerning the lottery, that NATIVO LOPEZ said "in April, he said, a political consultant advised HERMANDAD that it was inappropriate to offer entry to the drawing for voter registration or proof of voting, and so the organization entered only people who used other HERMANDAD services." Based on VILLANUEVA'a statements to PARKER, this may not be accurate.

PARKER told me he later went to Discount Auto Super Store, 626 South Euclid Street, Fullerton, and spoke to manager MIKE KEEGAN. KEEGAN told PARKER the Chevrolet Astro van was delivered to VILLANUEVA from his dealership, however, the actual sale occurred at 851 North Anaheim Blvd., Anaheim, California. PARKER told me he went to that location and obtained a copy of the check used in the transaction and sales information for the vehicle won by VILLANUEVA.

He gave me a copy of the check used for the purchase of the vehicle, and I observed it was

a check with the name and address, HERMANDAD MEXICANA NACIONAL, Santa Ana, 825 N. Broadway imprinted on it. I also observed the printed name of Union Bank, and an account number of #122000496 imprinted on it. I read the amount of the check was $12,000.00, the check was dated November 20, 1996, and was payable to LORENZO VILLANUEVA, 431 W. West Ave. Apt.#B, Fullerton, California. The imprinted check number was 6964.

PARKER told me that on December 9, 1996, he sent a telephone facsimile transmission a to an Immigration and Naturalization Service staff member known to him, YELBA REYES, requesting a record check for naturalization of LORENZO VILLANUEVA. PARKER said REYES checked Immigration and Naturalization records and informed PARKER, via facsimile, that VILLANUEVA was a Resident Alien and not a citizen of the United States.

On November 27, 1996, I conducted a California Department of Motor Vehicles records check and located a California Drivers License number S0941676 for NATIVO VIGIL LOPEZ, DOB: 10-3-51, 2218 South Van Ness Street, Santa Ana. NATIVO LOPEZ is described as a male Hispanic, 5-9 / 188, brown hair, and brown eyes. A California Department of Motor Vehicles photograph of NATIVO LOPEZ was ordered on November 27, 1996.

I conducted a California Department of Motor Vehicles records check and located a California Drivers License number N3093404 for REFUGIO MEJIA, DOB: 2-25-46, 3524 West Washington #H, Santa Ana. REFUGIO MEJIA is described as male, 5-7 / 175, black hair, and brown eyes. A California Department of Motor Vehicles photograph of REFUGIO MEJIA was ordered on November 27, 1996. I conducted a California Department of Motor Vehicle records check and was unable to locate any information to confirm the identity of MARIA ROSA IBARRA.

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On January 3, 1997, PARKER and I met with Immigration and Naturalization Service Distric Director RICHARD ROGERS, Supervisor FRANK JOHNSTON, and Assistant Director o Adjudication JANE ARELLANO. I had earlier asked for information on the 1,160 names on th Voters Returning Ballots (Exhibit 1) printout from the Registrar of Voters, and we were provide with preliminary information in reference to the VOTERS RETURNING BALLOTS list I sent t them on December 10, 1996. These officials told PARKER and I the following:

- 491 subjects registered by HERMANDAD MEXICANA NACIONAL became United State citizens prior to November 1, 1996.
- 3 subjects registered by HERMANDAD MEXICANA NACIONAL became United State citizens after November 1, 1996.
- 177 subjects registered by HERMANDAD MEXICANA NACIONAL are currently in th process of becoming United States citizens, but are not yet citizens. (As a result, I believ these subjects illegally registered to vote; they are part of the 229 subjects identified a "NNP.")
- 51 subjects registered by HERMANDAD MEXICANA NACIONAL have not submitted a application for United States citizenship, however, they are resident aliens. (As a result, believe these subjects illegally registered to vote; they are part of the 229 subjects identifie as "NNP.")
- 1 subject registered to vote by HERMANDAD MEXICANA NACIONAL was deni United States citizenship. (As a result, I believe this subject illegally registered to vote; he/sl is part of the 229 subjects identified as "NNP.")
- 266 of these subjects cannot be found in Immigration and Naturalization records. 153 of t

266 subjects listed the United States as their birthplace according to the Voters Returning Ballots list, and therefore would not be in any Immigration and Naturalization records.

As of January 3, the Immigration and Naturalization Service was still in the process of finalizing their review of the VOTERS RETURNING BALLOTS list for more specific information. ARELLANO informed me HERMANDAD MEXICANA NACIONAL would have received a list of interview dates and naturalization (swearing in) dates from the Immigration and Naturalization Service.

On January 8, 1997, the Immigration and Naturalization Service provided PARKER and I with our VOTERS RETURNING BALLOTS list (Exhibit 1), with annotations indicating their preliminary results. I observed to the right of the printed name of the individuals some handwritten initials, and to the far right, some handwritten dates. According to the January 8, 1997 memo to me from JOHN BUTLER, JR., Section Chief at the Immigration and Naturalization Service, which accompanied our list, and has been made part of Exhibit 1, the abbreviations are explained as follows:

NNP = Not Naturalized Pending

NR = No Record

PSR = Pending Status Review

DATE = Date of Naturalization

John BUTLER told me that Not Naturalized Pending meant that the individual was in the process of becoming naturalized, but had not yet completed their final INS interview, and therefore were **not** yet United States Citizens. BUTLER told me that the number of "NNP" individuals originally believed to be 229 at our January 3 meeting, had been reduced to 227 because two of those had been naturalized, as explained in his memo, which is attached to Exhibit #1. I have quickly

compared INS' handwritten date of naturalization with the date registered to vote on the printouts, and counted many individuals who registered to vote before they were sworn in as citizens. INS has promised to provide more complete detailed information in the future.

On January 7, 1997, California Secretary of State Investigator GAYLE PARKER told me he saw a photograph in the newspaper Union Hispana which had a corresponding story. The story referred to a female in the photograph as MARIA ROSA IBARRA-LOPEZ. PARKER conducted a Department of Motor Vehicles record check and located MARIA ROSA LOPEZ, California drivers license number #C1286447, DOB 8-29-50, AKA: MARIA ROSA IBARRA LOPEZ, who resided at 2218 S. Van Ness, Santa Ana. The residence listed for MARIA ROSA IBARRA LOPEZ is the same address listed by NATIVO LOPEZ on his California drivers license.

District Attorney's Investigator Randy H. Sorley, who works with me in the Special Assignments Section, told me he has been a police officer in the State of California since April 15, 1977. Sorley said he was first employed as a police officer for the City of Anaheim, and has been employed as an investigator for the Orange County District Attorney's Office since March 13, 1986. He has a Bachelor of Science Degree in Administration of Justice with Concentration in Law Enforcement from San Jose State University.

Sorley told me that since March 1993, he has been assigned to the Special Assignments Unit where he assists all other investigative units in the forensic examination of computers. Prior to that assignment Sorley told me he was assigned to the Major Fraud unit for five years where he specialized in investigating business and white collar crimes.

Sorley told me that he has forensically examined and recovered evidence from computers seized during the execution of search warrants. He attended several local colleges completing classes

in word processing, databases, spreadsheets, advanced DOS and computer information systems. He completed classes in the computer programming languages of BASIC and PASCAL.

Sorley told me he is a member of the International Association of Computer Investigative Specialists (IACIS). He received his DOS Seizure Certification from IACIS after completing an eighty hour computer forensics and seizure training seminar. He received his DOS Processing Certification after completing a year long computer forensics examination class conducted by IACIS. He received his Seizure and Examination of Microcomputers certification from the California Department of Justice Search Group.

Sorley told me he has seized over twenty computers pursuant to search warrants on which he was the affiant. He has also assisted in the execution of many more search warrants involving the seizure of computers. These search warrants were served on small and large businesses as well as private residences. He has forensically examined approximately twenty-five seized computers which were used by narcotics suspects, homicide suspects, fraudulent telemarketing businesses (boiler rooms) and other types of crimes where computers were used to store data. He has testified in court as an expert witness on computer forensics data recovery.

Sorley told me, that based on his training and personal experience, that businesses, of all sizes and types, use computers to store business related documents and data. Computers have become a necessary and integral part of conducting business. They are used to store client data bases, mailing lists, internal correspondence, employee information and schedules, financial data and a host of other business uses.

I told Sorley that confidential informant(s) told me the following: (1) the confidential informant saw at least one computer inside this business; (2) the confidential informant received

documents from this business a few months after making contact with the business; and (3) the business was processing a large volume of clients.

Sorley told me, that based on his training and experience in investigating business crimes and in seizing and processing computers from businesses, combined with the information provided by the confidential informant(s), he believes that computer(s) and other computer generated storage media and hardware, as described in item number 9 of the property to be searched for ("For the following property"), and further defined below, which he believes are located inside the Hermandad Mexicana Nacional business, will contain business and client records similar to those described in items one through eight of the property to be searched for.

Randy Sorley told me the following computer terminology and words would be useful in describing the various computer and storage media utilized by many businesses. They are listed here for the purpose of providing appropriate general definitions.

HARDWARE - The physical bits and pieces of the computer such as the keyboard, terminal, video display and disk drive.

SOFTWARE - This is the general term that applies to all computer programs that run on computer hardware.

DISK DRIVE - A hardware mechanism used to read and write data to and from a diskette.

DISKETTE - A magnetic medium in which data may be stored. The diskette is a portable way to store data and programs. It is generally available in two forms for most personal computers. The floppy disk is generally 5¼" square and flexible, the 3½" diskettes are rigid.

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HARD DISK OR HARD DRIVE - A magnetic medium on which data can be stored. The hard disk is usually a permanent internal part or the central processing unit (CPU). It may be externally attached to the CPU.

MAGNETIC TAPE - A magnetic medium, similar in function to diskettes, in which data can be stored. It can be, but is not limited to, audio cassette, video cassette or reel form.

TAPE DRIVE - A hardware mechanism used to read and write programs and data to magnetic tape.

I request the identity of confidential informants (C.I.) #1, #2, #3, #4, and #5 remain confidential for the following reasons. I have been informed by C.I.#1 and C.I.#3 that HERMANDAD MEXICANA NACIONAL is contacting individuals they registered to vote, by telephone, and advising them not to cooperate with anyone who comes to their home asking questions about their citizenship. C.I.#1 stated he/she fears retribution by HERMANDAD MEXICANA NACIONAL if he/she cooperates with law enforcement. C.I. #1 told me HERMANDAD MEXICANA NACIONAL is very powerful and would harm him/her if it was known he/she was cooperating with law enforcement. For these reasons, and to protect the integrity of this investigation, as well as the identity of those individuals who have cooperated, I request these persons' identity remain confidential.

On December 30, 1996 I received a call from C.I.#3 who told me he/she wanted to remain anonymous in reference to this investigation. He/she feared for his/her personal safety and that of his/her family's safety for cooperating with law enforcement. C.I.#3 told me HERMANDAD MEXICANA NACIONAL wrote him/her a letter advising him/her not to answer questions from law enforcement pertaining to his citizenship. The letter cited the Fifth Amendment of the United States

Constitution for not answering questions. C.I.#3 informed me he/she threw the letter away.

Investigator GAYLE PARKER told me that when he was inside the HERMANDAD MEXICANA NACIONAL building, he observed a sign reading Legal Clinic. As a result, I suspect there may be either a some sort of legal clinic inside the building, or there may be a claim by HERMANDAD MEXICANA NACIONAL personnel that some documents are privileged attorney client materials. Should that be the case, we have arranged to have a Special Master available, should the need arise.

GUY ORMES told me that he has made arrangements with attorney Richard Thomas PETERSON, who ORMES said was on the State Bar's list of Special Masters, to be available in the District Attorney's Office, several blocks away from the search site on Tuesday morning, January 14, the date we are planing to execute this search warrant. If a privilege is claimed, we will bring Special Master PETERSON to the scene of the search.

CONCLUSIONS

Based on the totality of the information set forth in this affidavit, I believe property sought in this Search Warrant will tend to establish the following violations, and will be evidence of which particular person(s) committed the violation(s):

Over the past several months, employees of the organization known as HERMANDAD MEXICANA NACIONAL willfully and unlawfully committed a felony, to wit registration of persons not entitled to registration as defined by Election Code Section 18100(a) and 18100(b).

- 18100(a): Every person who willfully causes, procures, or allows himself or herself or any other person to be registered as a voter, knowing that he or she or that other person is not entitled to registration.

- 18100(b): Every person who knowingly and willfully signs, or causes or procures the signing of, an affidavit of registration of a nonexistent person, and who mails or delivers, or causes or procures the mailing or delivery of, that affidavit to a county elections official.

Based on the facts described above, your affiant believes probable cause exists that the following offenses have been committed:

1. REGISTERING UNQUALIFIED PERSONS TO VOTE.

Elections Code section 18100 provides: "Every person who willfully causes, procures, or allows himself or herself to be registered as a voter, knowing that he or she or that the other person is not entitled to registration, is punishable by imprisonment in the state prison for 16 months or two or three years, or in a county jail for not more than one year." Based on the interviews with the CIs and the records obtained from the Orange County Registrar of Voters and the federal Immigration and Naturalization Service, it appears that Hermandad Mexicana Nacional assisted hundreds of persons to register to vote. At least 227 of those registered to vote were not qualified by virtue of not yet being citizens of The United States. Elections Code section 2101 provides, "A person is entitled to register to vote shall be a United States citizen . . . ." California Constitution, Article II, Section 2 provides: "A United States citizen 18 years of age and resident of this state may vote."

2. CASTING A FRAUDULENT VOTE AND ASSISTING AN UNQUALIFIED PERSON TO VOTE.

Elections Code section 18560 makes it an alternate felony/misdemeanor to fraudulently vote or attempt to vote when not entitled to vote. Elections Code section 18561 provides: Every person

is punishable by imprisonment in the state prison for 16 months or two or three years who: (a) Procures, assists counsels, or advises another person to give or offer his vote at any election, knowing that the person is not qualified to vote. (B) Aids or abets in the commission of any of the offenses mentioned in Section 18560." As explained above, the persons taking citizenship classes at Hermandad Mexicana Nacional not only registered to vote (with the assistance and at the urging of Hermandad Mexicana Nacional personnel) but many voted.

3. PERJURY THE SUBORNATION OF PERJURY

All voter registration affidavits are signed under the penalty of perjury. The affidavits require the person registering to vote to sign the affidavit, under penalty of perjury, declaring that he or she is a citizen of the United States. Elections Code section 2102 requires that voter registration affidavits be certified as to their truthfulness and correctness, under penalty of perjury by the signature of the affiant.

Penal Code section 118 provides in part: "[E]very person who testifies, declares, deposes, or certifies under penalty of perjury in any of the cases in which the testimony, declarations, depositions, or certification is permitted by law of the State of California under penalty of perjury and willfully states as true any material matter which he or she knows to be false, is guilty of perjury." This section would apply to the noncitizens who signed voter registration affidavits certifying they were United States citizens.

Penal Code section 127 provides, "Every person who willfully procures another person to commit perjury is guilty of subornation of perjury, and is punishable in the same manner as he would be if personally guilty of the perjury so procured." The Hermandad Mexicana Nacional personnel

who had the numerous persons attending citizenship interviews register to vote appear to have violated this section.

4. CONSPIRING TO RUN AN ILLEGAL LOTTERY.

Hermandad Mexicana Nacional officials and personnel organized and operated a "raffle" for the alleged grand prize of a 1996 Chevrolet Camaro. Raffle tickets were available to people who registered to vote, applied for an absentee voter ballot, paid ten dollars, joined Hermandad Mexicana Nacional or renewed their membership, applied for citizenship for themselves or family members through Hermandad Mexicana Nacional, or supplied proof of having voted in the March or November 1996 elections. The "raffle" constituted an illegal lottery under Penal Code section 319 because tickets were offered for sale for ten dollars and for other valuable consideration. Penal Code section 319 defines a lottery as "any scheme for the disposal or distribution of property by chance, among persons who have paid or promised to pay any valuable consideration for the chance of obtaining such property . . . upon any understanding or expectation that it is to be distributed or disposed of by lot or chance . . . ." By running the raffle as a group, Hermandad Mexicana Nacional personnel appear to have conspired together to conduct an illegal lottery in violation of Penal Code section 182/319.

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For the reasons enumerated above concerning the confidential informants, and because this investigation is most sensitive, especially to certain segments of the community, I am requesting that this Affidavit be sealed, pending further order of this court.

I pray a Search Warrant be issued based on the above facts.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: January 13, 1997

EDWARD R. CONTRERAS, INVESTIGATOR

Subscribed and sworn before me on this 13th day of January 1997 at 3:42 P.M.

JUDGE OF THE CENTRAL MUNICIPAL COURT

WHEREFORE, it is prayed that a Search Warrant be issued.

MICHAEL R. CAPIZZI, DISTRICT ATTORNEY
COUNTY OF ORANGE, STATE OF CALIFORNIA

BY
JOHN ANDERSON
DEPUTY DISTRICT ATTORNEY

APPENDIX G: CONTESTANT'S CRIMINAL COMPLAINT AGAINST HERMANDAD MEXICANA NACIONAL

FAILURE TO COMPLY WITH FEDERAL CONTESTED ELECTION ACT SUBPOENAS—H. RES. 244

In the *Dornan* v. *Sanchez* case 11 parties[88] failed to comply with subpoenas issued under the Federal Contested Election Act.[89]

Section 390 of the FCEA provides that "Every person who, having been subpoenaed as a witness under the Act to give testimony or produce documents, willfully makes default * * * shall be deemed guilty of a misdemeanor. * * *"

Amongst the parties defaulting is Hermandad Mexicana Nacional, the organization at the center of the vote fraud allegations in this case. On May 1, 1997 Hermandad failed to comply with a subpoena as modified by the Committee on House Oversight on April 16, 1997. On May 14th Contestant Dornan referred Hermandad to the U.S. Attorney in Los Angeles for prosecution pursuant to 2 U.S.C. §390. After an exchange of correspondence between the US Attorney and the Contestant, the Department of Justice failed to take any action against Hermandad. Therefore, the Committee inquired as to the status of the criminal complaint on June 23rd. The Department of Justice responded on July 25th that the complaint was still under review. Once again, the Department of Justice was impeding the investigation of this contested election. Therefore, the Committee reported to the House of Representatives and the House passed H. Res. 244 calling upon the Department of Justice to fulfill its responsibility to enforce the provisions of the Federal Contested Elections Act.

The Justice Department has never prosecuted any entity for defaulting on a lawful subpoena issued under the Federal Contested Elections Act.

Without the assistance of the Executive Branch proper adjudication of a contested election has been severely hampered.

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[88] Hermandad Mexicana Nacional, Hermandad Mexicana Nacional Legal Center, Nativo Lopez, the Committee for Loretta Sanchez, Nativo Lopez for School Board, Humberto Corona, Michael Farber, Lou Correa for State Assembly, Southwest Voter Registration Project, Benny Hernandez, and One-Stop Immigration and Education Center.

[89] 2 U.S.C. § 388.

DATE May 14, 1997

COMPLAINT REPORT

Instructions: A complaint regarding a federal crime may be registered with the United States Attorney for the Central District of California by completing this form and delivering it to the receptionist or mailing it to: United States Attorney, 312 North Spring Street, Los Angeles, California 90012. Use the reverse side of this form if more space is required.

1. Name: Robert K. Dornan
   Address: c/o Hart, King & Coldren, 200 E. Sandpointe, Ste. 400, Santa Ana, CA 92707
   Telephone: Area Code (714) Number: 432-8700 Age: 63
   Occupation: Former U.S. Congressman, 46th Congressional District

2. What federal crime do you believe has been committed? Violation of Section 390 of the Federal Contested Election Act entitled, "Penalty for Failure to Appear, Testify, or Produce Documents".

3. Explain in detail what you know about the crime, including when and where it occurred, what you have heard and observed and when you heard and observed it, what others have told you (include their names) and what other evidence may exist. Hermandad Mexicana Nacional and Hermandad Mexicana Nacional Legal Center and their custodians of records are in violation/default of Committee on House Oversight, House of Representatives of the Congress of the United States' April 18, 1997, orders to produce documents in response to Subpoenas Duces Tecums served by Robert K. Dornan on their custodians of records in the context of the Congressional Election Contest filed by Mr. Dornan against Loretta Sanchez. See attached Letter Complaint for details.

4. Have you reported the crime to any federal, state, or local offices or agencies? Yes. If yes, who did you report it to, when did you report it, and what action was taken? The Committee on House Oversight, House of Representatives of the Congress of the United States. Prosecution of misdemeanor pursuant to Section 390 of the Federal Contested Election Act properly brought by the U.S. Attorney's Office.

5. Have you reported the crime to a private attorney? Yes. If yes, who did you report it to, when did you report it and what action was taken? Attorneys for Hermandad Mexicana Nacional and Hermandad Mexicana Nacional Legal Center and the attorneys for Loretta Sanchez.

Original for action by Chief of Complaints
Copy 1 for file
Copy 2 for complaining party

ROBERT S. COLDREN
GARY R. KING
WILLIAM R. HART
CANDICE L. CAMPBELL
JOHN H. PENTECOST
C. WILLIAM DAHLIN
GLENN MONDO

BARBARA J. DIBBLE
CHRISTOPHER R. ELLIOTT
RICHARD P. GERBER
LINDA J. LESTER
RACHELLE E. MENAKER
ROBERT J. MULVIHILL

HART, KING & COLDREN

A PROFESSIONAL LAW CORPORATION

200 EAST SANDPOINTE, FOURTH FLOOR
DIRECT ALL MAIL TO: P.O. BOX 2507
SANTA ANA, CALIFORNIA 92707
TELEPHONE (714) 432-8700
FACSIMILE (714) 546-7457

INLAND EMPIRE OFFICE
3350 SHELBY STREET, SUITE 200
ONTARIO, CALIFORNIA 91764
TELEPHONE (909) 944-2514

OF COUNSEL
MICHAEL J. SCHROEDER, P.C.
JOHN C. TEAL, JR.

May 13, 1997

Nora M. Manella, U.S. Attorney
United States Attorney's Office
312 North Spring Street
Los Angeles, CA 90012

Attn: Citizen Complaint Unit

Re: In the Matter of the Contested Election of Loretta Sanchez for the Office of the House of Representatives to the United States Congress, Robert K. Dornan, Contestant v. Loretta Sanchez, Contestee

Dear Ms. Manella:

Please permit this letter to serve as a Complaint on behalf of Contestant, Robert K. Dornan ("Dornan") In the Matter of the Contested Election of Loretta Sanchez for the Office of the House of Representatives to the United States against Hermandad Mexicana Nacional and Hermandad Mexicana Nacional Legal Center and their Custodians of Records.

1. Nature of Offense.

Dornan contends in this Complaint that both Hermandad Mexicana Nacional and Hermandad Mexicana Nacional Legal Center and their Custodians of Records are guilty of a misdemeanor punishable by a fine of not more than $1,000 nor less than $100 or imprisonment for not less than one month nor more than 12 months, or both, pursuant to the Federal Contested Election Act, 2 U.S.C. § 390, for wilfully refusing to produce documents that have been ordered produced by the Committee on House Oversight, House of Representatives of the Congress of the United States.

Section 390 of the Federal Contested Election Act entitled, "Penalty for Failure to Appear, Testify, or Produce Documents" provides as follows:

> "Every person who, having been subpoenaed as a witness under this Act to give testimony or to produce documents, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the contested election case, shall be deemed guilty of a misdemeanor punishable by fine of not more than $1,000 nor less than $100 or imprisonment for not less than one month nor more than twelve months, or both."

A true and correct copy of Section 390 of the Federal Contested Election Act is attached hereto and marked Exhibit "1."

As set forth in detail herein, on April 18, 1997, the Committee on House Oversight of the House of Representatives of the Congress of the United States ordered Hermandad Mexicana Nacional and Hermandad Mexicana Nacional Legal Center to produce certain documents in response to Contestant, Robert K. Dornan's subpoenas. A true and correct copy of the April 18, 1997 orders are attached hereto and marked collectively as Exhibit "2."

Neither Hermandad Mexicana Nacional nor Hermandad Mexicana Nacional Legal Center have complied with the Committee on House Oversight's April 18, 1997 orders and they are therefore in violation of said orders and are subject to misdemeanor penalties including a fine of not more than $1,000 nor less than $100 or imprisonment for not less than one month nor more than 12 months, or both pursuant to Federal Contested Election Act § 390.

2. BRIEF STATEMENT OF FACTS.

On November 5, 1996, Loretta Sanchez was elected to the United States House of Representatives, defeating incumbent, Robert K. Dornan.

On December 26, 1996, Dornan filed an election contest with The Committee on House Oversight for the United States House of Representatives. A true and correct copy of the Notice of Election Contest is attached hereto and marked as Exhibit "3".

On March 13, 1997, the United States District Court for the Central District of California, Southern Division in Santa Ana, the Honorable Gary L. Taylor, Judge presiding, entered an order which among other things, vacated certain subpoenas previously issued to Dornan and clarified the role of the United States District Court in issuing subpoenas pursuant to the Federal Contested Elections Act.

Subsequent to March 17, 1997, the Honorable Gary L. Taylor, Judge of the United States District Court for the Central District of California, issued 33 subpoenas pursuant to Dornan's request. A true and correct copy of the subpoenas served on Hermandad Mexicana Nacional and Hermandad Mexicana Nacional Legal Center are attached hereto and marked Exhibit Nos. "4" and "5," respectively.

On or about March 20, 1997, Hermandad Mexicana Nacional and Hermandad Mexicana Nacional Legal Center through their attorney, Mark S. Rosen, filed motions to quash or modify the subpoenas with the Clerk of the House of Representatives of the United States of America. The motions to quash raised various objections including First Amendment rights, overbroad, burdensomeness, lack of due process, lack of relevancy, Fifth Amendment rights, and constitutionality of the Federal Contested Election Act and other irregularities. A true and correct copy of the Motions to Quash are attached hereto and marked Exhibits "6" and "7."

On or about April 4, 1997, Dornan filed a Motion to Compel Compliance with the Subpoenas with the Clerk of the House of Representatives of the United States. A true and correct copy of Dornan's Motion to Compel Compliance is attached hereto and marked Exhibit "8."

On April 18, 1997, the Committee on House Oversight of the House of Representatives of the Congress of the United States issued two orders requiring Hermandad Mexicana Nacional and Hermandad Mexicana Nacional Legal Center to produce the subpoenaed documents, with some minor modifications to the subpoenas. See Exhibit "2" attached hereto. The Committee on House Oversight sent a copy of its orders to Hermandad Mexicana Nacional and Hermandad Mexicana Nacional Legal Center care of their attorney Mark S. Rosen, Esq., 2107 N. Broadway, Suite 202, Santa Ana, California 92706. Both Hermandad Mexicana Nacional and Hermandad Mexicana Nacional Legal Center thus have notice of the Committee on House Oversight's orders and have at all times relevant herein been able to comply with said orders but have without justification refused to comply.

Dornan's counsel, William R. Hart, has signed the requisite Protective Order required as a condition precedent to the production of the documents and said Protective Order has been sent to the Clerk of the House of Representatives of the Congress of the United States.

3. CONCLUSION.

For the reasons stated herein, Dornan contends that Hermandad Mexicana Nacional and Hermandad Mexicana Nacional Legal Center are guilty of a misdemeanor pursuant to Federal Contested Elections Act § 390 in that they are in default of the April 18, 1997 orders

of the Committee on House Oversight of the House of Representatives of the Congress of the United States.

Robert K. Dornan respectfully requests that your office immediately undertake an investigation into this matter and recommend misdemeanor prosecutions for each violation of 2 U.S.C. §390 et. seq. against both Hermandad Mexicana Nacional and Hermandad Mexicana Nacional Legal Center and their custodians of records.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

HART, KING & COLDREN

William R. Hart

WRH:RPG:wp

cc: Committee on House Oversight
U.S. House of Representatives
Mark Braden
Mark Rosen
Wylie Aitken
Fred Woocher

71362.001\162858.wp

bcc: Robert K. Dornan

HART, KING & COLDREN

A PROFESSIONAL LAW CORPORATION

200 EAST SANDPOINTE, FOURTH FLOOR
DIRECT ALL MAIL TO: P.O. BOX 2507
SANTA ANA, CALIFORNIA 92707
TELEPHONE (714) 432-8700
FACSIMILE (714) 546-7457

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ONTARIO, CALIFORNIA 91764
TELEPHONE (909) 944-2514

OF COUNSEL
MICHAEL J. SCHROEDER, P.C.
JOHN C. TEAL, JR.

97 JUN -5 AM 9:55
OVERSIGHT

June 2, 1997

Nora M. Manella, U.S. Attorney
United States Attorney's Office
312 North Spring Street
Los Angeles, CA 90012

Re: Robert K. Dornan, Contestant vs. Loretta Sanchez, Contestee

Re: Hermandad Mexicana Nacional and Hermandad Mexicana Nacional Legal Center

Dear Ms. Manella:

As you know, we caused to be filed with your office on May 14, 1997, a complaint seeking the attention of the United States Attorney's Office in connection with the failure of Hermandad Mexicana Nacional and Hermandad Mexicana Nacional Legal Center to comply with discovery ordered by the United States District Court (Central) and the Committee on House Oversight, United States House of Representatives, in connection with the above-entitled Election Contest.

To date, we have received no response or report of the status of that complaint. I am sure you are aware that time is of the essence, and the discovery that is the subject of the earlier Court and House orders is vital in determining the facts upon which the Election Contest is based.

Please advise at the earliest possible time whether or not the Department of Justice intends to pursue enforcement of our alleged violations of the Federal Contested Elections Act §390, et seq., as provided for in greater detail in our earlier complaint.

I look forward to your written response in this regard.

Very truly yours,

HART, KING & COLDREN

William R. Hart

WRH:ci
cc: Bill Thomas
John Kelliher
Mark Braden
Mark Rosen
Wylie Aitken
Fredric Woocher

HART, KING & COLDREN

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INLAND EMPIRE OFFICE
3350 SHELBY STREET, SUITE 200
ONTARIO, CALIFORNIA 91764
TELEPHONE (909) 944-2514

OF COUNSEL
MICHAEL J. SCHROEDER, P.C.
JOHN C. TEAL, JR.

June 9, 1997

Nora M. Manella, U.S. Attorney
United States Attorney's Office
312 North Spring Street
Los Angeles, CA 90012

Re: Robert K. Dornan, Contestant, vs. Loretta Sanchez, Contestee

Dear Ms. Manella:

On behalf of Contestant, Robert K. Dornan, we filed a complaint with the United States Attorney's Office on May 14, 1997, and followed it with a request for status letter on June 2, 1997.

To date, we have yet to receive the courtesy of a response, let alone any demonstrated effort on behalf of the U. S. Attorney to enforce the law in this instance.

I am writing to inquire once again whether or not the U. S. Attorney intends to pursue this matter against Hermandad Mexicana Nacional and Hermandad Mexicana Nacional Legal Center. If not, please confirm in writing.

Very truly yours,

HART, KING & COLDREN

William R. Hart

WRH:ci
cc: The Honorable William M. Thomas, Chairman
John Kelliher
Robert K. Dornan
Mark Braden
Mark Rosen
Wylie Aitken
Fredric Woocher
71362.001/164091

WILLIAM M. THOMAS, CALIFORNIA,
CHAIRMAN

ROBERT W. NEY, OHIO
JOHN A. BOEHNER, OHIO
VERNON J. EHLERS, MICHIGAN
RAY GRANGER, TEXAS
JOHN L. MICA, FLORIDA

SAM GEJDENSON, CONNECTICUT,
RANKING MINORITY MEMBER

STENY H. HOYER, MARYLAND
CAROLYN CHEEKS KILPATRICK, MICHIGAN

STACY TARLSON,
STAFF DIRECTOR
ROBERT J. BASKIN,
MINORITY STAFF DIRECTOR

Congress of the United States
House of Representatives
COMMITTEE ON HOUSE OVERSIGHT
1309 LONGWORTH HOUSE OFFICE BUILDING
(202) 225-8281
Washington, DC 20515-0515

September 25, 1997

The Honorable Gerald B. H. Solomon
Chairman
Committee on Rules
H-312 The Capitol
Washington, D.C. 20515

Dear Mr. Chairman:

On September 24, 1997, the Committee on House Oversight agreed to the text of an original House Resolution, by voice vote, a quorum being present, demanding that the Office of the United States Attorney for the Central District of California file criminal charges against Hermandad Mexicana Nacional for failure to comply with a subpoena under the Federal Contested Elections Act.

Today, I introduced this resolution as House Resolution 244, and hereby request that the Committee on Rules grant a closed rule for consideration of the resolution by the House. The rule should further provide for discharge of the committees of jurisdiction, and protect the resolution from all points of order.

I also request expedited consideration of this measure by your committee so it can be considered by the full House next week. I appreciate your attention to this matter.

Best regards,

Bill Thomas
Chairman

WMT/dfcc

cc: The Honorable Henry J. Hyde

F:\NLW\HOREP\26DOJRES.002

H.L.C.

Original signature of Member

105TH CONGRESS
1ST SESSION

H. RES. 244

IN THE HOUSE OF REPRESENTATIVES

Mr. THOMAS submitted the following resolution; which was referred to the Committee on _____

RESOLUTION

Demanding that the Office of the United States Attorney for the Central District of California file criminal charges against Hermandad Mexicana Nacional for failure to comply with a valid subpoena under the Federal Contested Elections Act.

Whereas the contested election case of Dornan v. Sanchez is pending before the Committee;

Whereas the Federal Contested Elections Act (2 U.S.C. 381 et seq.) (hereafter in this resolution referred to as the "Act") provides for the issuance of subpoenas, and on March 17, 1997, United States District Court Judge Gary L. Taylor issued such a subpoena at the request of the Contestant for the deposition and records of Hermandad Mexicana Nacional;

Whereas on April 16, 1997, the Committee voted to modify the subpoena by limiting production of documents to the 46th Congressional District (among other modifications),

and as perfected by the Committee, the subpoena required Hermandad Mexicana Nacional to produce documents and appear for a deposition no later than May 1, 1997;

Whereas Hermandad Mexicana Nacional failed to produce documents or appear for the deposition by May 1, 1997, and still has not complied with the subpoena;

Whereas Hermandad Mexicana Nacional, by willfully failing to comply with the lawfully issued subpoena, is in violation of section 11 of the Act (2 U.S.C. 390), which provides for criminal penalties;

Whereas on May 13, 1997, the Contestant wrote to the United States Attorney for the Central District of California, Nora M. Manella, requesting that action be taken to enforce the law with respect to Hermandad Mexicana Nacional, and on June 23, 1997, the Committee wrote to the Department of Justice inquiring as to the status of this request for criminal prosecution, and the Department responded on July 25, 1997, that the criminal referral remained "under review";

Whereas the United States Attorney's failure to enforce criminal penalties for the violation of the Act encourages disrespect for the law and hinders the Constitutionally mandated process of determining the facts in the contested election case, including the discovery of any election fraud that may have influenced the outcome of the election; and

Whereas on September 23, 1997, the United States District Court for the Central District of California ruled that the deposition subpoena provisions of the Act are constitutional: Now, therefore, be it

Resolved. That the House of Representatives demands that the Office of the United States Attorney for the Central District of California carry out its responsibility by filing criminal charges against Hermandad Mexicana Nacional for failure to comply with a valid subpoena issued under the Act.

WILLIAM M. THOMAS, CALIFORNIA
CHAIRMAN

ROBERT W. NEY, OHIO
CHARLES H. TAYLOR, NORTH CAROLINA
PAT FRANCIS TOOMEY, PENNSYLVANIA
TOM DAVIS, VIRGINIA

SAM GEJDENSON, CONNECTICUT
RANKING MINORITY MEMBER

TOM LANTOS, CALIFORNIA
ROBERT E. WISE, JR., WEST VIRGINIA
ROBERT E. BASS
STAFF DIRECTOR

Congress of the United States

House of Representatives

COMMITTEE ON HOUSE OVERSIGHT
1309 LONGWORTH HOUSE OFFICE BUILDING
(202) 225-8281
Washington, DC 20515-6157

June 23, 1997

Mr. Seth Waxman
Deputy Attorney General (Acting)
Department of Justice, Room 411
950 Pennsylvania Ave, NW
Washington, DC 20530

Re: Doman v. Sanchez – Contested Election

Dear Mr. Waxman:

This letter concerns the ongoing investigation of the contested election in the 46th Congressional District of California. More specifically, it relates to the criminal complaint filed on May 14, 1997, by Contestant Robert Dornan against Hermandad Mexicana National and Hermandad Mexicana National Legal Center ("Hermandad").

The House of Representatives is empowered by Article I, § 5 of the Constitution of the United States to be "the Judge of the Election, Returns and Qualifications of its own Members . . .." The House of Representatives has delegated the responsibility for hearing contested elections cases to the Committee on House Oversight under House Rule X(1)(h)(12). The Committee on House Oversight adjudicates contested elections under the provisions of the Federal Contested Elections Act (FCEA), 2 USC §§ 381 *et. seq.*

In the current contest, Mr. Dornan applied, pursuant to 2 USC § 388, for subpoenas of Hermandad. Then, in accordance with § 388, U.S. District Court Judge Gary Taylor of the Central District of California issued the requested subpoenas and the Committee on House Oversight denied the motions to quash submitted to the Committee by Hermandad.

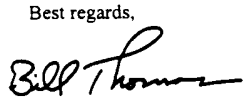
Subsequently, Hermandad has failed to respond to the subpoenas. The FCEA provides, in § 390, that "Every person who, having been subpenaed as a witness under the Act to give testimony or produce documents, willfully makes default . . . shall be deemed guilty of a misdemeanor . . .."

The Committee expects that you have been informed, pursuant to USAM 9-2.133, that the Contestant filed a criminal complaint with the US Attorney's Office in Los Angeles, California on May 14, 1997.

Because of the Committee's Constitutional duties and the importance of expeditiously resolving contested elections, the Committee requests that the Department of Justice advise the Committee of the status of the pending criminal complaint against Hermandad Mexicana National and Hermandad Mexicana National Legal Center.

If you have any questions, please contact Mark Braden, Counsel to the Committee on House Oversight, at (202) 861-1504.

Best regards,



Bill Thomas
Chairman

Enclosures (3)

Cc: Members, Committee on House Oversight
Attorney General Janet Reno
U. S. Attorney Nora Manella
William R. Hart
Wylie Aitken
Mark Rosen

WMT/jjk

ROBERT S. COLDREN
GARY R. KING
WILLIAM R. HART
CANDICE L. CAMPBELL
JOHN H. PENTECOST
C. WILLIAM DAHLIN
GLENN MONDO

BARBARA J. DIBBLE
CHRISTOPHER R. ELLIOTT
RICHARD P. GERBER
LINDA J. LESTER
RACHELLE E. MENAKER
ROBERT J. MULVIHILL

HART, KING & COLDREN

A PROFESSIONAL LAW CORPORATION

200 EAST SANDPOINTE, FOURTH FLOOR
DIRECT ALL MAIL TO: P.O. BOX 2507
SANTA ANA, CALIFORNIA 92707
TELEPHONE (714) 432-8700
FACSIMILE (714) 546-7457

INLAND EMPIRE OFFICE
[illegible] STREET, SUITE 220
ONTARIO, CALIFORNIA 91764
TELEPHONE (909) 944-2514

OF COUNSEL

MICHAEL J. SCHROEDER, P.C.
JOHN C. TEAL, JR.

RECEIVED
97 JUN 20
COMMITTEE ON
HOUSE OVERSIGHT

June 17, 1997

VIA FACSIMILE AND U.S. MAIL
(202) 226-1966

John Kelliher
Deputy Counsel for the
Committee on House Oversight
1309 Longworth
House Office Building
Washington, DC 20505-6230

Re: Dornan/Sanchez Election Challenge; Criminal Complaint Against Hermandad Mexicana Nacional and Hermandad Mexicana Nacional Legal Center

Dear Mr. Kelliher:

I am writing this letter to respectfully seek the assistance of the Committee on House Oversight with regard to the criminal complaint that we filed on behalf of Robert K. Dornan in the above-entitled Election Contest.

As I know you are aware, we filed that criminal complaint about two (2) months ago and followed with another letter to the U.S. Attorney in Los Angeles, California. To date, we have heard nothing from the U.S. Attorney and to our knowledge, no action has been taken with regard to that criminal complaint for Hermandad's failure to comply with both the United States District Court subpoenas and the Committee's direct orders.

I respectfully solicit the attention and assistance of the Committee, vis-a-vis this criminal complaint filed with the U.S. Attorney's office in Los Angeles, California.

Very truly yours,

HART, KING & COLDREN

William R. Hart

WRH:ci

cc: Nora M. Manella, U.S. Attorney
Robert K. Dornan
Mark Braden
Fredric Woocher
Wylie Aitken
Mark Rosen
71362.001/164541

HART, KING & COLDREN
A PROFESSIONAL LAW CORPORATION
200 EAST SANDPOINTE, FOURTH FLOOR
DIRECT ALL MAIL TO: P.O. BOX 1922
SANTA ANA, CALIFORNIA 92707
TELEPHONE (714) 432-8700
FACSIMILE (714) 546-7457

ROBERT S. COLDREN
GARY R. KING
WILLIAM R. HART
CANDICE L. CAMPBELL
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C. WILLIAM DAHLIN
GLENN MONDO

BARBARA J. DOBLE
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RACHELLE E. MENAKER
ROBERT J. MULVIHILL

INLAND EMPIRE OFFICE
3350 SHELBY STREET, SUITE 200
ONTARIO, CALIFORNIA 91764
TELEPHONE (909) 944-2514

OF COUNSEL
MICHAEL J. SCHROEDER, P.C.
JOHN C. TEAL, JR.

RECEIVED
97 JUN -6 AM 9:55
OVERSIGHT

June 2, 1997

Nora M. Manella, U.S. Attorney
United States Attorney's Office
312 North Spring Street
Los Angeles, CA 90012

Re: Robert K. Dornan, Contestant vs. Loretta Sanchez, Contestee

Re: Hermandad Mexicana Nacional and Hermandad Mexicana Nacional Legal Center

Dear Ms. Manella:

As you know, we caused to be filed with your office on May 14, 1997, a complaint seeking the attention of the United States Attorney's Office in connection with the failure of Hermandad Mexicana Nacional and Hermandad Mexicana Nacional Legal Center to comply with discovery ordered by the United States District Court (Central) and the Committee on House Oversight, United States House of Representatives, in connection with the above-entitled Election Contest.

To date, we have received no response or report of the status of that complaint. I am sure you are aware that time is of the essence, and the discovery that is the subject of the earlier Court and House orders is vital in determining the facts upon which the Election Contest is based.

Please advise at the earliest possible time whether or not the Department of Justice intends to pursue enforcement of our alleged violations of the Federal Contested Elections Act §390, et seq., as provided for in greater detail in our earlier complaint.

I look forward to your written response in this regard.

Very truly yours,

HART, KING & COLDREN

William R. Hart

WRH:ci
cc: Bill Thomas
John Kelliher
Mark Braden
Mark Rosen
Wylie Aitken
Fredric Woocher

DATE May 14, 1997

RECEIVED
97 MAY 19 AM 11:58
HOUSE OVERSIGHT

COMPLAINT REPORT

Instructions: A complaint regarding a federal crime may be registered with the United States Attorney for the Central District of California by completing this form and delivering it to the receptionist or mailing it to: United States Attorney, 312 North Spring Street, Los Angeles, California 90012. Use the reverse side of this form if more space is required.

1. Name: Robert K. Dornan
   Address: c/o Hart, King & Coldren, 200 E. Sandpointe, Ste. 400, Santa Ana CA 92707
   Telephone: Area Code (714) Number: 432-8700 Age: 63
   Occupation: Former U.S. Congressman, 46th Congressional District

2. What federal crime do you believe has been committed? Violation of Section 390 of the Federal Contested Election Act entitled, "Penalty for Failure to Appear, Testify, or Produce Documents".

3. Explain in detail what you know about the crime, including when and where it occurred, what you have heard and observed and when you heard and observed it, what others have told you (include their names) and what other evidence may exist. Hermandad Mexicana Nacional and Hermandad Mexicana Nacional Legal Center and their custodians of records are in violation/default of Committee on House Oversight, House of Representatives of the Congress of the United States' April 18, 1997, orders to produce documents in response to Subpoenas Duces Tecums served by Robert K. Dornan on their custodians of records in the context of the Congressional Election Contest filed by Mr. Dornan against Loretta Sanchez. See attached Letter Complaint for details. /

4. Have you reported the crime to any federal, state, or local offices or agencies? Yes. If yes, who did you report it to, when did you report it, and what action was taken? The Committee on House Oversight, House of Representatives of the Congress of the United States. Prosecution of misdemeanor pursuant to Section 390 of the Federal Contested Election Act properly brought by the U.S. Attorney's Office.

5. Have you reported the crime to a private attorney? Yes. If yes, who did you report it to, when did you report it and what action was taken? Attorneys for Hermandad Mexicana Nacional and Hermandad Mexicana Nacional Legal Center and the attorneys for Loretta Sanchez.

Original for action by Chief of Complaints
Copy 1 for file

HART, KING
& COLDREN

A PROFESSIONAL LAW CORPORATION

200 EAST SANDPOINTE, FOURTH FLOOR
DIRECT ALL MAIL TO: P.O. BOX 2507
SANTA ANA, CALIFORNIA 92707
TELEPHONE (714) 432-8700
FACSIMILE (714) 546-7457

ROBERT S. COLDREN
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GLENN MONDO

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RACHELLE E. MENAKER
ROBERT J. MULVIHILL

INLAND EMPIRE OFFICE
3130 SHELBY STREET, SUITE 200
ONTARIO, CALIFORNIA 91764
TELEPHONE (909) 944-2514

OF COUNSEL
MICHAEL J. SCHROEDER, P.C.
JOHN C. TEAL, JR.

May 13, 1997

Nora M. Manella, U.S. Attorney
United States Attorney's Office
312 North Spring Street
Los Angeles, CA 90012

Attn: Citizen Complaint Unit

Re: In the Matter of the Contested Election of Loretta Sanchez for the Office of the House of Representatives to the United States Congress, Robert K. Dornan, Contestant v. Loretta Sanchez, Contestee

Dear Ms. Manella:

Please permit this letter to serve as a Complaint on behalf of Contestant, Robert K. Dornan ("Dornan") In the Matter of the Contested Election of Loretta Sanchez for the Office of the House of Representatives to the United States against Hermandad Mexicana Nacional and Hermandad Mexicana Nacional Legal Center and their Custodians of Records.

1. Nature of Offense.

Dornan contends in this Complaint that both Hermandad Mexicana Nacional and Hermandad Mexicana Nacional Legal Center and their Custodians of Records are guilty of a misdemeanor punishable by a fine of not more than $1,000 nor less than $100 or imprisonment for not less than one month nor more than 12 months, or both, pursuant to the Federal Contested Election Act, 2 U.S.C. § 390, for wilfully refusing to produce documents that have been ordered produced by the Committee on House Oversight, House of Representatives of the Congress of the United States.

Section 390 of the Federal Contested Election Act entitled, "Penalty for Failure to Appear, Testify, or Produce Documents" provides as follows:

> "Every person who, having been subpoenaed as a witness under this Act to give testimony or to produce documents, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the contested election case, shall be deemed guilty of a misdemeanor punishable by fine of not more than $1,000 nor less than $100 or imprisonment for not less than one month nor more than twelve months, or both."

A true and correct copy of Section 390 of the Federal Contested Election Act is attached hereto and marked Exhibit "1."

As set forth in detail herein, on April 18, 1997, the Committee on House Oversight of the House of Representatives of the Congress of the United States ordered Hermandad Mexicana Nacional and Hermandad Mexicana Nacional Legal Center to produce certain documents in response to Contestant, Robert K. Dornan's subpoenas. A true and correct copy of the April 18, 1997 orders are attached hereto and marked collectively as Exhibit "2."

Neither Hermandad Mexicana Nacional nor Hermandad Mexicana Nacional Legal Center have complied with the Committee on House Oversight's April 18, 1997 orders and they are therefore in violation of said orders and are subject to misdemeanor penalties including a fine of not more than $1,000 nor less than $100 or imprisonment for not less than one month nor more than 12 months, or both pursuant to Federal Contested Election Act § 390.

2. BRIEF STATEMENT OF FACTS.

On November 5, 1996, Loretta Sanchez was elected to the United States House of Representatives, defeating incumbent, Robert K. Dornan.

On December 26, 1996, Dornan filed an election contest with The Committee on House Oversight for the United States House of Representatives. A true and correct copy of the Notice of Election Contest is attached hereto and marked as Exhibit "3".

On March 13, 1997, the United States District Court for the Central District of California, Southern Division in Santa Ana, the Honorable Gary L. Taylor, Judge presiding, entered an order which among other things, vacated certain subpoenas previously issued to Dornan and clarified the role of the United States District Court in issuing subpoenas pursuant to the Federal Contested Elections Act.

Subsequent to March 17, 1997, the Honorable Gary L. Taylor, Judge of the United States District Court for the Central District of California, issued 33 subpoenas pursuant to Dornan's request. A true and correct copy of the subpoenas served on Hermandad Mexicana Nacional and Hermandad Mexicana Nacional Legal Center are attached hereto and marked Exhibit Nos. "4" and "5," respectively.

On or about March 20, 1997, Hermandad Mexicana Nacional and Hermandad Mexicana Nacional Legal Center through their attorney, Mark S. Rosen, filed motions to quash or modify the subpoenas with the Clerk of the House of Representatives of the United States of America. The motions to quash raised various objections including First Amendment rights, overbroad, burdensomeness, lack of due process, lack of relevancy, Fifth Amendment rights, and constitutionality of the Federal Contested Election Act and other irregularities. A true and correct copy of the Motions to Quash are attached hereto and marked Exhibits "6" and "7."

On or about April 4, 1997, Dornan filed a Motion to Compel Compliance with the Subpoenas with the Clerk of the House of Representatives of the United States. A true and correct copy of Dornan's Motion to Compel Compliance is attached hereto and marked Exhibit "8."

On April 18, 1997, the Committee on House Oversight of the House of Representatives of the Congress of the United States issued two orders requiring Hermandad Mexicana Nacional and Hermandad Mexicana Nacional Legal Center to produce the subpoenaed documents, with some minor modifications to the subpoenas. See Exhibit "2" attached hereto. The Committee on House Oversight sent a copy of its orders to Hermandad Mexicana Nacional and Hermandad Mexicana Nacional Legal Center care of their attorney Mark S. Rosen, Esq., 2107 N. Broadway, Suite 202, Santa Ana, California 92706. Both Hermandad Mexicana Nacional and Hermandad Mexicana Nacional Legal Center thus have notice of the Committee on House Oversight's orders and have at all times relevant herein been able to comply with said orders but have without justification refused to comply.

Dornan's counsel, William R. Hart, has signed the requisite Protective Order required as a condition precedent to the production of the documents and said Protective Order has been sent to the Clerk of the House of Representatives of the Congress of the United States.

3. CONCLUSION.

For the reasons stated herein, Dornan contends that Hermandad Mexicana Nacional and Hermandad Mexicana Nacional Legal Center are guilty of a misdemeanor pursuant to Federal Contested Elections Act § 390 in that they are in default of the April 18, 1997 orders

of the Committee on House Oversight of the House of Representatives of the Congress of the United States.

Robert K. Dornan respectfully requests that your office immediately undertake an investigation into this matter and recommend misdemeanor prosecutions for each violation of 2 U.S.C. §390 et. seq. against both Hermandad Mexicana Nacional and Hermandad Mexicana Nacional Legal Center and their custodians of records.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

HART, KING & COLDREN

William R. Hart

WRH:RPG:wp

cc: Committee on House Oversight
U.S. House of Representatives
Mark Braden
Mark Rosen
Wylie Aitken
Fred Woocher

71362.001\162858.wp

bcc: Robert K. Dornan

MARK S. ROSEN
ATTORNEY AT LAW
2700 NORTH MAIN STREET
SUITE 630
SANTA ANA, CALIFORNIA 92705
TELEPHONE (714) 972-8040
FAX (714) 285-9840

RECEIVED
97 JUL -3 AM 9:39
COMMITTEE ON
HOUSE OVERSIGHT

June 26, 1997

Mr. Seth Waxman
Deputy Attorney General (Acting)
Department of Justice, Room 411
950 Pennsylvania Avenue NW
Washington, DC 20530

Re: Dornan v. Sanchez Contested Election

Dear Mr. Waxman:

I am counsel for Hermandad Mexicana Nacional and Hermandad Mexicana Nacional Legal Center. This letter will respond to the letter dated June 23, 1997, sent to you by Congressman William M. Thomas concerning subpoenas directed to my clients in the election contest in the 46th Congressional District of California.

Congressman Thomas enclosed copies of correspondence sent by Robert Dornan's attorney to United States Attorney Nora Manella, but the Congressman did not enclose my reply to that correspondence. I am enclosing a copy of the letter I wrote to Ms. Manella on May 20, 1997.

Everything I stated in my letter of May 20 remains true today. We firmly believe that the Federal Contested Elections Act's delegation of the authority of the House of Representatives to a private party to conduct discovery regarding contested elections is an unconstitutional delegation of Congressional authority. We further believe that the subpoenas in question are blatantly overbroad, intrusive, not germane to the election contest, and are designed to violate the First Amendment rights of free speech, privacy, and association. The Committee on House Oversight has essentially ignored these objections. There have also been numerous denials of due process, including the fact that the Committee has not responded to any of the particular objections, the Committee has ignored the

constitutional challenges to the Federal Contested Elections Act and to the subpoenas, and the Committee has made its orders virtually in secret without prior notice that it intended to hold a meeting on the objections. These decisions have been made in violation of the Committee's own Rule 9, which requires a normal seven day period between the announcement of a meeting and the actual meeting.

Congressman Thomas is inaccurate in his statement that the Committee "denied" the motions. The Committee did not quash the subpoenas, but it has modified every subpoena issued by Dornan, including the subpoenas issued to my clients. This fact illustrates why action by the Justice Department at this stage would be, at best, premature. Is the Justice Department being asked to enforce Dornan's original private subpoena (which would be unprecedented) or to enforce a congressional committee order? Even Dornan's counsel has not taken the position that private discovery can be directly enforced by criminal prosecution. In his original May 13 letter to Ms. Manella, Dornan's attorney felt compelled to rely on the assertion that the documents "have been ordered produced by the Committee" (page 1), and that my clients' alleged guilt arises from the "default of the April 18, 1997 orders" (pages 3-4). As set forth in my letter of May 20, the only proper remedy for the enforcement of a congressional order is for the entire House to vote a contempt of Congress citation, which would then be referred to the Justice Department for review.

There has been a complete absence in this election contest of anything that would pass for judicial review of the serious constitutional arguments that have been made. Other assertions of defects, including, but not limited to, the lack of a provision in the Federal Contested Elections Act permitting the subpoenaing of generic custodians of record, the effect of comingling of judicial and legislative functions by the committee, and the discriminatory focus on Hispanic registration and the harassment of Hispanics resulting from the accusations made in this matter, will certainly be raised if and when that becomes necessary.

My clients do not intend to voluntarily waive any of their constitutional or statutory rights. Both the Committee and Dornan have resisted any intervention by the judicial branch in determining the validity of these

subpoenas or the Committee's actions. Given this, before the Committee seeks intervention by the executive branch, the Committee should at the very least have to follow its own procedures by obtaining a vote of the entire House.

Very truly yours,

MARK S. ROSEN

MSR/rr
Encl.
cc: William Hart, Esq. (w/o encl.)
Fred Woocher, Esq. (w/o encl.)
Wylie Aitken, Esq. (w/o encl.)
U.S. Attorney Nora Manella (w/o encl.)
Congressman William M. Thomas (w/o encl.)

While Hermandad did not respond to the Committee they did send a letter to the Department of Justice claiming that Justice could not enforce the subpoenas without a vote of the whole House.

The statute does not provide for such a mechanism.

The Democrats have never contended that this is necessary.

Rosen also raised general constitutional issues such as separation of powers and freedom of association and due process. Judge Taylor has ruled that these are not concerns.

WILLIAM M. THOMAS, CALIFORNIA,
CHAIRMAN

ROBERT W. NEY, OHIO
JOHN A. BOEHNER, OHIO
VERNON J. EHLERS, MICHIGAN
KAY GRANGER, TEXAS
JOHN L. MICA, FLORIDA

SAM GEJDENSON, CONNECTICUT
RANKING MINORITY MEMBER

STENY H. HOYER, MARYLAND
CAROLYN CHEEKS KILPATRICK, MICHIGAN

STACY CARLSON
STAFF DIRECTOR
ROBERT J. BASKIN
MINORITY STAFF DIRECTOR

Congress of the United States
House of Representatives
COMMITTEE ON HOUSE OVERSIGHT
1309 LONGWORTH HOUSE OFFICE BUILDING
(202) 225-8281
Washington, DC 20515-0157

June 30, 1997

Mr. Seth Waxman
Deputy Attorney General (Acting)
Department of Justice, Room 4111
950 Pennsylvania Ave, NW
Washington, DC 20530

Re: Dornan v. Sanchez – Contested Election

Dear Mr. Waxman:

In a letter dated June 23, 1997 I requested that the Department of Justice advise the Committee on House Oversight of the status of the criminal complaint filed by Contestant Robert K. Dornan with the United States Attorney's Office in Los Angeles on May 14, 1997.

To date, we have not received any response. In order to continue our investigation in an expeditious fashion, the Committee requests a response by noon on July 3, 1997.

If you have any questions, please contact Mark Braden, Counsel to the Committee on House Oversight, at (202) 861-1504.

Best regards,

Bill Thomas
Chairman

Cc: Members, Committee on House Oversight
Attorney General Janet Reno
U.S. Attorney Nora Manella
William R. Hart
Wylie Aitken
Mark Rosen

WMT/jjk

U. S. Department of Justice

United States Attorney
Central District of California

Jonathan Shapiro
Assistant United States Attorney
(213) 894-2395

United States Courthouse
312 North Spring Street
Los Angeles, California 90012

July 2, 1997

Mr. William R. Hart, Esq.
200 East Sandpointe
Fourteenth Floor
Santa Ana, CA 92707

Re: Criminal Complaint Filed Against Hermandad Mexicana Nacional Legal Center Alleging Violations of Title 2, United States Code Section 390

Dear Mr. Hart:

In response to your letter of June 2, 1997, the United States Attorney's Office for the Central District of California has received and reviewed the May 13, 1997 criminal complaint filed on behalf of Robert K. Dornan against Hermandad Mexicana Nacional Legal Center. The criminal complaint alleges a violation of Title 2, United States Code Section 390, based on the failure of Hermandad Mexicana Nacional Legal Center to produce documents subpoenaed on behalf of Mr. Dornan.

The subpoenas in this case were signed by The Honorable Gary L. Taylor, United States District Judge. If there has been a failure to produce documents sought by the subpoenas, the appropriate remedy is to return to Judge Taylor to seek an order requiring compliance with the subpoenas, or to seek an order to show cause why Hermandad Mexicana Nacional Legal Center should not be held in contempt. Prior to the filing of criminal action by this Office, we need to know if Mr. Dornan has taken the appropriate next step of having his subpoena request reduced to an enforceable order.

Please feel free to contact me if you have any further information regarding this matter, or if I can provide any further guidance to you.

Respectfully submitted,

NORA M. MANELLA
United States Attorney

DAVID C. SCHEPER
Assistant United States Attorney
Chief, Criminal Division

Sincerely,

JONATHAN S. SHAPIRO
Assistant U.S. Attorney

HART, KING & COLDREN

ROBERT A. COLDREN
GARY E. KING
WILLIAM E. HART
CANDICE L. CAMPBELL
JOHN H. PONTICONT
C. WILLIAM DAHLIN
GLENN MONDO

BARBARA J. DOBLE
CHRISTOPHER B. ELLIOTT
RICHARD P. GIBSON
LINDA I. LESTER
RACHELLE E. MENAKER
ROBERT J. MCLIVERIA

A PROFESSIONAL LAW CORPORATION

200 EAST SANDPOINTE, FOURTH FLOOR
DIRECT ALL MAIL TO: P.O. BOX 2707
SANTA ANA, CALIFORNIA 92707
TELEPHONE (714) 432-8700
FACSIMILE (714) 546-7457

[redacted]

OF COUNSEL
MICHAEL I. SCHECHTER, P.C.
JOHN C. TEAL, JR.

July 3, 1997

VIA FACSIMILE AND U.S. MAIL
(213) 894-6436

Jonathan S. Shapiro
Assistant U. S. Attorney
United States Attorney
Central District of California
United States Courthouse
312 North Spring Street
Los Angeles, CA 90012

RE: Criminal Complaint Filed Against Hermandad Mexicana Nacional Legal Center and Hermandad Mexicana Nacional for Violation of U.S.C. Section 390, et seq.

Dear Mr. Shapiro:

I am in receipt of your letter dated July 2, 1997, suggesting that Contestant, Robert K. Dornan, seek an order from the Honorable Gary L. Taylor of the United States District Court (Central) enforcing those subpoenas.

First, Judge Taylor has made it abundantly clear in a number of rulings from his court that his interpretation of U.S.C. Section 390, et seq., precludes the District Court from becoming involved in the enforcement of subpoenas subsequent discovery disputes or matters of this type whatsoever. Indeed, Judge Taylor has made it clear that the only remedy available to the Contestant and the Contestee in matters such as this is to present the matter to the Committee on House Oversight. Contestant Dornan has done exactly that in this case, and the Committee on House Oversight has ordered that the two subpoenas in question directed to Hermandad Mexicana Nacional and their Legal Center be honored in accordance therewith. Further, the Committee allowed 15 days for Hermandad to comply, and they have not done so. I have provided you with the Committee's orders in this regard and they are unambiguous.

Second, the Committee on House Oversight has made a specific demand upon the United State Attorney's office to enforce the Committee's order. Presumably, this is because U.S.C. Section 390, et seq., specifically provides that the Committee has the responsibility and power to enforce orders and subpoenas in connection with this Election Contest and are endeavoring to do so.

To that end, may I respectfully suggest that your further handling of this matter be undertaken in conjunction with Chairman, Bill Thomas, and the Committee on House Oversight? I will be pleased to provide you with any documentation that I have in my possession that you need to prosecute this complaint to the fullest extent of the law.

Very truly yours,

HART, KING & COLDREN

William R. Hart

WRH:ci
cc: Bill Thomas, Chairman
John Kelliher
Mark Braden
Robert K. Dornan
Mark Rosen
Wylie Aitken
Fredric Woocher
71362.001/165398

HART, KING & COLDREN

A PROFESSIONAL LAW CORPORATION

200 EAST SANDPOINTE, FOURTH FLOOR
DIRECT ALL MAIL TO: P.O. BOX 2507
SANTA ANA, CALIFORNIA 92707
TELEPHONE (714) 432-8700
FACSIMILE (714) 546-7457

ROBERT S. COLDREN
GARY R. KING
WILLIAM R. HART
CANDICE L. CAMPBELL
JOHN H. PENTECOST
C. WILLIAM DAHLIN
GLENN MONDO

BARBARA J. DIBBLE
CHRISTOPHER R. ELLIOTT
RICHARD P. GERBER
LINDA J. LESTER
RACHELLE E. MENAKER
ROBERT J. MULVIHILL

INLAND EMPIRE OFFICE
3330 SHELBY STREET, SUITE 200
ONTARIO, CALIFORNIA 91764
TELEPHONE (909) 944-2514

OF COUNSEL
MICHAEL J. SCHROEDER, P.C.
JOHN C. TEAL, JR.

July 3, 1997

VIA FACSIMILE AND U.S. MAIL
(213) 894-6436

Jonathan S. Shapiro
Assistant U. S. Attorney
United States Attorney
Central District of California
United States Courthouse
312 North Spring Street
Los Angeles, CA 90012

RE: Criminal Complaint Filed Against Hermandad Mexicana Nacional Legal Center and Hermandad Mexicana Nacional for Violation of U.S.C. Section 390, et seq.

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Very truly yours,

HART, KING & COLDREN

William R. Hart

WRH:ci
cc: Bill Thomas, Chairman
John Kelliher
Mark Braden
Robert K. Dornan
Mark Rosen
Wylie Aitken
Fredric Woocher
71362.001/165395

HART, KING & COLDREN

A PROFESSIONAL LAW CORPORATION

200 EAST SANDPOINTE, FOURTH FLOOR
DIRECT ALL MAIL TO: P.O. BOX 2507
SANTA ANA, CALIFORNIA 92707
TELEPHONE (714) 432-8700
FACSIMILE (714) 546-7457

ROBERT S. COLDREN
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ROBERT J. MULVIHILL

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3350 SHELBY STREET, SUITE 200
ONTARIO, CALIFORNIA 91764
TELEPHONE (909) 944-2514

OF COUNSEL
MICHAEL J. SCHROEDER, P.C.
JOHN C. TEAL, JR.

July 3, 1997

VIA FACSIMILE AND U.S. MAIL
(213) 894-6436

Jonathan S. Shapiro
Assistant U. S. Attorney
United States Attorney
Central District of California
United States Courthouse
312 North Spring Street
Los Angeles, CA 90012

RE: Criminal Complaint Filed Against Hermandad Mexicana Nacional Legal Center and Hermandad Mexicana Nacional for Violation of U.S.C. Section 390, et seq.

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Very truly yours,

HART, KING & COLDREN

William R. Hart

WRH:ci
cc: Bill Thomas, Chairman
John Kelliher
Mark Braden
Robert K. Dornan
Mark Rosen
Wylie Aitken
Fredric Woocher
71362.001/165395

U. S. Department of Justice

United States Attorney
Central District of California

Jonathon Shapiro
Assistant United States Attorney
(213) 894-2393

United States Courthouse
312 North Spring Street
Los Angeles, California 90012

RECEIVED
JUL 15 1997
HK&C

July 8, 1997

Mr. William R. Hart, Esq.
200 East Sandpointe
Fourteenth Floor
Santa Ana, CA 92707

Re: Criminal Complaint Filed Against Hermandad Mexicana Nacional Legal Center Alleging Violations of Title 2, United States Code Section 390

Dear Mr. Hart:

Pursuant to our discussion this afternoon, I wonder if you could help our Office by answering the following questions:

1. Has Mr. Dornan filed a motion or request with Judge Taylor seeking to reduce the subpoenas in the above-referenced case to an enforceable order compelling the production of documents? Since Judge Taylor issued the subpoenas, his Court would seem to be the proper venue for seeking compliance.

2. Could you provide me with a copy of Judge Taylor's ruling, referenced in your letter of July 3, 1997, in which Judge Taylor interpreted federal law as precluding the District Court from enforcing the subpoenas issued in this case?

3. Finally, could you provide me with any other authority that supports your position that only this Office has jurisdiction to enforce the subpoenas in this case?

Please feel free to contact me as soon as you have the information. I look forward to hearing from you.

Respectfully submitted,

NORA M. MANELLA
United States Attorney

DAVID C. SCHEPER
Assistant United States Attorney
Chief, Criminal Division

Sincerely,

JONATHAN S. SHAPIRO
Assistant U.S. Attorney

ROBERT S. COLDREN
GARY R. KING
WILLIAM R. HART
CANDICE L. CAMPBELL
JOHN H. PENTECOST
C. WILLIAM DAHLIN
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ROBERT J. MULVIHILL

HART, KING & COLDREN

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200 EAST SANDPOINTE, FOURTH FLOOR
DIRECT ALL MAIL TO: P.O. BOX 2507
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TELEPHONE (714) 432-8700
FACSIMILE (714) 546-7457

INLAND EMPIRE OFFICE
4 SHELBY STREET, SUITE 200
ONTARIO, CALIFORNIA 91764
TELEPHONE (909) 944-2514

OF COUNSEL
MICHAEL J. SCHROEDER, P.C.
JOHN C. TEAL, JR.

RECEIVED
97 JUL 22 AM 10: 45
COMMITTEE ON HOUSE OVERSIGHT

July 16, 1997

VIA FACSIMILE AND U.S. MAIL
(213) 894-6436

Jonathan S. Shapiro
Assistant U. S. Attorney
United States Attorney
Central District of California
United States Courthouse
312 North Spring Street
Los Angeles, CA 90012

RE: Criminal Complaint Filed Against Hermandad Mexicana Nacional Legal Center and Hermandad Mexicana Nacional for Violation of U.S.C. Section 390, et seq.

Dear Mr. Shapiro:

Pursuant to my July 3, 1997 letter to you Federal District Court Judge Gary L. Taylor has made it abundantly clear in a number of rulings that his interpretation of USC § 390, et seq., precludes the District Court from becoming involved in the enforcement of subpoenas, subsequent discovery disputes or matters of this type whatsoever. A copy of my July 3, 1997 letter to you is attached hereto.

I am enclosing herewith a number of Judge Taylor's Minute Orders that emphasize this point. For example, in Judge Taylor's April 16, 1997 Minute Order he states in part:

> "In order to avoid a delay in the Houses election contest matter, the Court responds as follows:
>
> Under the narrow scope of the applicable statute and the specific Constitutional

> reservation to the House to adjudicate its own election contest, the Court is without jurisdiction to determine such discovery disputes. The statute directs the Court to issue subpoenas, but does not authorize anything more. A request by the House for the Court to resolve discovery disputes could not create jurisdiction where none exists. Under the Constitution, the House may not delegate this function to the Court."

Judge Taylor's March 31, 1997 Minute Order states in part:

> "This court has previously ruled it is the court's duty under the contested election law to issue subpoenas that appear regular on their face, and all contests of those subpoenas must be directed to the House of Representatives. Therefore, the April 21, 1997, hearing is ordered off-calendar and the parties are directed to present any subpoena contest to the House of Representatives."

Judge Taylor's March 31, 1997 Minute Order states in part:

> "It appears there may be substantial objections by reposed (sic) deponents to the scope or priority of the deposition document productions requested. There may be also claims of the subpoena applicant of non-compliance with discovery requirements. Under the law, such matters must be referred to the House of Representatives."

Judge Taylor's March 18, 1997 Order states in part:

> "Under the law, any objection to complying with a subpoena or a contention a subpoena is overbroad, burdensome, etc., must be presented to the House of Representatives."

Judge Taylor's March 13, 1997 Order Vacating Subpoena Order and Recalling Subpoenas states in part:

> "The procedures the Act creates are specific, and the role allocated to the courts is very limited. Under § 388, upon the application of any party, 'a subpoena for attendance at a deposition shall be issued . . .' by the Court or other designated persons.

> The Acts subpoena process is entirely a creature of this statutory structure. There is no provision in the Act for engrafting on to it the provisions of the Federal Rules of Civil Procedure, or other aspects of the Court's operation or supervision. The limit of a courts role under the Act is to issue requested deposition subpoenas apparently regular on their face.
>
> Unlike other areas of law where the Court retains inherent supervision over its own subpoenas, the role is more limited here. The Constitutions special reservation to Congress of judging its own elections and returns preempts inherent Court power not specifically authorized by Congress. The Court may do what the Act authorizes and directs it to do, but no more."

As I stated in my July 3, 1997 letter, I respectfully suggest that your further handling of this matter be undertaken in conjunction with Chairman, Bill Thomas, and the Committee on House Oversight.

I would appreciated it if you would give this matter your immediate attention.

Very truly yours,

HART, KING & COLDREN

William R. Hart

WRH:RPG:wp

cc: Bill Thomas, Chairman
John Kelliher
Mark Braden
Robert K. Dornan
Mark Rosen
Wylie Aitken
Fredric Woocher

71362.001/166000.wp

HART, KING & COLDREN

A PROFESSIONAL LAW CORPORATION

200 EAST SANDPOINTE, FOURTH FLOOR
DIRECT ALL MAIL TO: P.O. BOX 2507
SANTA ANA, CALIFORNIA 92707
TELEPHONE (714) 432-8700
FACSIMILE (714) 546-7457

INLAND EMPIRE OFFICE
[illegible] SHELBY STREET, SUITE 200
ONTARIO, CALIFORNIA 91764
TELEPHONE (909) 944-2514

ROBERT S. COLDREN
GARY R. KING
WILLIAM R. HART
CANDICE L. CAMPBELL
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ROBERT J. MULVIHILL

OF COUNSEL

MICHAEL J. SCHROEDER, P.C.
JOHN C. TEAL, JR.

RECEIVED
97 JUL 22 PM 1:26
HOUSE [illegible] SIGHT

July 17, 1997

VIA FACSIMILE AND U.S. MAIL
(213) 894-6436

Jonathan S. Shapiro
Assistant U. S. Attorney
United States Attorney
Central District of California
United States Courthouse
312 North Spring Street
Los Angeles, CA 90012

RE: Criminal Complaint Filed Against Hermandad Mexicana Nacional Legal Center and Hermandad Mexicana Nacional for Violation of U.S.C. Section 390, et seq.

Dear Mr. Shapiro:

Following up on my July 16, 1997 letter please find enclosed a copy of § 29 entitled "Scope of Examination; Objections" from Deschler's Precedents of the United States House of Representatives.

The enclosed excerpt reinforces and supports Judge Taylor's orders that I sent you yesterday. The House not the Court has jurisdiction regarding the above referenced matter. Please contact John Kelliher, Esq., counsel to the Committee, at (202) 225-7552 in this regard.

Very truly yours,

HART, KING & COLDREN

William R. Hart

for such refusal require rejection of the deposition in whole or in part.[2]

Upon completion of a deposition, the officer before whom it is taken certifies thereon that the witness was duly sworn and that it is a true record of the testimony given. He then seals it, together with any accompanying papers, and files it with the Clerk of the House.[3]

The officer must then promptly notify the parties of the filing of the deposition with the Clerk. And he must furnish a copy of the deposition to any party or the deponent on payment of reasonable charges therefor.[4]

Unsigned Transcript of Deposition by Witness

§ 28.1 There have been instances in which attorneys have refused to accept an unsigned transcript of a witness' deposition, notwithstanding their prior agreement to waive such signatures.

In Lanzetta v Marcantonio (§ 48.1, infra), a 1936 New York election contest, the Committee on Elections called the attention of the House to the actions of the contestee's attorneys in refusing to accept unsigned testimony as agreed, which necessitated further subpenas to witnesses, some of whom refused to respond or could not be found. Notwithstanding these actions, the House agreed to a resolution that contestee was entitled to the disputed seat.[5]

§ 29. Scope of Examination; Objections

Witnesses may be examined regarding any matter, not privileged, relevant to the subject matter involved in the case, whether it relates to a claim or defense. The examination may extend to such subjects as the existence, description, nature, custody, and the condition and location of books, papers, documents, or other tangible things, as well as the identity and location of persons having knowledge of relevant facts. The right of cross examination is to be afforded the opposing party.[6]

Objections to the proceedings,

2. 2 USC § 386(h). This section of the statute permits waiver of the signature requirement.
3. 2 USC § 391.
4. 2 USC § 391 (b), (c).
5. For the procedure under the present statute, see 2 USC § 386(h).
6. 2 USC § 386(b).

including objections to the qualifications of the officer taking the deposition or to the manner of taking it, or to the evidence presented, or the conduct of any party, are to be noted by the officer. Evidence objected to is taken subject to such objection.[7]

A subpena to compel the production of books, papers, or other tangible things designated therein is permitted under the Federal Contested Elections Act. However, the Committee on House Administration, on motion, may quash or modify the subpena if it is unreasonable or oppressive, or condition denial of it on the advancement of reasonable production costs.[8]

Failure to Produce Testimony

§ 29.1 A request was made by contestant to the Clerk of the House seeking the production of testimony taken before a commissioner who failed to forward it to the Clerk.

In Casey v Turpin (§ 47.3, infra), a 1934 Pennsylvania contest, the committee recommended dismissal of the contest for lack of evidence of the matters charged in the notice, and for the failure of the contestant to appear in person and show cause why his contest should not be dismissed. The contestant had argued that he could not present evidence because an official failed to forward testimony, and that he had asked the clerk to seek such testimony.

Ballots as "Papers" Required To Be Produced

§ 29.2 The statute authorizing an officer to require the production of "papers" has been construed to confer authority to require the production of ballots.

In the 1932 Illinois election contest of Kunz v Granata (§ 46.2, infra),[9] ballots were determined to be "papers" within the meaning of 2 USC § 219 such that their production could be demanded by a party.[10]

In this instance the contestant sought and obtained the appointment of a notary public to obtain testimony in his behalf. This notary public served a subpena duces tecum on the election officials, who then procured the ballots and other

7. 2 USC § 386(g).
8. 2 USC § 388(e).
9. Also reported in 6 Cannon's Precedents § 186.
10. 2 USC § 219, now 2 USC § 388. But see the 1949 Michigan contested election case of Stevens v Blackney (§ 55.3 infra).

WRH:RPG:wp

cc: Bill Thomas, Chairman
John Kelliher
Mark Braden
Robert K. Dornan
Mark Rosen
Wylie Aitken
Fredric Woocher

71362.001/166031.01

ROBERT S. COLDREN
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4340 SHELBY STREET, SUITE 200
ONTARIO, CALIFORNIA 91764
TELEPHONE (909) 944-2514

OF COUNSEL
MICHAEL J. SCHROEDER, P.C.
JOHN C. TEAL, JR.

97 JUL 2
HOUSE OVERSIGHT

July 25, 1997

The Honorable William M. Thomas
Chairman, Committee on House Oversight
United States House of Representatives
1309 Longworth House Office Building
Washington, D.C. 20515-6157

Re: Dornan/Sanchez Election Challenge

Dear Chairman Thomas:

Please find enclosed a letter just received from the United States Attorney's Office in Los Angeles, California, responsive to our earlier communication to him on the subject of the criminal prosecution of Hermandad Mexicana Nacionale ("Hermandad") for their failure to comply with federal court subpoenas and rulings by the Committee on House Oversight.

It seems that the United States Attorney agrees with us in that they have acknowledged that they need a formal order from the Committee on House Oversight directing the United States Attorney's Office to undertake a criminal investigation and a possible prosecution of Hermandad and their legal center. As of this date, they have the Committee's letter on that subject but, apparently, require a more formal direction from the Committee to proceed.

In my discussions with Mr. Shapiro of the United States Attorney's Office, he indicated that once this order from the Committee was received that he would proceed.

On behalf of Robert K. Dornan, we respectfully request that the Committee issue such an order directing the United States Attorney to investigate and prosecute Hermandad and its legal center for their failure to comply with the earlier served federal court subpoenas and earlier rulings by the Committee on that subject.

Thank you very much for the Committee's immediate attention to and anticipated action in this regard.

Very truly yours,

HART, KING & COLDREN

William R. Hart

WRH:ci
Enclosure(s)
cc: Robert K. Dornan
John Kelliher
Mark Braden
Mark Rosen
Wylie Aitken
Fredric Woocher
Jonathan Shapiro, Assistant U. S. Attorney (w/o Enc.)

71362.001/166488

U. S. Department of Justice

United States Attorney
Central District of California

Jonathan Shapiro
Assistant United States Attorney
(213) 894-2393

United States Courthouse
312 North Spring Street
Los Angeles, California 90012

July 21, 1997

Mr. William R. Hart, Esq.
200 East Sandpointe
Fourteenth Floor
Santa Ana, CA 92707

Re: Criminal Complaint Filed Against Hermandad Mexicana Nacional Legal Center Alleging Violations of Title 2, United States Code Section 390

Dear Mr. Hart:

Thank you for sending me your letter of July 16, 1997. The attached materials were very helpful and answered many of the questions that I raised by way of my letter of July 8, 1997.

The Honorable Gary L. Taylor, United States District Judge, has made abundantly clear that only the House of Representatives has jurisdiction to resolve discovery disputes regarding contested elections. For example, Judge Taylor noted in his Minute Order of April 16, 1997: "A request by the House for the Court to resolve discovery disputes could not create jurisdiction where none exists. Under the Constitution, the House may not delegate [the function of resolving discovery disputes in regard to contested elections] to the Court." Furthermore, Judge Taylor noted in his Minute Order of March 31, 1997, contested matters regarding subpoenas "must be directed to the House of Representatives."

I am persuaded by Judge Taylor's orders and reasoning. The proper body to enforce any subpoenas in this case is not the district court. Nor is it the United States Attorney's Office at this time. The proper authority to resolve discovery dispute and enforce these subpoenas is the House of Representatives.

In your July 3, 1997 letter, you state: "[T]he Committee on House Oversight has made a specific demand upon the United States Attorney's Office to enforce the Committee's Order."

What demand and order are you referring to, and by what authority is such a demand made of or order given to this Office? Has the House of Representatives reduced the subpoenas in the above-referenced case to an enforceable order compelling the production of such documents, thereby resolving any further discovery questions?

As a practical matter, this Office does not generally use criminal prosecution to enforce civil subpoenas. Furthermore, I am not aware of any situation in which this Office has filed a criminal prosecution to enforce subpoenas in a case in which the United States is not a party. I appreciate this is a unique situation, however, and do not foreclose the possibility of this Office taking action when and if doing so becomes appropriate.

Please feel free to contact me as soon as you have the information. I look forward to hearing from you.

Respectfully submitted,

NORA M. MANELLA
United States Attorney

DAVID C. SCHEPER
Assistant United States Attorney
Chief, Criminal Division

Sincerely,

JONATHAN S. SHAPIRO
Assistant U.S. Attorney

MAJORITY MEMBERS
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BOB GOODLATTE, VIRGINIA
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ED BRYANT, TENNESSEE
STEVE CHABOT, OHIO
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WILLIAM L. JENKINS, TENNESSEE
ASA HUTCHINSON, ARKANSAS
EDWARD A. PEASE, INDIANA
CHRISTOPHER B. CANNON, UTAH

ONE HUNDRED FIFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-3951

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THOMAS E. MOONEY, SR.
CHIEF OF STAFF — GENERAL COUNSEL

JOSEPH V. WOLFE
STAFF DIRECTOR — COUNSEL

JULIAN EPSTEIN
MINORITY STAFF DIRECTOR

September 25, 1997

The Honorable Newt Gingrich
Speaker
U.S. House of Representatives
H-233, the Capitol
Washington, D.C. 20515

Dear Mr. Speaker:

I am writing to you concerning H. Res. 244, a resolution demanding that the Office of the United States Attorney for the Central District of California file criminal charges against Hermandad Mexicana Nacional for failure to comply with a subpoena under the Federal Contested Elections Act.

This resolution contains language directing officials within the Department of Justice to take certain actions. Therefore this bill was referred jointly to the House Oversight Committee and this Committee, since the Department of Justice falls within this Committee's rule X jurisdiction.

It is my understanding that the Leadership wishes to proceed in an expedited manner on this measure. Accordingly, I am willing to permit this Committee to be discharged from further consideration of this matter.

This does not, of course, waive any jurisdiction under rule X of this Committee over the subject matter contained in H. Res. 244, which was the basis of the original referral.

Sincerely,

HENRY J. HYDE
Chairman

cc: Honorable Gerald B.H. Solomon
Honorable Bill Thomas

HART, KING & COLDREN

A PROFESSIONAL LAW CORPORATION

200 EAST SANDPOINTE, FOURTH FLOOR
DIRECT ALL MAIL TO: P.O. BOX 2507
SANTA ANA, CALIFORNIA 92707
TELEPHONE (714) 432-8700
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RACHELLE E. MENAKER
ROBERT J. MULVIHILL
SHAWN J. D. WACHTER

OF COUNSEL
MICHAEL J. SCHROEDER, P.C.
JOHN C. TEAL, JR.

November 14, 1997

Jonathan Shapiro, Esq.
1300 United States Courthouse
312 N. Spring Street
Los Angeles, CA 90012

Re: Hermandad Mexicana Nacional
Hermandad Mexicana Nacional Legal Center

Dear Mr. Shapiro:

This is in response to your request for the current status of subpoenas to Hermandad Mexicana Nacional and hermandad Mexicana Nacional Legal Center.

Our client, Robert K. Dornan initiated an election contest pursuant to 2 U.S. Code § 381 et seq. against Loretta Sanchez. Pursuant to that contest, Dornan had several subpoenas issued including a subpoena to Hermandad Mexicana Nacional (spelled "Nacionale" in the subpoena) and Hermandad Mexicana Nacional Legal Center (again spelled "Nacionale"). The subpoenas were personally served on the deponents on March 19, 1997. Copies of these two subpoenas are enclosed. You will find the proofs of service on the last page.

On or about March 20, 1997, Hermandad Mexicana Nacional and Hermandad Mexicana Nacional Legal Center filed a Motion to Quash the Subpoenas or to modify them. Pursuant to the Contested Election Act, the Motion was filed with the House of Representatives of the United States of America.

On April 18, 1997, the House Oversight Committee of the United States Congress ruled on Hermandad Mexicana Nacional's and Hermandad Mexicana Nacional Legal Center's Motion to Quash or Modify the Subpoenas. The Congressional Committee made some modifications to the subpoenas and ordered the deponents to respond within 15 days from April 16, 1997. Copies of these rulings are enclosed. We have also enclosed for your information a copy of the Protective Order mentioned in the rulings.

Even though Hermandad Mexicana Nacional and Hermandad Mexicana Nacional Legal Center were ordered to comply with the subpoenas, they failed to do so. We wrote to these entities' attorney on May 14, 1997 advising him that his clients had not complied with the rulings from the Congressional Committee. A copy is enclosed. Also, on May 14, 1997, this firm, on behalf of our client, Robert K. Dornan, filed a Complaint with the United States Attorney for the Central District of California stating that Hermandad Mexicana Nacional and Hermandad Mexicana Nacional Legal Center had violated the Contested Election Act. I am enclosing for your information a copy of the Complaint and a letter dated May 13, 1997 to Nora M. Manella, United States Attorney, which was attached to that Complaint. I did not include the exhibits to the Complaint as they do not appear to be relevant to your inquiry concerning the current status.

We have never been contacted by Hermandad Mexicana Nacional or Hermandad Mexicana Nacional Legal Center regarding compliance with the subpoenas or the Congressional Committee's rulings.

It should be noted that Mr. Rosen, on behalf of Hermandad Mexicana Nacional filed a Motion with the Central District of California seeking to quash a subpoena which Dornan had issued to the Orange County District Attorney's office for production of records pertaining to his clients. Judge Taylor denied that Motion and Mr. Rosen filed an appeal. However, there has been no ruling on the appeal and we recently received communication indicating that the Ninth Circuit Court of Appeals is considering a dismissal of the appeal. A copy of the Court's November 10, 1997 Order is enclosed.

In summary, our client obtained lawful subpoenas to Hermandad Mexicana Nacional and Hermandad Mexicana Nacional Legal Center which were personally served on these entities and these entities filed motions to quash or modify the subpoenas resulting in the United States Congress making minor modifications to the subpoenas and ordering Hermandad Mexicana Nacional and Hermandad Mexicana Nacional Legal Center to comply. There has been no compliance.

As you will notice when you review the subpoenas to Hermandad Mexicana Nacional and Hermandad Mexicana Nacional Legal Center, there are numerous documents requested. Many of these requests relate to the identity of persons who attended citizenship classes or utilized citizenship services offered by these entities. We anticipate that Hermandad Mexicana Nacional and Hermandad Mexicana Nacional Legal Center will attempt to excuse their compliance with the subpoenas by claiming that they violate their rights under the Fifth Amendment of the United States Constitution (i.e., that the documents may tend to incriminate them) or violate other constitutional rights. However, we do not see that just providing lists of persons without more can in any way violate constitutional rights. The same would be true with regard to

providing the names, addresses and telephone numbers of these entities' employees, associates or volunteers or providing copies of correspondence they may have had with the Loretta Sanchez campaign.

Hermandad Mexicana Nacional and Hermandad Mexicana Nacional Legal Center have denied any connection with the Loretta Sanchez for Congress campaign. They also deny any connection with various other groups which may have been active in the Loretta Sanchez campaign for Congress. We do not see that providing copies of correspondence alone could violate the Fifth Amendment rights of the Hermandad entities.

If there is a "smoking gun" (and I doubt that such a document is extant), that might be another story. But, "garden variety" correspondence should not be objectionable. Dornan requested the Hermandad entities to produce information concerning their bank accounts or savings accounts. Although these entities probably do not relish the idea of producing this information, we do not see how it could violate these entities' Fifth Amendment rights. In fact, as you look through the documents requested pursuant to the subpoena, short of an actual evidence of criminal conduct, none of them would be objectionable under the witnesses' Fifth Amendment rights.

If we can provide further information, please do not hesitate to call.

Very truly yours,

HART, KING & COLDREN

William R. Hart

WRH:JCT:wp

Enclosures

cc: John Kelliher, Counsel to the Committee on House Oversight
Michael L. Stern, Senior Assistant Counsel, U.S. House of of Representatives, Office of the General Counsel
Bill Thomas, Chairman, House Oversight Committee
Robert K. Dornan

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HART, KING & COLDREN

A PROFESSIONAL LAW CORPORATION

200 EAST SANDPOINTE, FOURTH FLOOR
DIRECT ALL MAIL TO: P.O. BOX 2507
SANTA ANA, CALIFORNIA 92707
TELEPHONE (714) 432-8700
FACSIMILE (714) 546-7457

ROBERT S. COLDREN
GARY R. KING
WILLIAM R. HART
CANDICE L. CAMPBELL
JOHN H. PENTECOST
C. WILLIAM DAHLIN
GLENN MONDO

CHRISTOPHER R. ELLIOTT
RICHARD P. GERBER
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ROBERT J. MULVIHILL
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OF COUNSEL
MICHAEL J. SCHROEDER, P.C.
JOHN C. TEAL, JR.

November 14, 1997

Sue O'Brien, Special Agent
Federal Bureau of Investigation
11000 Wilshire Boulevard, Suite 1700
Los Angeles, CA 90024

Re: Hermandad Mexicana Nacional
Hermandad Mexicana Nacional Legal Center

Dear Ms. O'Brien:

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If we can provide further information, please do not hesitate to call.

Very truly yours,

HART, KING & COLDREN

William R. Hart

WRH:JCT:wp

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cc: John Kelliher, Counsel to the Committee on House Oversight
Michael L. Stern, Senior Assistant Counsel, U.S. House of of Representatives, Office of the General Counsel
Bill Thomas, Chairman, House Oversight Committee
Robert K. Dornan

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M E M O R A N D U M

TO: Bill Hart

FROM: Jack Teal

DATE: November 19, 1997

RE: Dornan v. Sanchez

Bill-

On November 19, 1997 I spoke with Sue O'Brien of the Federal Bureau of Investigation ((310) 996-3814). Here is the status.

Ms. O'Brien received our letter and enclosures regarding the Hermandad subpoenas. She and Jonathan Shapiro of the US Attorneys Office went to the Federal Court in Santa Ana and tracked down the court file and reviewed it. She and Mr. Shapiro would like to meet with you to find out what documents you would have expected Hermandad to produce "without blinking".

I explained to Ms. O'Brien that you are in trial but that you might not be trying the case on Friday and that I would check with your secretary. As soon as you know whether you will be in trial on Friday, please let me know so that arrangements can be made. She said that she would prefer an appointment in the afternoon. I will not be in the office on Thursday, 11/20 but Chae can phone and set up the appointment.

I asked Ms. O'Brien if there were any other documents or information that she would need in order to move the investigation along. She said she would like to see any communications with Hermandad which were not in the "pleadings" (*i.e.*, the Federal Court file or the motions to quash filed with Congress). I told her that I had seen a letter from Hermandad's attorney to, I believe, the US Attorney in Washington, D.C. which explained in some detail why the US Attorney should not prosecute Hermandad. She said that she did not have a copy of the letter as their file was missing one of the folders and that perhaps the letter was in that folder. She would like to see a copy.

After speaking with Sue O'Brien, I asked Patty Crimmins to go through the correspondence and locate the letter from Hermandad's attorney and any other correspondence which might be of interest. I will not send anything to Sue O'Brien without discussing it with you beforehand.

Pursuant to your request I telephoned John Kelliher in Washington D.C. ((202) 225-7552) to advise him of the status. He was pleased that the FBI was pursuing the investigation. He asked to be kept

up to date on any other developments. He said that he recalled the letter from Hermandad's attorney and he will have his staff go through their correspondence and copy anything that might be of interest to the FBI as well.

On the "to do" list, then, would be:

1. Send Sue O'Brien and Jonathan Shapiro a copy of Hermandad's attorney's letter and any other correspondence relevant to the prosection of Hermandad;

2. Schedule a meeting with Sue O'Brien. She said that she and Jonathan Shapiro will be pleased to come to your office for the meeting.

3. Prior to the meeting with Sue O'Brien and Jonathan Shapiro, review the Hermandad subpoenas and be ready to point out to O'Brien and Shapiro what documents should have been produced by Hermandad "without blinking". I did not feel that I had enough background information to answer her question on this point.

JCT

JCT/brs
71362.001

105TH CONGRESS
1ST SESSION

H. RES. 244

Demanding that the Office of the United States Attorney for the Central District of California file criminal charges against Hermandad Mexicana Nacional for failure to comply with a valid subpoena under the Federal Contested Elections Act.

IN THE HOUSE OF REPRESENTATIVES

Mr. THOMAS submitted the following resolution; which was referred to the Committee on _____

RESOLUTION

Demanding that the Office of the United States Attorney for the Central District of California file criminal charges against Hermandad Mexicana Nacional for failure to comply with a valid subpoena under the Federal Contested Elections Act.

Whereas the contested election case of Dornan v. Sanchez is pending before the Committee;

Whereas the Federal Contested Elections Act (2 U.S.C. 381 et seq.) (hereafter in this resolution referred to as the "Act") provides for the issuance of subpoenas, and on March 17, 1997, United States District Court Judge Gary L. Taylor issued such a subpoena at the request of

the Contestant for the deposition and records of Hermandad Mexicana Nacional;

Whereas on April 16, 1997, the Committee voted to modify the subpoena by limiting production of documents to the 46th Congressional District (among other modifications), and as perfected by the Committee, the subpoena required Hermandad Mexicana Nacional to produce documents and appear for a deposition no later than May 1, 1997;

Whereas Hermandad Mexicana Nacional failed to produce documents or appear for the deposition by May 1, 1997, and still has not complied with the subpoena;

Whereas Hermandad Mexicana Nacional, by willfully failing to comply with the lawfully issued subpoena, is in violation of section 11 of the Act (2 U.S.C. 390), which provides for criminal penalties;

Whereas on May 13, 1997, the Contestant wrote to the United States Attorney for the Central District of California, Nora M. Manella, requesting that action be taken to enforce the law with respect to Hermandad Mexicana Nacional, and on June 23, 1997, the Committee wrote to the Department of Justice inquiring as to the status of this request for criminal prosecution, and the Department responded on July 25, 1997, that the criminal referral remained "under review";

Whereas the United States Attorney's failure to enforce criminal penalties for the violation of the Act encourages disrespect for the law and hinders the Constitutionally mandated process of determining the facts in the contested election case, including the discovery of any elec-

tion fraud that may have influenced the outcome of the election; and

Whereas on September 23, 1997, the United States District Court for the Central District of California ruled that the deposition subpoena provisions of the Act are constitutional: Now, therefore, be it

Resolved, That the House of Representatives demands that the Office of the United States Attorney for the Central District of California carry out its responsibility by filing, pursuant to its determination that it is appropriate according to the law and the facts, criminal charges against Hermandad Mexicana Nacional for failure to comply with a valid subpoena issued under the Act.

Moran (VA)	Redmond	Stenholm
Morella	Regula	Stump
Murtha	Reyes	Talent
Myrick	Riggs	Thanner
Nethercutt	Rogan	Tauzin
Ney	Rogers	Taylor (NC)
Northup	Ros-Lehtinen	Thomas
Nussle	Sanford	Thornberry
Ortiz	Saxton	Thune
Oxley	Schaefer, Dan	Tiahrt
Packard	Sessions	Traficant
Pallone	Shadegg	Upton
Pappas	Shaw	Visclosky
Parker	Sherman	Walsh
Pastor	Shimkus	Wamp
Paxon	Shuster	Watkins
Pease	Siskisky	Watts (OK)
Peterson (PA)	Skaggs	Waxman
Petri	Skeen	Weldon (FL)
Pickering	Skelton	Weldon (PA)
Pitts	Smith (MI)	Weller
Porter	Smith (NJ)	White
Portman	Smith (OR)	Whitfield
Price (NC)	Smith (TX)	Wicker
Pryce (OH)	Snowbarger	Wise
Quinn	Solomon	Wolf
Rahall	Souder	Young (AK)
Ramstad	Spence	
	Stearns	

NAYS—199

Ackerman	Gejdenson	Hinchey
Allen	Gephardt	Hinojosa
Andrews	Gibbons	Hooley
Bachus	Gordon	Hostettler
Barcia	Graham	Istook
Bartlett	Green	Jackson (IL)
Becerra	Harman	Jackson-Lee (TX)
Bentsen	Hastings (FL)	Jefferson
Berry	Hefley	John
Bishop	Hill	Johnson, E. B.
Blagojevich	Hilleary	Johnson, Sam
Blumenauer	Hilliard	Jones
Blunt	Hinchey	Kaptur
Bonior	Hinojosa	Kennedy (MA)
Boswell	Hooley	Kennedy (RI)
Boyd	Hostettler	Kennelly
Brown (FL)	Istook	Kildee
Brown (OH)	Jackson (IL)	Kilpatrick
Burr	Jackson-Lee (TX)	Kleczka
Burton	Jefferson	Kucinich
Campbell	John	LaFalce
Capps	Johnson, E. B.	Lampson
Cardin	Johnson, Sam	Lantos
Carson	Jones	Largent
Chabot	Kaptur	Levin
Chenoweth	Kennedy (MA)	Lewis (GA)
Clay	Kennedy (RI)	Lipinski
Clayton	Kennelly	Lowey
Clement	Kildee	Lucas
Clyburn	Kilpatrick	Maloney (CT)
Coburn	Kleczka	Maloney (NY)
Combest	Kucinich	Manton
Conyers	LaFalce	Manzullo
Costello	Lampson	Markey
Cox	Lantos	Martinez
Coyne	Largent	Mascara
Crane	Levin	McCarthy (NY)
Crapo	Lewis (GA)	McGovern
Cummings	Lipinski	McHale
Davis (FL)	Lowey	McIntosh
Davis (IL)	Lucas	McIntyre
DeFazio	Maloney (CT)	McKinney
DeGette	Maloney (NY)	McNulty
Delahunt	Manton	Meehan
DeLauro	Manzullo	Meek
Dellums	Markey	Menendez
Deutsch	Martinez	Millender-McDonald
Dingell	Mascara	Miller
Doggett	McCarthy (NY)	Mink
Dooley	McGovern	Moakley
Doolittle	McHale	Moran (KS)
Duncan	McIntosh	Nadler
Edwards	McIntyre	Neal
Ehrlich	McKinney	Oberstar
Engel	McNulty	Obey
Ensign	Meehan	Olver
Etheridge	Meek	Owens
Evans	Menendez	Pascrell
Fattah	Millender-McDonald	Paul
Fazio	Miller	Payne
Filner	Mink	Pelosi
Fiske	Moakley	Peterson (MN)
Fogietta	Moran (KS)	Pickett
Ford	Nadler	Pombo
Frank (MA)	Neal	Pomeroy
Frost	Neumann	Portman
Furse	Norwood	Radanovich
Gejdenson	Oberstar	Rangel
Gephardt	Obey	Riley
Gibbons	Olver	Rivers
Gordon	Owens	Rodriguez
Graham	Pascrell	Roemer
Green	Paul	Rohrabacher
Harman	Payne	Rothman
Hastings (FL)	Pelosi	Roybal-Allard
Hefley	Peterson (MN)	Royce
Hill	Pickett	Rush
Hilleary	Pombo	Ryun
Hilliard	Pomeroy	Sabo
Hinchey	Portman	Salmon
Hinojosa	Radanovich	Sanchez
Hooley	Rangel	Sanders
Hostettler	Riley	Sandlin
Istook	Rivers	Sanford
Jackson (IL)	Rodriguez	Sawyer
Jackson-Lee (TX)	Roemer	Scarborough
Jefferson	Rohrabacher	Schaffer, Bob
John	Rothman	Scott
Johnson, E. B.	Roybal-Allard	Sensenbrenner
Johnson, Sam	Royce	Serrano
Jones	Rush	Shays
Kaptur	Ryun	Slaughter
Kennedy (MA)	Sabo	Smith, Adam
Kennedy (RI)	Salmon	Smith, Linda
Kennelly	Sanchez	Snyder
Kildee	Sanders	Spratt
Kilpatrick	Sandlin	Stabenow
Kleczka	Sanford	Stark
Kucinich	Sawyer	Stokes
LaFalce	Scarborough	Strickland
Lampson	Schaffer, Bob	Stump
Lantos	Scott	Stupak
Largent	Sensenbrenner	Tauscher
Levin	Serrano	Taylor (MS)
Lewis (GA)	Shays	Thompson
Lipinski	Slaughter	Thurman
Lowey	Smith, Adam	Tierney
Lucas	Smith, Linda	Torres
Maloney (CT)	Snyder	Towns
Maloney (NY)	Spratt	Turner
Manton	Stabenow	Velazquez
Manzullo	Stark	Vento
Markey	Stokes	Waters
Martinez	Strickland	Watt (NC)
Mascara	Stump	Waxman
McCarthy (NY)	Stupak	Wexler
McGovern	Tauscher	Weygand
McHale	Taylor (MS)	Woolsey
McIntosh	Thompson	Wynn
McIntyre	Thurman	
McKinney	Tierney	
McNulty	Torres	
Meehan	Towns	
Meek	Turner	
Menendez	Velazquez	
Millender-McDonald	Vento	
Miller	Waters	
Mink	Watt (NC)	
Moakley	Wexler	
Moran (KS)	Weygand	
Nadler	Woolsey	
Neal	Wynn	

NOT VOTING—7

Gonzalez	Schiff	Young (FL)
McDermott	Schumer	
Roukema	Yates	

□ 2050

Messrs. COX of California, OWENS, ENGEL, GIBBONS, and RILEY changed their vote from "aye" to "no."

Mr. HERGER changed his vote from "no" to "aye."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 1171

Mr. KASICH. Mr. Speaker, I ask unanimous consent that the name of the gentleman from Pennsylvania [Mr. MASCARA] be removed as cosponsor of H.R. 1171. He was added in error.

The SPEAKER. Is there objection to the request of the gentleman from Ohio?

There was no objection.

PROVIDING FOR CONSIDERATION OF H.R. 244, SUBPOENA ENFORCEMENT IN CASE OF DORNAN V. SANCHEZ

Mr. SOLOMON. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 253 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 253

Resolved, That upon the adoption of this resolution it shall be in order without intervention of any point of order to consider in the House the resolution (H. Res. 244) demanding that the Office of the United States Attorney for the Central District of California file criminal charges against Hermandad Mexicana Nacional for failure to comply with a valid subpoena under the Federal Contested Elections Act. The resolution shall be considered as read for amendment. The previous question shall be considered as ordered on the resolution and the preamble to final adoption without intervening motion except: (1) one hour of debate equally divided and controlled by the chairman and ranking minority member of the Committee on House Oversight; and (2) one motion to recommit which may not contain instructions and on which the previous question shall be considered as ordered.

The SPEAKER pro tempore [Mr. GILLMOR]. The gentleman from New York [Mr. SOLOMON] is recognized for 1 hour.

Mr. SOLOMON. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentlewoman from New York [Ms. SLAUGHTER], pending which I yield myself such time as I may consume. During consideration of the resolution, all time yielded is for the purposes of debate only.

Mr. Speaker, this resolution is a rule which provides for consideration of House Resolution 244. It is a resolution relating to subpoena enforcement in the case of Dornan v. Sanchez. The rule provides for 1 hour of debate, divided equally between the chairman and ranking minority member of the Committee on House Oversight. The rule also waives points of order against consideration of this resolution.

Finally, the rule provides for one motion to recommit.

Mr. Speaker, the resolution this rule brings to the floor today is an attempt to express the will of this House relating to the proper enforcement of a subpoena issued under the Federal Contested Elections Act.

The House will be asserting, by voting on this resolution, that ignoring a valid subpoena issued under this act is an affront to the dignity of the House of Representatives and to the integrity of its proceedings.

We will hear from Members of the House on the Committee on House Oversight to explain the facts of the case during the debate on this resolution. But it is important to consider the relevant statutes in question at the onset of this debate, and I would like to take a minute just to make sure that we all understand those statutes.

As the debate on this resolution unfolds, which is likely to be acrimonious, at best, I would ask Members to keep in mind these important provisions of law: Members should also be aware of their constitutional responsibilities as they consider this very, very difficult issue.

First, Article I, Section 5 of the Constitution states that each House, that means the House and the Senate, shall be the judge of its own elections, of its own returns, and qualifications of its own Members. That is Article I, Section 5 of the Constitution of the United States. This provides the groundwork for the House to judge contested elections involving its seats, a responsibility the House has practiced since the early Congresses, 200 years ago.

Also, the Federal Contested Elections Act, enacted in 1969, sets forth the procedures for candidates to contest an election in this House of Representatives. The act provides for filing a Notice of Contest with the Clerk of the House, among other congressional procedures. Furthermore, the act sets forth procedures for subpoena for depositions.

The Contested Elections Act is also very specific in "allowing subpoenas to be issued by any party in the elected contest." That is a quote. We heard considerable testimony on that subject in the Committee on Rules for several hours last night.

As the Members are well aware, there is a contested election pending in the 46th district in California. On March 17, 1997, and this is important for the Members to understand, the United States District Court issued a subpoena under the Contested Elections Act for the deposition and records of Hermandad Mexicana Nacional. The Committee on House Oversight voted to modify the subpoena and require compliance by a date certain, that date

being May 1, 1997. To date, compliance with this valid subpoena has not occurred.

It should also be noted that, in the exercise of its proper role under the Contested Elections Act, the Committee on House Oversight met on September 24 just past and quashed several subpoenas, including one to the contestee in the case, the gentlewoman from California [Ms. SANCHEZ].

□ 2100

Last week, Mr. Speaker, the United States District Court upheld the constitutionality of the deposition subpoena provisions of the Contested Election Act. House Resolution 244, the resolution before us today, will put the House on record asserting that the rights of the House as an institution and the dignity of its proceedings under the Constitution and under Federal law are called into question by the lack of compliance with the subpoena.

Now, Mr. Speaker, last night during the Committee on Rules consideration of the resolution, a member of the Committee on Rules, the gentleman from Florida [Mr. DIAZ-BALART], expressed concern that the drafting of the resolution violated the spirit of the constitutional doctrine of separation of powers. Because of this Congressman's concerns, I will be offering a manager's amendment to this rule that will address his concerns. This amendment to the rule will change the text of the House Resolution to read as follows:

Resolved that the House of Representatives demands that the Office of the United States Attorney for the Central District of California carry out its responsibility by filing, and that part is what is in the bill right now, but we would then add to that, pursuant to its determination that it is appropriate according to the law and the facts. And then we go back to the regular language in the resolution which states criminal charges against Hermandad Mexicana Nacional for failure to comply with a valid subpoena issued under the act.

The phrase again, what I would be offering in the manager's amendment, which I understand will probably be accepted by the other side, simply says, pursuant to its determination that it is appropriate according to the law and the facts, is what we are inserting.

Mr. Speaker, the amendment to the rule tightens the language of the original resolution to satisfy the concerns of the gentleman from Florida [Mr. DIAZ-BALART], and at the appropriate time I would urge support of the amendment and the rule.

Mr. DIAZ-BALART. Mr. Speaker, will the gentleman yield?

Mr. SOLOMON. I yield to the gentleman from Florida.

Mr. DIAZ-BALART. Mr. Speaker, I will be brief.

The chairman of the Committee on Rules was correct in stating that I expressed my serious concern, in fact was not able to support this rule last night. I opposed this rule last night because of my concern related to the separation of powers, not with regard to the process of discovery in this case.

I agree with the U.S. District Court for the Southern District of California that, and I would quote the court, in the review of its discovery process, Congress is not seising a function not constitutionally entrusted to it, and there is no separation of powers violation, end quote, but, rather, in the demand that the resolution makes that the U.S. Attorney for the Central District of California filed criminal charges.

It was alleged more than once during the almost 4 hours that we listened to the testimony in the Committee on Rules last night that legal authority exists preventing that outright demand by Congress of the U.S. attorney. The Gorsuch case in the 1980's, specifically in 1983, was referred to.

So what we do with this amendment that the chairman of the Committee on Rules is proposing to the rule is to state and make clear that when the House makes its demands upon the U.S. attorney, that the determination to prosecute must be made by the U.S. attorney pursuant to its finding that it is appropriate according to the law and the facts in this case.

The evidence that the subpoena at issue in this matter has been ignored after hours of testimony in the Committee on Rules became very evident. The fact that no one is above the law in the United States of America must be made clear. We made clear in this House just a few weeks ago that the rules of this House also cannot be violated when we barred from the floor of this House the contestant in this matter.

With the amendment that we are proposing to the rule, Mr. Speaker, we are going the extra mile to make certain that absolutely no constitutional precepts are violated when the House of Representatives insists upon the principle that the law must be followed.

AMENDMENT OFFERED BY MR. SOLOMON

Mr. SOLOMON. Mr. Speaker, I thank the gentleman from Florida, and if it is all right, I would say to the gentlewoman from New York, so that we are debating the actual resolution, I would at this time propound the unanimous-consent request that the amendment to House Resolution 253 that was placed at the desk be considered as adopted now.

The SPEAKER pro tempore (Mr. GILLMOR). The Clerk will report the amendment.

The Clerk read as follows:

Amendment Offered By Mr. SOLOMON:

At the end of the resolution add the following new sections:

"Sec. 2. Notwithstanding any other provision of this resolution, the amendment specified in section 3 of this resolution shall be considered as adopted.

"Sec. 3. The amendment described in section 2 of this resolution is as follows:

Page 3, line 4, after 'filing' insert the following: ', pursuant to its determination that it is appropriate according to the law and the facts,'.".

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

Mr. MENENDEZ. Reserving the right to object, Mr. Speaker, I would like to turn to the distinguished chairman of the Committee on Rules to ask a question.

I heard my dear friend and colleague from Florida [Mr. DIAZ-BALART] describe what he believes is the reasoning behind this, and I would like to ask the chairman, "Exactly what is your intent in this language?"

Mr. SOLOMON. Mr. Speaker, will the gentleman yield?

Mr. MENENDEZ. I yield to the gentleman from New York.

Mr. SOLOMON. It is exactly as the words that the gentleman from Florida [Mr. DIAZ-BALART] has asked us to place in it. Pursuant to its determination that it is appropriate according to the law and the facts. He just wants to make sure that we are not infringing on another branch of the Government, which he explained.

Mr. MENENDEZ. Does this indicate that the U.S. attorney has not made a determination that is in accordance with the law and the facts at this time?

Mr. SOLOMON. No, it does not.

Mr. MENENDEZ. Does it determine that he has made a determination?

Mr. SOLOMON. No, it does not.

Mr. MENENDEZ. So it is up in the air as to whether or not he has a determination pursuant to the law and the facts. We do not know whether he has made one.

Mr. SOLOMON. As far as the resolution is concerned, the gentleman is correct.

Mr. MENENDEZ. OK. So, in essence, what we will be doing if we permit this specific language to amend it is to demand that the U.S. attorney carry out his responsibility even though we recognize that a basis to determine whether or not the laws and the fact in this issue should rise to the level of pursuing a criminal charge has been made.

Mr. SOLOMON. I would just say to the gentleman, it makes no material difference whether it is in or out or not. This simply states the fact that they will be pursuant to law and to facts, whatever they may be.

Mr. MENENDEZ. Continuing on my reservation of objection, Mr. Speaker, I just have a simple question; maybe I misstated it.

The simple question is, are we saying that we do not know whether or not, or do we know whether the U.S. attorney has made a determination pursuant to the law and the facts that this is appropriate?

Mr. SOLOMON. No, and I do not know.

Mr. MENENDEZ. We do not know.

Mr. SOLOMON. I do not know.

Mr. MENENDEZ. And so by placing this in there, we are recognizing that it is the responsibility of the U.S. attorney to determine that it is appropriate pursuant to the law and the facts.

Mr. SOLOMON. It is his responsibility.

Mr. MENENDEZ. And we do not know whether he has made that determination yet or not.

Mr. SOLOMON. No, but we sure want to find out.

Mr. MENENDEZ. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The SPEAKER pro tempore. Without objection, the amendment is agreed to.

There was no objection.

Mr. SOLOMON. Mr. Speaker, I reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I thank the gentleman from New York [Mr. SOLOMON] for yielding me the customary time.

Mr. Speaker, I rise today to strongly urge my colleagues to defeat this rule and the resolution that it makes in order for several reasons.

First, there are still, in my view, major separation of powers concerns regarding this resolution. If I can repeat, I still think that the major separation of powers question remains because we are still demanding that action be taken.

Since when does this Congress demand that any law enforcement arm is to bring criminal action against private citizens? The majority knows very well it is beyond our power to compel compliance with this resolution, and the proof of that is the fact the resolution has no legal effect whatsoever. The role of Congress is to enact legislation, not to enforce it.

Second, the Committee on House Oversight has failed to make even the most basic determination that enough specific votes were in question to bring into doubt the, certified by the Secretary of State of California, the certified 984 vote margin. Common sense would mandate that the Committee on House Oversight should have been able to substantiate specific allegations of the mistaken counting of at least 984 identified votes before beginning the investigation. But no, we continued the investigation for 10 months and still are not able to identify enough votes to negate this outcome, and that is unconscionable. The Committee on House Oversight has allowed an election contest based not on facts or even specific allegations, but on innuendo and unsupported, vague assertions.

From the very beginning, the supposed investigation has been a fishing expedition trying desperately to find enough votes and voters to justify its own continuation, and what do we have after 10 months? Very little. The majority on the committee is now looking for distraction to draw attention from its inability to make a case and its unwillingness to dismiss it.

The red herring it offers today is a resolution that purports to demand that the United States attorney file criminal charges against an organization for its failure to comply with the subpoena issued by the defeated incumbent in the election, not by the House of Representatives, but by a defeated incumbent, a normal citizen, while knowing full well that this Congress has no authority to demand any such thing.

Third, simply as a procedural matter this resolution is premature. A court has just ruled on the constitutional status of the Contested Election Act last week. The time for appeal of that court ruling has not even expired, and yet this resolution nevertheless purports to demand that criminal charges be brought against an organization for failing to comply with subpoenas issued pursuant to that act. At the very least, it is inappropriate for this Congress to be acting so precipitously when it is still possible that a court of appeals may reverse the lower court's decision.

Mr. Speaker, I urge my colleagues to reject this attempt to divert attention from this committee's true responsibility and end this unwarranted fishing expedition. It is time for this committee to fish or cut bait. It has specifically identified sufficient invalid votes to overturn the certified 984-vote margin or declare an end to this floundering and this misbegotten challenge.

The amendment that we just passed unanimously I think reinforces what we were saying, that this resolution has absolutely no power behind it. We cannot demand another branch of the Government do anything, and in fact, frankly, I think what we proved again here is a simple phone call perhaps might have sufficed, but to tie up the Houses's time with a resolution is beyond the pale.

Mr. Speaker, I reserve the balance of my time.

Mr. SOLOMON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I really would like to just be frank for a few minutes and, as my colleagues know, just try to clear the air a little bit, because I personally want to be as fair as I can on this issue.

Mr. HOYER. Mr. Speaker, will the gentleman yield?

Mr. SOLOMON. I yield to the gentleman from Maryland.

Mr. HOYER. Mr. Speaker, I was wondering if the gentleman was just going to be frank for a few minutes.

Mr. SOLOMON. I will be as frank as my friend would like me to be, for as long as that.

But, as my colleagues know, I have heard the gentlewoman, whom I have great respect for, from Rochester, NY, use the term "red herring" and talk about fishing and cutting bait, and to tell the truth, I wish I was fishing and cutting bait right now up in the Adirondacks. It is a beautiful time up there. I invite all of my colleagues to come up when the beautiful colors appear at this time of the year.

Ms. SLAUGHTER. I mentioned flounder, too.

Mr. SOLOMON. Let me point out the difference on how we Republicans are handling this, because we are trying to be fair, and the gentlewoman from New York [Ms. SLAUGHTER] said we ought to be rushing this thing, we ought to be getting it over with. But I just go back to years ago before many of my colleagues were on this floor. I have been here for 20 years. But there was a situation where there was a gentleman by the name of Rick McIntyre from Indiana had won an election. He was certified by the State of Indiana as the winner, and in spite of that certification at that time, the Democrat-controlled Congress would not seat the certified winner.

□ 2115

But in fact, seated the loser, another good friend of mine, a Democrat by the name of Frank McCloskey.

Now, the point is this: In this disputed case, we did not try to rush this through and not seat the certified winner, the gentlewoman from California [Ms. SANCHEZ], because she should have been seated and she was, and she is here today; yet, we went ahead and we tried to investigate the matter.

Now, that is the difference. We did not rush to it and seat the loser, we seated the certified winner. But yet, it is terribly important if we are going to have an elected process in this country that it be a fair process, and we need to get to the bottom of it and that is really what we are attempting to do here. So I wanted to clear the air.

Mr. Speaker, I yield 3 minutes to the gentlewoman from Columbus, Ohio [Ms. PRYCE], to further clear the air.

Ms. PRYCE of Ohio. Mr. Speaker, I thank the distinguished chairman of the Committee on Rules for yielding me this time, and I rise to express my support for both this rule and the underlying resolution.

House Resolution 253 is a closed rule to govern debate on a very serious matter that speaks directly to the issue of whether this institution is willing to demand that the laws it passes are honored and enforced. It is both that simple and that important.

Mr. Speaker, we will hear plenty of impassioned debate today that will be driven by politics and influenced by personalities. The gentlewoman from California [Ms. SANCHEZ] is a pleasure to serve with and we all take pleasure in her company, but this is not about personalities. The resolution that this rule makes in order addresses the willful failure of the Hermandad Mexicana Nacional to comply with a valid legal subpoena.

However, some of my colleagues clearly are missing the point. It does not matter who requested the subpoena; it does not matter what the subpoena is expected to uncover, nor does it matter what the ethnicity is of the parties served by the subpoena. What is significant is that the subpoena is valid under the processes laid out by a Federal law that has been on the books for over 25 years.

How long can this body sit idle as the Hermandad completely ignores this subpoena and, in effect, challenges the legitimacy of the Federal Contested Elections Act? The bottom line is that if one breaks the law, then one must face the consequences, but somehow our friends on the other side of the aisle express outrage at this very simple principle.

Are they really suggesting that voter fraud should not be investigated? Are they really suggesting that non-U.S. citizens should be allowed to vote? And if the Department of Justice is content to drag its feet in the face of this defiance, then as a former prosecutor and a former judge, I believe it is the responsibility of this House to send a strong message that we demand that the law be enforced.

It is a sad day for all of us when we cannot expect this body, which is sworn to uphold the Constitution, to honor this very basic legal process.

The other side's deliberately inflammatory charges are an insult to this great institution and to the American ideal of fair and honest elections. We keep hearing clamoring for campaign reform. Well, I respectfully suggest that we enforce the laws that we have at hand. That is what this resolution is about, and I encourage my colleagues to support both the rule and the underlying resolution.

Ms. SLAUGHTER. Mr. Speaker, I yield 3 minutes to the gentleman from Michigan [Mr. BONIOR].

Mr. BONIOR. Mr. Speaker, in 1996 the voters of Orange County elected LORETTA SANCHEZ and defeated Bob Dornan. Now, that is the way the American democracy is supposed to work: voters get to choose who represents them in Congress. The gentleman from California [Mr. THOMAS] and the Republican leadership seem to have forgotten that. They are trying to deny voters their choice through an outrageous campaign of harassment against the gentlewoman from California [Ms. SANCHEZ] and half a million Americans.

The committee has abandoned its proper role to evaluate evidence and has assumed the role of partisan prosecutor. They say they are simply looking for information, but according to many press accounts, the Republican leadership has already decided the case in favor of Mr. Dornan.

The committee appears willing to go to any extreme. The gentleman from California [Mr. THOMAS] even directed the INS to comb through the records of 40 million Americans, trying to dredge up private information that somehow could be used to support Mr. Dornan's wild allegations. Of those 40 million Americans, half a million were singled out for further investigation. Of these, 50 percent were Hispanic, 30 percent were Asian.

Now, who are the actual people singled out as suspicious? Let us take a look. Mr. Dornan claims Carmen Villa was not entitled to vote because she was not an American citizen. Quite the contrary. She is proud to be an American citizen. She is proud to be an American citizen and she displays her naturalization certificate to prove it.

Mr. Dornan even questioned the voting rights of 18 Dominican nuns and a group of 18 active-duty Marines based at a helicopter air station.

The gentleman from California [Mr. THOMAS] continues to press on with this sham investigation, assuming thousands of Americans are guilty until proven innocent.

Now, that is not the American way and that is not the way the American system is supposed to work. The burden of proof should be on Mr. Dornan, not on thousands of Americans who simply exercised their constitutional right to vote.

So I call on this evening, and my colleagues will hear others call on this evening, the Republican leadership to stop this harassment.

This has been a terrible day for many Americans in this country. We just went through a process on the census and on sampling. Four to 10 million Americans were denied in the last census of being counted. They are people like every single one of us in this body. They deserve representation.

We got rid of three-fifths counting a long time ago. Now that my colleagues on the other side do not want to count them, they do not want to count the votes of those people who are American citizens who come and vote and exercise their right. This harassment has gone on long enough. We call for this resolution to be defeated and we call on this rule to be defeated.

Ms. SLAUGHTER. Mr. Speaker, I yield 4 minutes to the gentleman from Massachusetts [Mr. FRANK].

Mr. FRANK of Massachusetts. Mr. Speaker, we should be very clear on what this resolution says. It forthrightly demands that the United States attorney do whatever he thinks he ought to do. Now, I did not realize that we had become the paymasters of the U.S. Government. Apparently this is kind of a bed check on the U.S. Attorney. It demands, it does not recommend, it demands, that he do whatever is appropriate.

I guess, if that is all the majority has to do with its time, that may be a better way to take up time than others, but I think we ought to vote against the resolution anyway.

In the first place, it is kind of a silly precedent to set; not a bad precedent, but a silly one, and understand, that is what the resolution does. It demands that he do what he thinks is appropriate.

I suppose we could offer an amendment that we demand that he not do what he thinks is inappropriate, and we might also demand that if he is undecided, that he make up his mind. I mean, why pull any punches. I also, however, want to argue for letting the U.S. Attorney make the determination that they should not go forward.

This has been a day. I started this morning, and three times today I have seen the Republican Party repudiate what used to be conservative legal doctrines. In 1983, William French Smith, the United States Attorney General under Ronald Reagan, said, "No, Congress, you cannot tell me to prosecute a contempt citation. You cannot tell me to prosecute for failure to comply, because the way to deal with it is through the civil process."

No one is saying that Hermandad, who seem to be the victims in this case of a fishing expedition, no one is saying that they can simply ignore the law. They went to court; they are contesting it. A single district court judge has decided against them.

Now, all year the Republicans have said that when a single district court judge rules on affirmative action or a single district court judge rules on something else, on immigration, ignore it. That is arbitrary. Now we have a single district court judge, and what is this organization saying? They want to appeal the decision. They have constitutional arguments to make. The constitutional argument is that the subpoena issued not by this House, but by Robert Dornan, might not be appropriate. I am myself not used to hearing the words "Dornan" and "appropriate" in the same sentence. I think that is a valid constitutional argument to make.

What we are saying is, let them proceed with an appeal. Instead, the Republicans said no, no, William French Smith in 1983 filed a lawsuit to enjoin the House of Representatives from doing a contempt citation. That is what the gentleman from Florida [Mr. DIAZ-BALART] was referring to. He called the lawsuit, by the way, to show his respect for this institution: The United States of America versus the House of Representatives. The judge threw out the lawsuit, but there was an agreement that a civil process would be a way to go forward. What we are saying here is, we will prosecute these people criminally in the middle of their appeal process.

Now, I have to say that is what we originally demanded. We should come back to what happened. Because of the gentleman from Florida [Mr. DIAZ-BALART], my colleagues have backed off, and are now, with a very silly resolution, demanding that the man do his job, but the context makes it worthy of defeat.

Mr. Speaker, maybe my colleagues will amend the resolution again while I am speaking, but I just again want to point out, conservatism ought to be some consistency to principle. I want to make a point, by the way. People talk about the McCloskey-McIntyre election. As a Democrat, I voted not to seat Mr. McCloskey. I thought he was a great Member, but I was not sure he won that election. No, I do not believe you to be partisan, but I think to deny this group the right to their civil appeal is a grave error.

The Republicans recently, in an amendment passed earlier today, decided that the constitutional doctrine of standing does not mean anything because we want to get at statistical sampling in the census. In the Committee on the Judiciary today they decided to have the Federal courts further involve themselves in zoning matters because of property rights.

The notion that conservatism stands consistently for a set of legal principles is being thrown out the window with such rapidity that passersby probably ought to be warned. Yes, I think it is a good thing that my colleagues backed off on the resolution and that it no longer demands, it no longer makes any sense, but given the context in which it came forward, I think we ought to vote "no."

Mr. SOLOMON. Mr. Speaker, hesitating to respond, let me yield 2 minutes to the gentleman from California [Mr. COX], a very distinguished member that used to work for the Reagan administration, to respond to Mr. FRANK.

Mr. COX of California. Mr. Speaker, I thank the gentleman, and appreciating fully the arguments just advanced by my colleague from Massachusetts and former law school classmate, if there is just one Federal district judge that has ruled here, then we ought not to listen to the Federal courts when he ruled that a subpoena is not validly enforceable and what really matters is that people be given time to appeal, then one would think that we would not hear from the gentleman, that this thing has got to be over and shut down, that we cannot have an investigation, that it is taking too long.

However, there are two simultaneous arguments. One is, this investigation should be dropped, it has not turned up anything after all of these months. The other is, we have litigated this through the district court and lost, but we deserve an opportunity now to litigate further and appeal. If you get to appeal and argue some more, even though you have already lost in Federal district court, obviously that consumes weeks and months and so on, and meantime, the subpoena issued under the Federal Contested Elections Act is not honored, the documents are not returned, the investigation cannot go forward, it is stalled.

So pick your arguments. Either say we are going to have more time for this investigation because we need to wait for the Court of Appeals to rule on the validity of the subpoenas, or say we are in a rush and therefore the way the district court has ruled has to be adequate here, and let us go and enforce the subpoena based on the district court ruling.

Obviously, we cannot walk north and south at the same time, but we are trying to get this done in a hurry. The Federal Contested Elections Act contemplates that we would decide this in what we would consider to be real time, that is, an election cycle, rather than what in the Federal courts typically is a normal period of time for civil litigation, which can be 4 and 5 years and so on.

I think we are doing the right thing here by drawing the attention of the Justice Department and the U.S. Attorney's office to the issuance of a valid subpoena, something that has been litigated in district court, as you point out, Hermandad lost, they tried to resist the subpoena, and at this point Congress, in support of our own process, the Federal Contested Elections Act, and it would not matter if this were the Democratic Congress in control and so on, it would be the same story.

□ 2130

We ought to stand behind the legal process, both of this Congress and of the Federal courts.

Ms. SLAUGHTER. Mr. Speaker, I yield 30 seconds to the gentleman from Massachusetts [Mr. FRANK].

Mr. FRANK of Massachusetts. Mr. Speaker, in the first place, there was not a subpoena issued by the committee. They are looking for these facts the way they think. But here is the problem. We are talking about private citizens, Hermandad. They cannot be forced, I think, to give up their constitutional rights for the convenience of this House's process.

What the gentleman is saying is these people who are asserting their constitutional right to privacy should be put under the threat of criminal prosecution, and I am saying no, they have a right as a citizens' group to their full appeal process. The gentleman's insistence on subjecting Hermandad to criminal prosecution; cutting off their right of appeal, seems to me unfortunate, no matter how convenient it might be for this House.

Ms. SLAUGHTER. Mr. Speaker, I yield 2 minutes to the gentlewoman from Michigan [Ms. KILPATRICK], a member of the committee.

Ms. KILPATRICK. Mr. Speaker, I do not want us to lose sight of why we are here. Let us concentrate on that.

I rise in opposition to this resolution, after having sat on that committee for now nearly 10 months. They do not have the evidence. If they had it, they would bring it forth. The subpoena has been issued and this organization has complied. Members might not know that in January, the District Attorney in California drove a truck up to Hermandad and seized their records, everything; computers, files. They did a sweep of their hard drive. Members might not also know that on August 17 those same records were turned over to our committee. They have the records. Use the records, if they have them. And if there was something to be found, believe me, this House of Representatives would have found it.

Let the gentlewoman from Calif. nia, Ms. LORETTA SANCHEZ, go. She won the election by over 900 votes. She has been certified by the Republican Secretary of State. She has won in the recount, some more than 900 votes. I think it is horrendous.

Let us defeat this resolution. Let us let the gentlewoman from California [Ms. SANCHEZ] serve. She has been castigated and harassed enough. What is at stake is this institution. Will we allow an election won by some 900, nearly 1,000 votes, be overturned by constant, constant harassment?

This House of Representatives has authorized over $300,000 in legal fees for this witch hunt. I would much rather see that in senior meals, senior services and health services. We have to rise up in a bipartisan way. This must come to an end. Let us defeat this resolution. Let the gentlewoman from California [Ms. SANCHEZ] serve her constituents in the 46th district. She has accumulated over $500,000 in expenses.

Are we really a Congress for the people? Let us get back to the business of American citizens. Let us get to the work of jobs and industrial health for our people in this country. Let us defeat this resolution. Let the gentlewoman from California [Ms. SANCHEZ] get back to work, and let us go about the business of building America.

Ms. SLAUGHTER. Mr. Speaker, I yield 2 minutes to the gentlewoman from Texas [Ms. JACKSON-LEE].

Ms. JACKSON-LEE of Texas. Mr. Speaker, I thank the gentlewoman for yielding time to me.

Mr. Speaker, I think this is a day that we need to focus on the facts. The facts become as clear as day if we would just open our eyes. That is that neither the committee nor the Republican Orange County District Attorney nor California State officials have ever substantiated that one single vote has been fraudulently cast in this election.

Then what is the issue, Mr. Speaker? The issue may be the Republicans have had an 8-year history in southern California of intimidating Latino voters at the polls; that they have paid to settle two voting intimidation cases, one from 1988, in which the Orange County Republican Party literally placed security guards at the voting polls in Hispanic neighborhoods, with signs designed to scare Hispanic voters, and the other case in 1989.

These efforts are not limited to California or to Hispanic voters. In Bergen County in New Jersey, in 1996, Republicans distributed a flyer in black precincts stating that dire consequences would follow for anyone who tried to vote who owed money, was guilty of misdemeanors, or any other number of possibilities.

The real issue is that Republicans do not want to place themselves in Hermandad's shoes. There are no more files, as have been represented. If there are, this organization has the right, the absolute right, to pursue its constitutional remedy. Just imagine if we would put a siege upon other citizens who are in the process of pursuing their constitutional rights, yet we in this body would insist that we want to instruct the U.S. attorney to implement a criminal procedure to deny

someone their constitutional right? Is it because they have a Hispanic-sounding name that they can be subject to this kind of attack and abuse?

I think the Republicans need to recognize if they have something, get to the floor of the House and deal with it. If they have nothing, allow the gentlewoman from California, [Ms. LORETTA SANCHEZ], to maintain her position and represent her constituents. Turn down this rule and allow Americans to believe in this country once again.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise in opposition to the rule on House Resolution 244, which demands that the Justice Department file criminal charges against Hermandad Mexicana Nacional for failing to comply with a subpoena issued by Representative Bob Dornan. Late last night the Rules Committee recommended a closed rule which blocks all amendments to the resolution. It is an outrage that the committee would allow such a resolution to come to the floor and an even further outrage to recommend a closed rule.

Representative SANCHEZ was elected to the House of Representatives in November 1996 from the 46th District of California. Since that time, she has been besieged by attacks from former Representative Bob Dornan as he attempts to prove that his defeat last fall was the result of voter fraud, not the will of the people.

Like the entire election contest, this resolution is about politics, pure and simple. Congresswoman LORETTA SANCHEZ has fully complied with requests for information relating to voter registration, organizations relating to voter registration and absentee balloting. She has objected only when those subpoenas became so intrusive as to demand access to her personal financial data. Further, the constitutionality of the subpoenas under the Federal Contested Elections Act was decided only last week. The House should, therefore, at the very least allow Hermandad a reasonable period from the time of the court's decision to respond.

I could not agree more strongly that allegations of voter fraud must be vigorously pursued and, when found meritorious, prosecuted. However, in this instance, 10 months and more than $300,000 in taxpayer's money have been spent, and yet no evidence of fraud has been presented. To this day, no one—not the committee, not the Republican Orange County District Attorney, and not California State officials—has substantiated that a single vote has been fraudulently cast in this election.

Mr. Speaker, the U.S. House of Representatives must not become a partner to Mr. Dornan's desperate charges. It is beneath the dignity of this body. I urge my colleagues to join me in saying enough is enough and to oppose the rule to House Resolution 244.

Ms. SLAUGHTER. Mr. Speaker, I yield 2 minutes to the gentlewoman from Florida [Mrs. MEEK].

Mrs. MEEK of Florida. Mr. Speaker, I thank the gentlewoman for yielding time to me.

Mr. Speaker, I stand today to ask this Congress, which I hope is a fair Congress, to defeat this rule and the resolution. There is no precedent in the Constitution for someone to receive the authority on the part of Congress to issue subpoenas, so the committee took care of this. They issued him the authority to issue subpoenas.

Mr. Speaker, what a shame on this country to see that happening in this day, when we have a young Hispanic woman who has given of herself to come forward to serve her country. What kind of message does this give to the other young Hispanic women in this country? What kind of message does it give to all young women in this country? Come forward, and we will just whittle away the votes that you have so that we can take your seat.

Mr. Dornan is receiving an authority that I know I would not receive. I know that as a black woman, if I came before this committee, they would never give me a chance to subpoena anything. They would send me back to where I came from. They would never give me a chance. It is constitutionally wrong, it is logically wrong, and it is morally wrong.

But do we want to stick with morals? Do we want to allow this young Hispanic woman to stand before this country, to say this Congress gave me a chance just because some male was defeated in California by 900 votes? She won. That is not the worst of it. She is going to win again when she comes up, and they are not going to take it away from her.

Mr. SOLOMON. Mr. Speaker, I yield 2 minutes to the gentleman from California, Mr. BILL THOMAS, the distinguished chairman of the Committee on House Oversight.

Mr. THOMAS. Mr. Speaker, I thank the gentleman for yielding me the time.

Mr. Speaker, I will try to explain some of the arguments that have been made, because frankly, they have been factually wrong. I do not want anyone who is listening to the debate to believe that the statements that have been made, because they are not challenged, means that they are correct. They are not.

Mr. Speaker, the Orange County district attorney subpoenaed the Hermandad records, but as we know, when that subpoena is used as a criminal subpoena there is a fourth amendment search and seizure right, so you have to specify exactly what it is that you need. As a matter of fact, the Orange County district attorney has indicated that not all of the records and not all of the materials were obtained with the subpoena that he placed.

The reason that the committee placed a subpoena on top of the Orange County district attorney's subpoena was that that subpoena was being challenged. We wanted to make sure that those records were not lost. There are additional records out there. This subpoena, under the civil section of the statute, can obtain that additional material.

Our job is to get to the bottom of it. We want to know everything that Hermandad was involved with. Obviously, during debate on the resolution, I believe when I describe Hermandad, it will be a slightly different organization than has already been explained. These people have violated the law. The Federal and the State government has revoked their charters. They have taken money from them. These people are criminals. What we are trying to do is find out the extent of their activity. We need to have as many subpoenas as possible.

This resolution, after this rule passes, is not about the gentlewoman from California [Ms. LORETTA SANCHEZ], it is not about Bob Dornan. It is about people obeying the law, and it is about the House of Representatives demanding that the law be obeyed. That is what it is about.

Ms. SLAUGHTER. Mr. Speaker, I yield 30 seconds to the gentleman from California [Mr. BECERRA].

Mr. BECERRA. Mr. Speaker, I thank the gentleman for yielding me the time.

I hope we are very careful how we use words on this House floor. When we talk about criminals, that means someone has in a court of law been convicted. The gentleman from California [Mr. THOMAS] just referred to individuals who are under investigation. There are a lot of folks that sit on this House floor who are under investigation, but we do not call them criminals.

Mr. Speaker, I would just urge that all of us during this debate be reasonable, and understand that when we refer to things, we use accurate words to describe what is going on. It is not accurate to say that there are criminals. There are people under investigation. In this country, you are innocent until proven guilty.

Mr. SOLOMON. Mr. Speaker, I yield 1 minute to the gentleman from California [Mr. THOMAS].

Mr. THOMAS. Mr. Speaker, I thank the gentleman for yielding me the time.

The Los Angeles Times, May 22, 1997, I quote, "In an apparent violation of Federal and State tax laws, Hermandad was also found in the audit to have spent $107,184 that it withheld from its employees' wages to satisfy Federal income taxes. Its director admitted that withholding the taxes was against the law."

Ms. SLAUGHTER. . Mr. Speaker, I yield 2 minutes to the gentleman from New Jersey [Mr. PALLONE].

Mr. PALLONE. Mr. Speaker, I have listened to my Republican colleagues, and they use very sinister language. They try to give the impression that those of us on this side are the ones, that the people that voted for the gentlewoman from California [Ms. LORETTA SANCHEZ] are all illegals or criminals, I think I heard the term, or otherwise badly motivated people.

This sinister language borders on racism. I have to say that, because it really concerns me. They claim, they claim to be so self-righteous, but they

are the ones that are seeking to tear up the Constitution here tonight in this House of Representatives that we value so much. They know that the gentlewoman from California [Ms. SANCHEZ] was duly elected and certified by the State of California.

What gives the Republican leadership the right to overturn her election? Because they are the majority here in Washington? If the majority here determines what happens in Orange County, CA, then we have the worst form of tyranny that the Founders of this country sought to guard against in the Constitution.

This is an effort to intimidate voters, specifically Hispanic voters. Republicans want Hispanic and other minority voters to stay home at election time.

I listened to what the gentlewoman from Texas [Ms. SHEILA JACKSON-LEE] said. I remember that election in New Jersey when those warnings were put up at the polling places, and I saw armed guards in camouflage and guns, I do not know if they were real guns, but they tried to give the impression that they had guns, because they did not want minorities to vote.

Mr. Speaker, what is going on here is not right. It needs to end. Let us start right now by defeating this rule and defeating the underlying resolution. This resolution is nothing but a hoax to try to hide what they are really trying to do here, and that is steal this election from the voters of Orange County and the American people.

Ms. SLAUGHTER. Mr. Speaker, I yield 2 minutes to the gentleman from Michigan [Mr. DINGELL].

(Mr. DINGELL asked and was given permission to revise and extend his remarks.)

Mr. DINGELL. Mr. Speaker, I have served here for 41 years and more. I have seen an awful lot of these kinds of challenges of elections. I never saw one like this. I have never heard charges of crime made about what appears at this time, at least, to be reasonably innocent behavior with regard to the election process. I have never seen subpoenas delegated in such an outrageous fashion by a committee of this body to a single individual, to be hurled around like confetti in a parade.

I have never seen the kind of behavior that brings, I think, this House into such low esteem. It gives every appearance that what we are doing is not inquiring into an election, but rather, that we are harassing a woman who is of obvious good character and integrity, who has been certified as having been duly and properly elected.

This proceeding tonight and the other proceedings that have been associated with this give a very bad appearance with regard to this body. I would think my colleagues on both sides would be embarrassed by what it is we are seeing happening tonight.

□ 2145

We have a criminal process going on out there in California to inquire into whether or not there was criminal misbehavior. Let that process go forward. Let us have the kind of proper inquiry that we have always had into these kinds of election situations, to find out what has happened. Let us not give the appearance of harassing innocent, lawabiding Hispanic Americans because they have chosen to vote. Let us not bring this body into discredit by the kind of behavior in which we are engaging.

I would tell my Republican colleagues, with all respect and with all affection, what it is that you are doing tonight is sowing a terrible wind. And you will reap the whirlwind, because it is not just going to be the fact that you bring discredit on this body by the behavior that I am seeing before me tonight or what I have seen in connection with your loose use of the subpoena and the enforcement process of this body. What is happening here is, you are creating further distrust and disrespect for this body.

It is going to have a bad effect on each and every one of us, whether we are Democrats or Republicans, but it is going to do something worse than that. It is going to do it to you, I would say to my Republican colleagues, because citizens all of a sudden are going to realize that elections are not about fighting out the issues in an honorable and a proper way and having an intelligent discussion of what it is that concerns the people, whether they be Hispanics, minority members, or whatever they might happen to be, but rather, it is win at any cost, win with any device, use the powers of this body to elect somebody who was clearly not elected by a fair election and who was clearly not elected by any vote of the people. And what you are giving the appearance of what you are seeking to do is to eject a legitimately elected Member of this body.

People are going to remember this. Be prepared to reap the whirlwind. You deserve it.

Mr. SOLOMON. Mr. Speaker, two quick points to the departing gentleman: I would hate to see the action he would take if a subpoena by his committee were not answered. Second, I hate to see Members bring up this business about stealing elections. My good friend and a gentleman I respect from Michigan was here in 1985 when there was a stolen election, and everybody knows it.

Mr. Speaker, I yield 3 minutes to the gentleman from Poland, Ohio [Mr. TRAFICANT], another respected Member of this body.

(Mr. TRAFICANT asked and was given permission to revise and extend his remarks.)

Mr. TRAFICANT. Mr. Speaker, I think this is an important debate. I believe it is a needed debate. There are Members on the Democrat side of the aisle who will not like what I have to say, and I will not explain it later, I will explain it now.

To me, this is not about LORETTA SANCHEZ. I believe under heavy pressure she has done a remarkable job, and I want to commend her. This is not, to me, about Bob Dornan. To me, it is not about Democrats at all and it is not about Republicans at all.

To me, this issue is about the possibility that illegal votes may have determined the outcome of a Federal election in our country. That is the issue before us. This is not about somebody that misplaced some ballots. This is not about a mistake of interpreting counts. This is about the possibility of illegal votes corrupting a Federal election. Congress must not allow a precedent to be set tonight that would allow the Federal election process to be corrupted or give the impression that we have soft-pedaled that possibility.

In my opinion, any individual or organization that has information or evidence in this matter should be compelled to comply. If the Justice Department does not pursue it, then, by God, Congress shall demand it. Congress must ensure enforcement. The Constitution requires it. The amount of illegal votes cast in this election must be carefully sought out; the exact numerical count must be known to Congress.

Let me say this: If there is any precedent to be set in the House of Representatives tonight, it should be a precedent that preserves the integrity of the election process. Let me say one other thing. The ox that may seem to be gored tonight is an ox different than what we see that might be gored tomorrow.

I support the rule. I support the bill. I believe the gentlewoman from California [Ms. SANCHEZ] has done a remarkable job, but the taint of her election must be removed and Congress must ensure, whether it is a Democrat or a Republican or any other party or an independent Member, that their rights are protected and that election and the integrity of that process is worthy of an individual being seated in this body.

Ms. SLAUGHTER. Mr. Speaker, if I could take just a second to correct what I think is a grave injustice here, the comment has been made several times this evening that these were committee subpoenas. I think it needs to be pointed out once again, these were given by a private citizen, Mr. Robert Dornan of California.

Mr. Speaker, I yield 1 minute to the gentleman from Wisconsin [Mr. OBEY].

Mr. OBEY. Mr. Speaker, what is happening here tonight is enough to give abuse of power a bad name. This act brings only one question into my mind: Does this body still believe in the biblical admonition, "Thou shalt not steal?" All I have to say about what you are about to do tonight is shame, shame, shame, shame, shame.

Mr. SOLOMON. Mr. Speaker, I yield 1 minute to the gentleman from Arizona [Mr. HAYWORTH].

Mr. HAYWORTH. Mr. Speaker, I thank my colleague from New York for yielding me the time.

With all due respect to my colleague from Wisconsin, putting personalities aside, dealing strictly with law, if this House of Representatives fails to take action to live up to the Constitution and the letter of the law, then shame, shame, shame, shame on this House and this process.

Ms. SLAUGHTER. Mr. Speaker, I yield 1 minute to the gentleman from California [Mr. FARR].

Mr. FARR of California. Mr. Speaker, the question here tonight is why, why are we doing this? The American public knows the results of last November's elections. Look at those elections. There were six elections that were less than 1,000 votes. But look at the names: FOX, TIERNEY, SMITH, SMITH, BROWN, and, guess what, one SANCHEZ.

Why were not the elections where there was only 84 votes difference contested? Why was not the election of the gentleman from Massachusetts [Mr. TIERNEY] contested? He lives close to the Canadian border. Perhaps some people who speak English crossed over the border and voted for him. Why were not the Smiths and the Browns challenged? This is a challenge to LORETTA SANCHEZ, a Latino woman.

The State of California's secretary of state certified her election. She is of the people, by the people, and for the people. Do not abuse that.

Ms. SLAUGHTER. Mr. Speaker, I yield 2 minutes and 30 seconds to the gentleman from California [Mr. BECERRA].

(Mr. BECERRA asked and was given permission to revise and extend his remarks.)

Mr. BECERRA. Mr. Speaker, I thank the gentlewoman for yielding me this time.

Let me begin by first saying, as I think has been repeated often on my side, this resolution has no effect. The founders of this country, in drafting the Constitution, made it clear that we as politicians have no role of telling the Department of Justice how to prosecute.

We cannot demand that they prosecute, and I thank the gentleman from Florida for making it clear, with the amendment that we have all accepted, that we cannot do anything with this resolution. It is just posturing. If we cannot do anything with this resolution, what are we really doing?

I think there are probably three things that we can say are behind this particular resolution and its intent. Either it is an intent to bootstrap this electoral investigation that we know is going nowhere and perhaps to justify, and I want to say it now on the record, perhaps to justify in the future some action by this House to possibly vacate the seat of the gentlewoman from California [Ms. SANCHEZ] using this as an excuse for being able to do that.

Second, as many are whispering, maybe, as some have said, maybe it is payback time for 1985, because Republicans feel that there was an election stolen in 1985. So if that was a wrong, maybe two wrongs will make a right.

Or, third, perhaps it is just a downright honest attempt to intimidate voters, in this case Latino voters, who are now beginning to vote. Perhaps you do not like that they are beginning to vote.

Regardless of what the intent is, there is a message that you are sending, whether you like it or not. It is to folks like my parents. My father was born in this country but speaks broken English and probably falls within the category of folks you want to go after. My mother was not born in this country, speaks better English than my father, and is a U.S. citizen of this country, and she probably is on that list of names that you are now disclosing, violating her privacy rights in the process of doing so.

You are sending a message to these folks. You are telling them you do not want them to participate, you do not care about what they do, you do not value their worth as citizens.

I will just say this: Remember this, because the message will be sent. I will say, as I conclude, I do not need to talk to my parents about this vote. They will be watching. And just like my parents will be watching, there will be a lot of other folks who, for the first time in 1996, had a chance to vote. Some of them voted for LORETTA SANCHEZ. Some of them may have even voted for Bob Dornan. But they will remember what this House of Representatives is doing, because you certainly are not out to get a conviction, you are not out to get a criminal investigation, but you are certainly out to get the hides of people who have participated in this American process. That is wrong.

Mr. SOLOMON. Mr. Speaker, I yield 1 minute to the distinguished gentleman from California [Mr. CAMPBELL].

(Mr. CAMPBELL asked and was given permission to revise and extend his remarks.)

Mr. CAMPBELL. Mr. Speaker, I am very sorry to have heard what I have heard tonight, because the references to race and gender are not what concern me. What does concern me is fairness, and the investigation of the honest outcome of an election should concern all of us.

The certification by the secretary of state is not a certification that there was no fraud. We know that. The matter deserves to be investigated. It does not deserve to be trivialized and to be said that we are simply doing what we do because of racial motivation. What a sad comment when our attempts to enforce the law, to enforce the prerogatives of our constitutional office, are taken instead to mean that we are acting in a racially motivated manner.

The statute says that failure to abide by a subpoena is a misdemeanor. We draw attention to the United States Attorney for the Central District of California of this violation, and we ask that he proceed pursuant to the determination that he would make or she would make. It is a sorry day.

Ms. SLAUGHTER. Mr. Speaker, I reserve the balance of my time.

Mr. SOLOMON. Mr. Speaker, I yield 2 minutes to the very distinguished gentleman from California [Mr. HUNTER].

□ 2300

Mr. HUNTER. The rule of law, my colleagues, it is the most precious thing that we have, and perhaps the most precious rule is that we vote and the person with the most votes wins. And sometimes it means for us, in fact, at times during all of our careers, we have agonizing defeats. The winner that has a victory sometimes goes on from that victory to a defeat fairly shortly thereafter, but it is the central part of our democracy. It is the heart of our democracy.

We had a group which took immigrants who were trying to become naturalized citizens and registered and voted those immigrants knowing that they had not yet raised their hands and become citizens of the United States. And from that group we want to get more information. That is absolutely appropriate.

I remember during the Contra wars of the 1980's, when we tried to export this precious thing called democracy to El Salvador and the guerrillas tried to stop the elections, we had one woman waiting in line who actually had a bullet wound in her arm, and she would not leave the line to get medical aid because she said, "I must vote. I must participate in this democracy."

All we want to see is who got the most votes. We can do no more and we should do no less for our country.

Ms. SLAUGHTER. Mr. Speaker, I yield 30 seconds to the gentleman from North Carolina [Mr. HEFNER].

Mr. HEFNER. Mr. Speaker, I want to respond to my good friend from California [Mr. CAMPBELL], and I challenge any Member in this House that has the certificate from the Secretary of State certifying that there was no fraud in their election. When I got my certification from the Secretary of State, it did not specify that there might not have been some fraud in my election.

Mr. CAMPBELL. Mr. Speaker, will the gentleman yield?

Mr. HEFNER. I yield to the gentleman from California.

Mr. CAMPBELL. Mr. Speaker, my statement was that the certification by the Secretary of State was not a certification that there was an absence of fraud. It is a certification of the numerical outcome of the election.

Mr. HEFNER. Mr. Speaker, reclaiming my time, I would say to the gentleman that the gentlewoman from California's certificate was a certification that she got more votes than anybody else, and fraud was not mentioned.

Mr. CAMPBELL. Mr. Speaker, if the gentleman will continue to yield, I stand by what I said.

Ms. SLAUGHTER. Mr. Speaker, I yield the balance of my time to the gentleman from Maryland [Mr. HOYER].

The SPEAKER pro tempore (Mr. GILLMOR). The gentleman from Maryland [Mr. HOYER] is recognized for 2¾ minutes.

Mr. HOYER. Mr. Speaker, this is an important resolution. The outcome of this vote tonight on this resolution will not decide the Sanchez-Dornan case. It will, however, be a statement as to whether or not we are going to proceed in a fair, judicial manner. I agree with the gentleman from California, that is the way we ought to proceed.

The gentleman from Massachusetts observed what has happened with this resolution. In the first instance, the committee proposed the harshest resolution it could ascribe, demanding that a U.S. citizen be indicted for crimes while under investigation by another body, the district attorney. My colleagues, that would not wash. It would not even wash with the majority of the majority party, and so that resolution was rightfully changed, and we did not object to that change.

The title was not changed. It still demands that the U.S. attorney seek criminal action against a citizen who has, as we have pointed out, still his and the organization's constitutional rights to contest the validity of the subpoena that is pending.

This resolution I have called precipitous. I believe it is. In response to the gentleman from Florida [Mr. DIAZ-BALART] yesterday, I said that what we ought to do, if we feel this way, is write a letter to the U.S. Attorney and say we think that he ought to take the appropriate action because the subpoena has not been responded to.

My colleagues attempt to adopt my suggestion by adopting language which now says that we demand, as the gentleman from Massachusetts [Mr. FRANK] pointed out, that pursuant to its determination, that is the U.S. Attorney's office, that it is appropriate, according to the law and the facts. In other words, do what you think is right.

Do we go around passing resolutions through the House of Representatives demanding that people do what they think is right when we know, my friend from California, the gentleman talks about the sanctity of a vote, the sanctity of the Constitution is something we are all sworn to preserve and protect, and it accords to every citizen that when the government moves against him or her that they have a right to go to the courts of this land and say "I need not respond."

Let us not put the House of Representatives in a position prematurely of demanding the denigration of that absolute constitutional right. Vote "no" on this resolution. Vote "no" on the final resolution.

Mr. SOLOMON. Mr. Speaker, I yield the balance of my time to the gentleman from San Antonio, Texas Mr. HENRY BONILLA, one of the most respected Members of this body, in my mind.

The SPEAKER pro tempore. The gentleman from Texas [Mr. BONILLA] is recognized for 2½ minutes.

(Mr. BONILLA asked and was given permission to revise and extend his remarks.)

Mr. BONILLA. Mr. Speaker, the debate tonight started out on the high road, and I was highly impressed and glad to see Members that are opposed to this resolution standing up and arguing the validity of this case on its merits. I even had a tremendous amount of respect and watched with great attention when the gentleman from Wisconsin [Mr. OBEY], my colleague on the Committee on Appropriations, stood up and got very emotional to tell us that he disagreed strongly with what we were doing tonight.

But then the debate deteriorated to those who choose to play the race card, when it is inappropriate, when they know they have lost other merits in their argument. That is unfortunate.

Three of my four grandparents emigrated here from Mexico at the turn of the century to seek a new life for their children and grandchildren. They did not come here to set up an isolated society within this country. They came here to be Americans first and to become part of the melting pot of this country that stood for certain values that all of us could benefit from regardless of what country we came from.

This country has prospered greatly because of the great immigration that we have seen from every part of the world. We should all be proud of that. To see Members tonight talk about racism is totally unjustified and they should be ashamed of themselves for doing that.

Members cannot tell me this is racism. I grew up in a barrio, in a Spanish-speaking neighborhood in South Texas, always with a dream that someday I would be able to aspire and work towards the American dream.

The implication among those who cry racism is one that says if a burglar broke into their home, that somehow they should have a different standard if the person is of a different color or ethnic background. How dumb an idea can that be? We are talking about people who are possibly implicated in crimes here. This Hermandad Mexicana Nacional, or whatever they call themselves, is one of the most corrupt organizations that has ever existed that is receiving Federal money.

We are trying to get to the truth of this. This has nothing to do with the gentlewoman from California [Ms. SANCHEZ] or Mr. Dornan. And if the gentlewoman comes out winning this election after this investigation is finished, I will be the first to congratulate her on her victory.

This is about justice, this is about finding out the truth. That is what all Americans want in every corner of the country, and I urge all Members to support this resolution and the resolution tomorrow as well.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the resolution, as amended.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. THOMAS. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 221, nays 202, answered "present" 1, not voting 10, as follows:

[Roll No. 477]

YEAS—221

Aderholt	Gekas	Packard
Archer	Gibbons	Pappas
Armey	Gilchrest	Parker
Bachus	Gillmor	Paul
Baker	Gilman	Paxon
Ballenger	Gingrich	Pease
Barr	Goodlatte	Peterson (PA)
Barrett (NE)	Goodling	Petri
Bartlett	Goss	Pickering
Barton	Graham	Pitts
Bass	Granger	Pombo
Bateman	Greenwood	Porter
Bereuter	Gutknecht	Portman
Bilbray	Hansen	Pryce (OH)
Billirakis	Hastert	Quinn
Bliley	Hastings (WA)	Radanovich
Blunt	Hayworth	Ramstad
Boehlert	Hefley	Redmond
Boehner	Herger	Regula
Bonilla	Hill	Riggs
Bono	Hilleary	Riley
Brady	Hobson	Rogan
Bryant	Hoekstra	Rogers
Bunning	Horn	Rohrabacher
Burr	Hostettler	Ros-Lehtinen
Burton	Hulshof	Roukema
Buyer	Hunter	Royce
Callahan	Hutchinson	Ryun
Calvert	Hyde	Salmon
Camp	Inglis	Sanford
Campbell	Istook	Saxton
Canady	Jenkins	Scarborough
Cannon	Johnson (CT)	Schaefer, Dan
Castle	Johnson, Sam	Schaffer, Bob
Chabot	Jones	Sensenbrenner
Chambliss	Kasich	Sessions
Chenoweth	Kelly	Shadegg
Christensen	Kim	Shaw
Coble	King (NY)	Shays
Coburn	Kingston	Shimkus
Collins	Klug	Shuster
Combest	Knollenberg	Skeen
Cook	Kolbe	Smith (MI)
Cooksey	LaHood	Smith (NJ)
Cox	Largent	Smith (TX)
Crane	Latham	Smith, Linda
Crapo	LaTourette	Snowbarger
Cubin	Lazio	Solomon
Cunningham	Leach	Souder
Davis (VA)	Lewis (CA)	Spence
Deal	Lewis (KY)	Stearns
DeLay	Linder	Stump
Diaz-Balart	Livingston	Sununu
Dickey	LoBiondo	Talent
Doolittle	Lucas	Tauzin
Dreier	Manzullo	Taylor (NC)
Duncan	McCollum	Thomas
Dunn	McCrery	Thornberry
Ehlers	McHugh	Thune
Ehrlich	McInnis	Tiahrt
Emerson	McIntosh	Traficant
English	McKeon	Upton
Ensign	Metcalf	Walsh
Everett	Mica	Wamp
Ewing	Miller (FL)	Watkins
Fawell	Moran (KS)	Watts (OK)
Foley	Morella	Weldon (FL)
Forbes	Myrick	Weldon (PA)
Fowler	Nethercutt	Weller
Fox	Neumann	White
Franks (NJ)	Ney	Whitfield
Frelinghuysen	Northup	Wicker
Gallegly	Norwood	Wolf
Ganske	Nussle	

NAYS—202

Abercrombie	Andrews	Barcia
Ackerman	Baesler	Barrett (WI)
Allen	Baldacci	Becerra

Bentsen	Hamilton	Neal
Berman	Harman	Oberstar
Berry	Hastings (FL)	Obey
Bishop	Hefner	Olver
Blagojevich	Hilliard	Ortiz
Blumenauer	Hinchey	Owens
Bonior	Hinojosa	Pallone
Borski	Holden	Pascrell
Boswell	Hooley	Pastor
Boucher	Hoyer	Payne
Boyd	Jackson (IL)	Pelosi
Brown (CA)	Jackson-Lee	Peterson (MN)
Brown (FL)	(TX)	Pickett
Brown (OH)	Jefferson	Pomeroy
Capps	John	Poshard
Cardin	Johnson (WI)	Price (NC)
Carson	Johnson, E. B.	Rahall
Clay	Kanjorski	Rangel
Clayton	Kaptur	Reyes
Clement	Kennedy (MA)	Rivers
Clyburn	Kennedy (RI)	Rodriguez
Condit	Kennelly	Roemer
Conyers	Kildee	Rothman
Costello	Kilpatrick	Roybal-Allard
Coyne	Kind (WI)	Rush
Cramer	Kleczka	Sabo
Cummings	Klink	Sanders
Danner	Kucinich	Sandlin
Davis (FL)	LaFalce	Sawyer
Davis (IL)	Lampson	Scott
DeFazio	Lantos	Serrano
DeGette	Lewis (GA)	Sherman
Delahunt	Lipinski	Sisisky
DeLauro	Lofgren	Skaggs
Dellums	Lowey	Skelton
Deutsch	Luther	Slaughter
Dicks	Maloney (CT)	Smith, Adam
Dingell	Maloney (NY)	Snyder
Dixon	Manton	Spratt
Doggett	Markey	Stabenow
Dooley	Martinez	Stark
Doyle	Mascara	Stenholm
Edwards	Matsui	Stokes
Engel	McCarthy (MO)	Strickland
Eshoo	McCarthy (NY)	Stupak
Etheridge	McDermott	Tanner
Evans	McGovern	Tauscher
Farr	McHale	Taylor (MS)
Fattah	McIntyre	Thompson
Fazio	McKinney	Thurman
Filner	McNulty	Tierney
Flake	Meehan	Torres
Foglietta	Meek	Towns
Ford	Menendez	Turner
Frank (MA)	Millender-	Velazquez
Frost	McDonald	Vento
Furse	Miller (CA)	Visclosky
Gejdenson	Minge	Waters
Gephardt	Mink	Watt (NC)
Goode	Moakley	Waxman
Gordon	Mollohan	Wexler
Green	Moran (VA)	Weygand
Gutierrez	Murtha	Wise
Hall (OH)	Nadler	Woolsey
Hall (TX)	Neal	Wynn

ANSWERED "PRESENT"—1

Sanchez

NOT VOTING—10

Gonzalez	Schiff	Young (AK)
Houghton	Schumer	Young (FL)
McDade	Smith (OR)	
Oxley	Yates	

□ 2229

Mr. OWENS changed his vote from "yea" to "nay."

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. HINCHEY. Mr. Speaker, earlier today I was delayed en route to the vote on Treasury-Postal appropriations. If I had been in the House, I would like the RECORD to reflect that I would have voted in the affirmative.

SUBPOENA ENFORCEMENT IN THE CASE OF DORNAN VERSUS SANCHEZ

Mr. THOMAS. Mr. Speaker, pursuant to House Resolution 253, I call up the resolution (H. Res. 244) demanding that the Office of the United States Attorney for the Central District of California file criminal charges against Hermandad Mexicana Nacional for failure to comply with a valid subpoena under the Federal Contested Elections Act, and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 244

Whereas the contested election case of Dornan v. Sanchez is pending before the Committee;

Whereas the Federal Contested Elections Act (2 U.S.C. 381 et seq.) (hereafter in this resolution referred to as the "Act") provides for the issuance of subpoenas, and on March 17, 1997, United States District Court Judge Gary L. Taylor issued such a subpoena at the request of the Contestant for the deposition and records of Hermandad Mexicana Nacional;

Whereas on April 16 1997, the Committee voted to modify the subpoena by limiting production of documents to the 46th Congressional District (among other modifications), and as perfected by the Committee, the subpoena required Hermandad Mexicana Nacional to produce documents and appear for a deposition no later than May 1, 1997;

Whereas Hermandad Mexicana Nacional failed to produce documents or appear for the deposition by May 1, 1997, and still has not complied with the subpoena;

Whereas Hermandad Mexicana Nacional, by willfully failing to comply with the lawfully issued subpoena, is in violation of section 11 of the Act (2 U.S.C. 390), which provides for criminal penalties;

Whereas on May 13, 1997, the Contestant wrote to the United States Attorney for the Central District of California, Nora M. Manella, requesting that action be taken to enforce the law with respect to Hermandad Mexicana Nacional, and on June 23, 1997, the Committee wrote to the Department of Justice inquiring as to the status of this request for criminal prosecution, and the Department responded on July 25, 1997, that the criminal referral remain "under review";

Whereas the United States Attorney's failure to enforce criminal penalties for the violation of the Act encourages disrespect for the law and hinders the Constitutionally mandated process of determining the facts in the contested election case, including the discovery of any election fraud that may have influenced the outcome of the election; and

Whereas on September 23, 1997, the United States District Court for the Central District of California ruled that the deposition subpoena provisions of the Act are constitutional: Now, therefore, be it

Resolved, That the House of Representatives demands that the Office of the United States Attorney for the Central District of California carry out its responsibility by filing, pursuant to its determination that it is appropriate according to the law and the facts, criminal charges against Hermandad Mexicana Nacional for failure to comply with a valid subpoena issued under the Act.

The SPEAKER pro tempore (Mr. GILLMOR). Pursuant to House Resolution 253, the gentleman from California [Mr. THOMAS] and the gentleman from Connecticut [Mr. GEJDENSON] each will control 30 minutes.

The Chair recognizes the gentleman from California [Mr. THOMAS].

Mr. THOMAS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, it was contended earlier that this resolution really does not make the Department of Justice do anything.

Of course we cannot, but what we can do is express the will of the House in terms of the direction that the Department of Justice should go, and as a matter of fact we pass concurrent resolutions all the time, and as a matter of fact, we have passed some recently.

For example, in the instance of the burning of churches in the South, the concurrent resolution stated that Congress hoped that the Department of Justice would pursue with all vigor the criminals and prosecute them. The resolution did not mean that the Department of Justice was going to do it, but we felt strong enough that the House wanted to tell the Department of Justice what we thought they should do.

What we are talking about in terms of asking the Department of Justice to look at is a direct violation of the law. The Contested Elections Act says that if someone does not honor a subpoena, they are deemed to be guilty of a misdemeanor, and we want the Department of Justice to enforce the law.

But probably in the greater sense, this is actually the story of victims. There are two major groups of victims. Directly the first group of victims are those documented aliens who placed their trust in becoming citizens in the hands of an organization who betrayed their trust. Indirectly, there are victims, and those are the citizens who voted and trusted the authorities, us, to make sure their votes were not diluted unfairly and contrary to law. The group that betrayed the trust of documented aliens were people who were using government money, both Federal and State, purportedly to assist documented aliens to become citizens.

The gentleman from Massachusetts said that perhaps Hermandad should be looked at as a victim rather than the individuals that I mentioned who are actually the real victims. Let us take a closer look at Hermandad. Tens of millions of dollars, taxpayer money, runs through this organization. They have broken both Federal and State law.

According to a Los Angeles Times article in February of this year, Hermandad offered a 1996 Chevrolet Camaro to the winner of a lottery as an inducement to register to vote. The winner of the lottery who registered to vote through Hermandad was not a United States citizen. Although Hermandad is a tax-exempt organization that is prohibited from participating in partisan politics, subpoena records show that Hermandad ran endorsements for political candidates in its newspapers. It also, through its State-funded computers, tracked over $700,000 in campaign contributions,

sorted Members by election precinct, and logged potential voters' political views.

A series of articles in the Los Angeles Times in April and May tracked the sordid financial record and the attempt to hide from the Government through stonewalling of the audits the misuse of money. Eventually an independent audit of Hermandad was carried out and it found that the group misspent or could not account for more than a half a million dollars of taxpayers' money.

An audit found that in addition to workers not being paid for months, Hermandad owed hundreds of thousands of dollars in Federal taxes and State employment benefits and they even stiffed Santa Anna Hospital Medical Center because they failed to repay a $27,000 loan. In fact, the California State Attorney General has recommended that Hermandad's nonprofit status be revoked for the failure to file necessary financial statements with the State.

In addition, the records subpoenaed by the Orange County district attorney and evaluated by the Los Angeles region of the Immigration and Naturalization Service, prior to Washington shutting down that operation, discovered more than 300 people who voted who should not have voted according to the law of the State of California.

There is a voter registration card used by people who register in the State of California. It starts off on the very top row, "Are you a citizen?" Two boxes, yes, no.

Mr. Speaker, I am pointing out that on the form that people sign it says, "Are you a U.S. citizen? Check yes or check no." If one checks no, it says, "If no, don't fill out this form." There is no argument about when they were going to become a citizen. If they were going to become a citizen prior to the election, it says "If you're not a citizen, don't fill out this form. If you don't fill out this form, you aren't a registered voter. But if you fill out this form and you're not a citizen, you're in violation of the law."

Over here it says, "Warning, it is a felony if you sign this statement even though you know it is untrue. Voter declaration: Read and sign below, I am a U.S. Citizen."

So we are talking about people who violated the law, but I think the individuals who cast those votes illegally were the victims. They were the victims because they were induced to do so by Hermandad.

The gentlewoman from New York said, "You know, there is no reason for us to try to pursue this resolution to get the Department of Justice to do something. Maybe we could clean it up with a simple phone call."

Several Members said, in fact, the gentleman from Maryland said, "Why don't we just write them a letter?" Perhaps the gentleman, notwithstanding the fact he is on the task force, is not familiar with the record, and I would ask that we place in the record a chronology, beginning on March 19 when we attempted to get Hermandad to simply follow the law; that is, to respond to a subpoena.

The record runs through March, April, and May. We finally wrote to the Department of Justice and said, "Please respond." Twice we wrote and said, "Please respond." We got back, "We are looking at it".

Into July, into August, and now into September, when there is a clear violation of the statute, there was no willingness to require Hermandad to produce documents. So we are here on the floor tonight to see if the House has sufficient resolve to simply tell the Department of Justice to carry out the law so that the task force can examine the other records that Hermandad has.

As I pointed out under the rule, the subpoena of the Orange County DA did not cover all of the records of Hermandad because it covered a specific assigned subpoena in particular rooms. The civil subpoena, to which Hermandad has refused to respond, would provide additional documents.

This organization is not a mom-and-pop struggling local operation. For half a century they have laundered Federal funds. They have now been exposed, and we still cannot get these people to respond to the law that is, "Could we please take a look at what they did in creating a group of victims who were preyed on and probably in the worst possible way?" These people placed their trust in an organization backed by taxpayers' dollars to make them U.S. citizens, and in fact they were used illegally for political purposes.

The House of Representatives should tell the Department of Justice to enforce the law.

HERMANDAD MEXICANA NACIONAL SUBPOENA TIMELINE

March 19: HMN Custodian of Records served with Dornan subpoena.

March 21: HMN files Motion to Quash Subpoena with CHO.

April 6: CHO votes to modify Dornan subpoena to require protective order and limit the scope of HMN subpoena and authorize letter ordering response by May 1.

April 18: CHO issues modifications to subpoenas issued by Dornan on HMN and issues order to comply by May 1.

May 13: Hart files criminal complaint against HMN with U.S. Attorney Nora Manella.

May 1: HMN fails to comply with Dornan subpoena deadline.

June 2: Hart writes to Manella asking for a response to the May 13 request for HMN prosecution.

June 9: Hart writes to Manella asking for a response to the May 13 request for HMN prosecution.

June 17: Hart writes to House Oversight (CHO) asking for assistance in soliciting a response from U.S. Attorney regarding criminal complaint.

June 23: CHO writes to DOJ Deputy Attorney General requesting advisement on the status of the HMN criminal complaint.

June 30: CHO writes to DOJ Deputy Attorney General again requesting advisement on the status of the HMN criminal complaint.

July 2: Assistant U.S. Attorney Jonathan Shapiro writes to Hart requesting that Hart return to Judge Taylor to seek contempt order. Shapiro says that until such action is taken, his office will not file criminal action.

July 3: Hart writes to Assistant U.S. Attorney Shapiro to explain that Judge Taylor has deferred all enforcement responsibilities to CHO and that CHO has ordered HMN to comply with Dornan's subpoena (April 16 letter from CHO to HMN).

July 8: Assistant U.S. Attorney Shapiro writes to Hart requesting documents and supporting authority regarding subpoena enforcement.

July 16: Hart responds to Shapiro request citing Taylor's Minute Order of April 16, 1997 which states that the House has jurisdiction over the subpoenas issued by Dornan.

July 21: Shapiro writes to Hart explaining that "the proper authority to resolve discovery dispute and enforce these subpoenas is the House of Representatives." Shapiro also questions the authority of the House to demand that the U.S. Attorney act.

July 25: Hart writes to CHO requesting that the Committee issue an order directing the U.S. Attorney to investigate and prosecute HMN.

July 25: Assistant Attorney General Andrew Fois writes to CHO explaining that the HMN complaint is a matter "still under review". He also states that "further action by the Congress may be necessary before their (U.S. Attorney for the Central District) enforcement becomes ripe for judicial attention."

Mr. Speaker, I reserve the balance of my time.

Mr. GEJDENSON. Mr. Speaker, I yield myself such time as I may consume.

The final speaker on the rule lamented the inclusion of race in this debate. In the crime statutes we have something called RICO, and it is used when there is a repeated pattern of activity in an organization that leads one to the conclusion that it is involved continuously in criminal activity. Let us take a look at the record here and why some people, some Hispanics and some non-Hispanics, could come to the conclusion that race might be part of this debate.

In 1960 in New Jersey, the Republican Party brought people to the polls in uniforms to intimidate minority and Hispanic voters from voting. They filed a consent decree not to do it any more. In 1992, the Republican Party of California paid $400,000 for the very same activities. Today on the floor, earlier when we were speaking of the generic, trying to get an accurate census count, a count that a Bush census director said made sense, that the National Academy of Sciences said made sense, that the General Accounting Office said made sense, and that would undercount minorities if it was not used, was blocked by the Republican majority.

□ 2245

Once again, keeping minority voters out of the political process. And guess where we are tonight? We are on the Sanchez hunt.

Now, this has not that much to do with Sanchez; this is a little diversion. As the gentleman from Massachusetts [Mr. FRANK], in his normal manner so aptly represented to this Congress, we started off with what was almost a bill

of attainder, demanding that the Justice Department prosecute these people. We are now sending the Justice Department a resolution, hoping that if they choose and see it to be correct, that they move forward.

Where are we and why are we here? The Speaker of the House, the gentleman from Georgia [Mr. GINGRICH] defeated a Democratic rival by 10 votes less than the gentlewoman from California [Mrs. SANCHEZ] has won her race.

The chairman of this committee is very concerned about leaks from the committee, and sometimes papers do get out here. I am not sure who lets those leaks out, but I have here from the Orange County Register, Mr. Dornan says, "The seat will be vacated, there will be a new election." Dornan said his sources on the committee staff told him; goes on and on, and finally says that they will throw out the results of the election and give him the seat.

Now, let us go back to where we started. Mrs. SANCHEZ won the election. Mr. Dornan came forward with complaints. He found there was one household that had 18 voters in it, all with different last names. Another one had 8 voters in it with different last names, and then there was someone who voted from their place of work, and they were investigated. We found 18 U.S. Marines, 8 nuns, and a zookeeper. That is what Mr. Dornan's charges came to.

Now, in all of the races that we have had since the 1969 Act, we have not tried to find the INS as the arbiter of the results of the election, and there is a reason for that. If we ask the INS if we can use their data to figure out who should be on the voter list, they tell us we cannot do that because one's name ends up in the INS for lots of reasons. If one tries to get an aunt or an uncle over here, one's name ends up in the INS. Their documents maybe should be more perfect, but they will tell us, in every transmittal, that one cannot use these to figure out who votes and who does not vote and whether they should vote.

We have now had 14 requests to the INS. We have had piles of names, as much as 500,000, in a district where just over 100,000 voted; we have had submission after submission, trying to keep enough smoke in the air so Mr. Dornan's prediction can be carried out.

The standard for Members of this House ought to be pretty basic, and that is, if one wins by as many votes as the Speaker did, then one ought to be seated and one ought to be left alone. If there is skullduggery in this election and one cannot prove it after 10 months, after 11 months, do we keep this process going in an attempt to exhaust Mrs. SANCHEZ until the next election?

My friends, what is clear here is there are people who see illegal aliens under every couch. They see them running across the border to vote in masses in districts across this country. They have nothing else to do but leave their homes in Mexico and elsewhere in Latin America and come up here and vote. We do not have any evidence of it, but there are lots of suspicions.

Today we have a simple matter, but it is a symbol of a case that has been carried on too long and ought to come to completion. Reject this as a symbol of our rejection of a process that has been unfair to Mrs. SANCHEZ, to her constituents, and to this House.

Mr. Speaker, I reserve the balance of my time.

Mr. THOMAS. Mr. Speaker, it is my pleasure to yield 4 minutes to the gentleman from Michigan [Mr. EHLERS], who is the chairman of the task force, a gentleman with unimpeachable integrity, a gentleman that brings pride on the House of Representatives.

Mr. EHLERS. Mr. Speaker, we have heard a lot of misinformation this evening. My purpose here is to simply try to lay out some facts and some information about the process that is used.

First of all, recognize that nothing is more sacred to the democratic process than to ensure that each legitimate voter be allowed to vote and that their votes be counted. Furthermore, that the voter be assured that no illegal votes be allowed to be cast or to be counted.

The principle of one person, one vote, or one citizen, one vote is extremely important in our system of government. So important, in fact, that the founders of our Nation decided to put it in the Constitution and ensure that the elections of the House were valid, and gave to the House itself the power, as we read in section 5 of Article I, near the beginning of the Constitution, that "Each House shall be the judge of the elections, returns and qualifications of its own Members."

Now, any contestant or any loser in an election may file a petition for a contested election. The committee does not choose to file these; the House does not. All of this discussion about picking on a particular person because the attributes of that person is simply false. The House has no control over which elections are contested. The losers of the election make that decision, and I am sure in this particular case we recognize that the person who filed the contest is not someone who would take advice from the House, the committee or anyone else.

Now, how does the House proceed? It has proceeded in various ways throughout the years the House has been in operation. Many, many contests have been filed over the years since 1789. All were filed under the constitutional provision. Some have been filed under statutes that were in effect at the time that the cases were filed, but there have been years when no statute was in effect, they were simply filed under the Constitution.

Our current law guiding this is the Contested Election Act passed in 1969. Under that, the duties and responsibilities of contested elections are assigned to the Committee on House Oversight, which then appoints task forces to investigate. I was appointed to the task force for this election. I did not seek that appointment. I did not want that appointment. It was almost as bad as being appointed chair of the Committee on Standards of Official Conduct.

It is a difficult task. It is particularly difficult for me to stand here and hear charges of racism, sexism and other charges when they are simply not true, and being unable to respond because of the nature of the case. There are many issues that are confidential. There are privacy statutes that have to be obeyed. Eventually, perhaps some of the details can be given, as we do in ethics cases, but I would urge those present and those listening in their offices not to judge the content of the case and the procedures by the comments that we have heard from some on the floor this evening.

Since 1789, the standard method of obtaining information in the case of a contested election has been the use of the subpoena. Even before statutes were written, the subpoena was used. There have been many contested elections over the years, and many thousands of subpoenas that have been issued in these cases. Currently they are issued within the confines of the Contested Election Act.

In this particular case, 51 subpoenas were requested by Mr. Dornan. The committee has the power, under the Contested Election Act, to review those subpoenas. We quashed 15 of them; 9 were withdrawn by the contestant. Six have been responded to; there was no response to 6; 13 have been ignored.

How can we enforce response? That is the question that faces the committee. If a subpoena is filed in a court, the court can use contempt proceedings. That power is not given us in the Contested Election Act. We must depend on the U.S. Attorney to bring actions in these cases.

The timetable in this case is that on March 19, a subpoena was issued on Hermandad Mexicana Nacional by Mr. Dornan. On April 16, the committee modified that. May 1, the response is due, no response is received. May 13, Mr. Dornan's attorney filed a criminal complaint with the U.S. Attorney. Nothing was done. June 2, the attorney once again asked for action. Nothing was done. June 23, the committee sent a letter to the U.S. Attorney. No response. June 30, another letter was sent, and we finally got a response saying, "We are looking at it." We are now in September, and we are still trying to get enforcement on the action on the subpoena that was issued under the law which was passed by the House of Representatives.

What can we do? What is the next step? We thought the next step was for

the House to send a letter to the Department of Justice by way of the resolution that is before us right now. That is the next logical step. If the Department of Justice chooses not to respond again, the only next step is that we issue a committee subpoena, but I am sure that the recipients of the subpoenas would prefer dealing with a U.S. Attorney rather than dealing with facing contempt of the House of Representatives.

We simply cannot allow individuals to thumb their nose at the House of Representatives and say, we do not want to answer your subpoena, so we are not going to. It is a legal subpoena issued by a U.S. District Court judge, and it is very important that these subpoenas be responded to. Our task force needs the information. We have obtained some information from the INS through a committee subpoena. That is all we have available at the moment, but we need the information that will be provided by these various subpoenas, and once we have that information, we hope we can bring this case to a rapid conclusion.

Mr. GEJDENSON. Mr. Speaker, I yield 3 minutes to the gentleman from New Jersey [Mr. MENENDEZ].

(Mr. MENENDEZ asked and was given permission to revise and extend his remarks.)

Mr. MENENDEZ. Mr. Speaker, should Hermandad Mexicana Nacional comply with the legal subpoena? Yes. But should the Republicans on the Committee on House Oversight have given Bob Dornan the power to issue that subpoena in the first place? Absolutely not.

Case in point: Scott Moxley, a reporter in Orange County and a former Federal Election Commission employee, had the temerity to write some disfavorable articles about Mr. Dornan. In response, Mr. Dornan issued a subpoena against him. In addition to this, according to published reports in Roll Call and in papers filed with the Committee on House Oversight, Mr. Dornan went to Scott Moxley's editor to try to get him fired, called the FEC in an attempt to dig up some dirt on him, which he was not able to do, and even resorted to harassing Mr. Moxley's father.

So forgive me if we have a little trouble with a process that gives Bob Dornan subpoena power over anybody.

Of all of the cases in which this Congress could step in and demand that legal action be taken, of all of the unacceptable outrages and defiance of our laws that take place in this country every day, that the majority party would choose Mr. Dornan's subpoena to take this extraordinary step is beyond me. Does this represent their view of the priorities of the American people?

It was the Reagan administration that successfully challenged Congress' attempts to tell the U.S. Attorney what to do, and that is why my colleagues on the other side amended it earlier. To insist on enforcing a particular course of action is to interfere and compromise an apolitical investigation of the facts.

We cannot send a message that condones this process, that gives credence to granting Bob Dornan subpoena power, or that singles out enforcement of this one subpoena as a law enforcement priority for this country.

□ 2300

Yes, let us talk about the Constitution that we have heard about here tonight. Let me tell the Members why, as one American of Hispanic descent, we are convinced that they are after us.

Republicans have taken an unprecedented action to overturn the election of Congresswoman SANCHEZ. They have given unprecedented subpoena powers under this statute to Mr. Dornan, which he has abused. They have undertaken to violate the privacy rights of the families of the gentleman from Texas [Mr. BONILLA] and my family and hundreds of thousands of others who have filed papers with the INS, expecting and demanding every right to protect their privacy rights in this country. And we start there. Is the IRS next? Is there an HIV registry next? Where is it that they will go to?

They have changed the standard of proof from one in which Mr. Dornan must prove his case to one where Congresswoman SANCHEZ must defend her duly certified election. Under this standard, the mere allegation of fraud takes the place of proving any fraud.

So imagine now that as a Member of Congress, you win with 1,000 votes. Under the standard being set by the committee, the mere allegation of fraud, which is what is going to happen in every election, will be sufficient to overturn your election. What must women and Hispanic Americans be thinking about when their votes are on the verge of being nullified by Republicans in this House? If there is no justice in this case, there will be no peace in this House.

Mr. THOMAS. Mr. Speaker, it is my pleasure to yield 1 minute to the gentleman from Georgia [Mr. BARR], to shed some facts on the subject.

Mr. BARR of Georgia. Mr. Speaker, having been a former prosecutor and practiced law in the private sector, I thought I was somewhat familiar with various defenses that were raised in criminal prosecution and in civil proceedings, but during the past year, listening to the Reagan administration and listening to the other side tonight, there is a whole new universe of defenses that defense attorneys are not even aware of. We hear them daily from the White House: That law does not apply to me. That is an old law. That law has not been used very much. I am not a person under that law. This building is not a building.

We hear another one tonight. Despite the fact that the United States criminal and civil codes are replete with measures insuring that subpoenas, as duly and important court documents, can be enforced and are enforced, despite the fact that people can and are held daily in contempt for failure to respond to subpoenas, we have the preposterous statement on the other side just a short while ago that people in this country have an absolute civil liberties constitutional right to refuse to honor subpoenas.

Mr. Speaker, we must stand for the rule of law. It begins now.

Mr. GEJDENSON. Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. FAZIO].

Mr. HOYER. Mr. Speaker, will the gentleman yield?

Mr. FAZIO of California. I yield to the gentleman from Maryland.

Mr. HOYER. Mr. Speaker, I thank the gentleman from California for yielding to me.

Mr. Speaker, the previous speaker either did not hear clearly the comments that were made, or has misrepresented them. I choose the former as the alternative.

What I said was that an American citizen has the right to go to court to question the constitutionality under which someone is asking that citizen to do something. In this case, that citizen has done so. The court just 8 days ago, I would say to the gentleman from Georgia [Mr. BARR], decided that they did have the constitutional right, and 8 days later, we demand that the U.S. Attorney take action, without giving the U.S. Attorney the opportunity to do so.

I think that is a precipitous and uncalled for action of this body sworn to uphold and defend the Constitution. That is what I said. I say to the gentleman from Georgia [Mr. BARR].

Mr. FAZIO of California. Mr. Speaker, reclaiming my time, it is time for this charade to end. Three hundred thousand dollars of the taxpayers' money has been spent, 10 months have gone by, and despite an incredibly long discovery phase, this committee has yet failed to produce any evidence to resolve this so-called contested election.

Despite unprecedented carte blanche investigative power given to the Committee on House Oversight and despite Bob Dornan's escapades, whether they be on this floor or on the Rush Limbaugh show, the vote count remains the same. Nevertheless, before us there is another puff of smoke just to prolong this investigation. This time it is a resolution that does nothing. It has no weight of law. We have all agreed to that. In fact, it is just another chapter in what is a never-ending saga designed to drain and assail the gentlewoman from California, Ms. LORETTA SANCHEZ, a woman whose election was certified by the California Secretary of State on December 9 of last year.

Mr. Speaker, someone watching this debate tonight could easily conclude that our Republican friends are going after this seat because it is held by a Latino woman in a district with a sizeable Hispanic population. Kick up

enough dust and maybe, just maybe, those voters will not show up at the polls again.

Do not count on it. This attempt to intimidate voters will have a backlash the likes of which we have never seen, not just in California, but across this Nation, where new immigrants are an emerging political force to be reckoned with.

I say to my Republican friends, it is time to face the facts. This election was won fair and square. I say, get over it. The gentlewoman from California, Ms. LORETTA SANCHEZ, is the Congresswoman from the 46th District of California, and the attacks that she has weathered will only make her stronger. We stand with her. We will help her prevail. I say to the gentlewoman from California, Ms. LORETTA SANCHEZ, all that she is putting up with tonight will be worth it when she returns to this body in the next Congress.

Mr. GEJDENSON. Mr. Speaker, I yield 2 minutes to the gentleman from Massachusetts [Mr. FRANK].

Mr. FRANK of Massachusetts. Mr. Speaker, what we are talking about is the right of a citizens group here. First of all, the resolution, of course, is hardly worth all this. The resolution originally demanded that the Justice Department do something. It now demands that the Justice Department think about doing something and then do whatever it thinks. It was amended. I should note that this is, I guess, an example of what is meant by a self-executing resolution.

This resolution has already executed itself. It cut off its head. But we still have a headless horseman stumbling around, and it is an obnoxious one, because here is the issue. A private citizens group has been denounced criminal by persons with constitutional immunity from any libel suit on this floor. They have been denounced as criminal partly, I guess, because they had a tax problem.

I guess that is going to be the precedent: somebody is shown not to have done right on taxes, and they are a criminal. The word will probably echo around here a lot, and make the parliamentarians earn their pay.

But the question is this. This organization has been the subject of a very broad subpoena, subpoenaing things that go to everything that is done, including political activity. They are trying to resist it. Important constitutional law has been made in America, the NAACP against Alabama, other organizations. Resistance of subpoenas has been important.

What we now have is a U.S. Attorney entitled to decide that a particular subpoena may have been so broad as to fail.

My colleague, the gentleman from Georgia said, where did you get such an idea? I will tell Members where, from William French Smith, Ronald Reagan's Attorney General, who told us when this House voted to cite Anne Gorsuch for contempt, when the House voted, not just one Member, when the House voted, not even an ex-Member, but when the House voted to cite Anne Gorsuch with contempt, William French Smith said, we are not going to prosecute because we disagree. We think that constitutionally there is executive privilege here. That is the precedent that held. No one tried to break it.

Here we have a group of private citizens engaged in political organizing who have gotten a subpoena, and they want to litigate it. What are the Members saying? Prosecute them, treat them as criminals. There is a process going forward now before the district court, and they want to appeal it, and they are saying, no, prosecute them.

My friend, the gentleman from California [Mr. CAMPBELL] said, well, we have to get this on. We do not sacrifice the constitutional right of association of private citizens because we are in a hurry, not that they seem to have been in such a hurry on this. But even if we are, citizens have a right to assert their constitutional rights.

To have the subpoena power in the hands of one individual who has clearly issued inappropriate subpoenas to the press, the committee has quashed some, this organization, and understand, this is not a subpoena specifically about who voted and who did not. It is a very broad subpoena issued by Mr. Dornan, and they are trying to figure out a way to litigate it, and to demand that they be criminally prosecuted is inappropriate.

To demand that maybe they should be criminally prosecuted if someone who has the job of thinking that they should think they should is not inappropriate, it is just too silly. It is unfortunately done to accommodate a political imperative that should not be taking up all this time in the House.

Mr. THOMAS. Mr. Speaker, I yield 30 seconds to the gentleman from California [Mr. COX].

Mr. COX of California. Mr. Speaker, I rise simply to defend the late William French Smith, who cannot be here to defend himself. When the Attorney General of the United States determined that it was not appropriate to institute on behalf of the Congress of the United States enforcement proceedings for a congressional subpoena, he was doing something very different than what we are talking about here tonight.

What we have before us is a subpoena that has been authorized by the United States District Court. No such authorization was given in the case of the Gorsuch subpoena. That was a subpoena issued by Congress without any court involvement.

Mr. GEJDENSON. Mr. Speaker, I yield 30 seconds to the gentleman from Massachusetts [Mr. FRANK].

Mr. FRANK of Massachusetts. Yes, Mr. Speaker, it was a subpoena that came from the former Member, Mr. Dornan, as opposed to one solemnly voted by the House in the course of an investigation. But the argument that it was not authorized by a district court, no, under our Constitution this House has the right constitutionally to issue contempt citations to try to compel testimony.

The Attorney General, I did not libel or defame the Attorney General, I simply quoted him. Being dead is not relevant. The fact is that the Attorney General said, it is wholly a matter of prosecutorial discretion whether or not we act on a contempt citation, and one voted by the whole House in the course of an investigation certainly has a great deal of standing.

Mr. GEJDENSON. Mr. Speaker, I yield 2 minutes to the gentlewoman from Connecticut [Ms. DELAURO].

Ms. DELAURO. Mr. Speaker, my Republican colleagues are engaged in a partisan, political probe against the gentlewoman from California, [Ms. LORETTA SANCHEZ], and this resolution is an attempt to prolong and to expand that investigation. Make no mistake, this is not the election of the gentlewoman from California in isolation; this is part and parcel of a Republican strategy that would in fact deny minorities in this country the right to vote.

Earlier today, the Republican majority denied the Bureau of the Census the ability to make a full count of Americans, fearing that such sampling methods would enfranchise undercounted urban minorities. This is un-American and it is simply wrong. The fact is that this resolution does not have the authority to force the Justice Department to do anything, and it intrudes on an ongoing legal process.

The gentlewoman from California, Ms. LORETTA SANCHEZ won this election by 1,000 votes. There were other much closer elections in 1996, and no others have been subjected to this kind of a witch hunt. The sore loser in this case was Bob Dornan, a man who cannot believe that he lost, a man whose vendetta against the gentlewoman from California is unprecedented, and a man whose behavior is so offensive that this Congress actually barred him from the floor of this House.

The Republican Party has chosen to go after a seat held by a Democratic Hispanic woman in a race where Hispanic votes may have determined the election. This is a deep insensitivity to the right of Latinos and Hispanics in this country to be able to vote. It is clearly an attempt by the Republican Party to create enough smoke to steal this election. If they cannot do that they hope simply to wear down the gentlewoman from California [Ms. SANCHEZ], depleting her time, her energy, her financial resources, in order to weaken her for reelection.

It will not happen. She will be reelected to this body. Do not disgrace the people's House tonight. Do not let this body allow for this sort of partisan political purpose. Vote down this resolution.

Mr. THOMAS. Mr. Speaker, it is my pleasure to yield 2 minutes to the gentleman from Florida [Mr. STEARNS].

(Mr. STEARNS asked and was given permission to revise and extend his remarks.)

Mr. STEARNS. Mr. Speaker, the gentlewoman from Connecticut [Ms. DELAURO], let me remind her and the gentleman from New Jersey [Mr. MENENDEZ] and the gentleman from Connecticut [Mr. GEJDENSON] and the gentleman from Massachusetts [Mr. FRANK], as a result of an initial investigation into this matter, the Immigration and Naturalization Service, that is part of their administration, ordered that an arm of its citizenship testing program be shut down effective January 6, 1997. That is not Republicans, that is Democrats. Democrats decided to shut down a citizenship testing program after it was acknowledged and verified that there were proven cases of fraud.

I am not a lawyer. We can put up here the best lawyers and we can talk about subpoenas and go on and on, but their administration found there was acknowledged and verified fraud. So this is a concern of not just Democrats and Republicans and Independents, this is a concern of every Member of Congress; there but for the grace of God go you, me, any one of us.

If the administration of their party says on January 6, 1997, yes, there is fraud, we have acknowledged it, verified it, and we are going to stop citizenship testing programs, does that not concern the Members? Does that not tell them that she did not win by 900 votes, as the gentlewoman from Connecticut [Ms. DELAURO] keeps talking about?

□ 2315

No; we have already identified half of those 900 are corroborated that they are false votes.

Mr. Dornan's request is not without precedence. We can go back to Supreme Court decisions. We can go back to McCloskey and McIntyre in the 99th Congress. We can back to Roush versus Chambers in the 87th Congress in the first session. And we can on and on with cases where we have the right and the House committee has the complete ability to order a recount in this congressional election if they want to.

This country prides itself on the fact that we are a democracy and we abide by the axiom, one man, one vote. However, I would like to quote a well known philosopher. This philosopher said it correctly: It is not the voting that is democracy, it is the counting.

Mr. GEJDENSON. The gentleman seemed to have placed great faith in the administration when they set aside Hermandad's activities but somehow does not trust the administration everywhere else.

Mr. Speaker, I yield 2 minutes to the gentleman from Illinois [Mr. GUTIERREZ].

Mr. GUTIERREZ. Mr. Speaker, I would just like to say that, LORETTA, the seat is yours and we are going to do everything possible to make sure that justice is done in your case.

Let me just share with everybody that this is not the first time that someone of Hispanic descent has been barred from the House of Representatives. About 9 months ago, I came here with my daughter and with my niece, and I waited in line in the main entrance to the Capitol of the United States. And as I walked through that line to come into this House, a security guard from the U.S. Capitol said to me, "You cannot come in here."

When I produced an ID, she said it was false. When I told her I was a Member of Congress, she said that I was crazy and that I was ludicrous. And then I said, "Ma'am, you really have a problem." And her response to me was, "No. The only problem we have is you and your people. Why do you not go back where you came from?" That was said to me as I entered in a very well published case right here. So, LORETTA, it is nothing new. It is nothing new.

But do you know something everybody said: She is not fit to serve the House of Representatives and the people of this Nation, given her actions. Do you know what my answer was? What can you expect from her? What can you expect from her when she sees Members of Congress each and every day on the TV set accuse those immigrants of coming across the border in hordes to destroy this Nation? When she sees on TV Presidential candidates with a rifle in their arms campaigning in Arizona and saying, "This is what we have for you, Jose," and then sees the Republican Party seat them at their convention in San Diego? What can you expect from a security guard when she sees Members of Congress come here and say, those seats should be invalidated that Latinos and African Americans were elected to and that we should challenge them in court? What do you think she expects when she sees a welfare reform bill come before this Congress which says, let us not give them any help?

LORETTA, you won. And in this Congress, you will prevail.

Mr. THOMAS. Mr. Speaker, I yield 2 minutes to the gentleman from Florida [Mr. MICA], a member of the committee.

Mr. MICA. Mr. Speaker, I rise in support of this resolution. In fact, this resolution is not offered in support or in opposition to the gentlewoman from California [Ms. SANCHEZ] who has been seated from California's 46th District. Nor is it offered in support or opposition to Mr. Dornan, who is contesting the election in California's 46th District. This resolution, in fact, is about the very heart and the essence of the democratic electoral process.

We have heard it said that the United States Constitution, Article I, section 5, states that the House shall be the judge of its Members and their election. The Committee on House Oversight, on which I am privileged to serve, is charged with seeking the facts relating to Members being seated in a contested election.

This resolution is not about the gentlewoman from California [Ms. SANCHEZ]. This resolution is not about Mr. Dornan. This resolution is not about a Republican or a Democrat serving in California's 46th District. This resolution is about determining whether or not the election in California's 46th District was conducted in a lawful and appropriate manner. This resolution is critical to every Member of this Congress and to the American people because this resolution seeks only to determine the facts as to who lawfully cast their ballots in a contested election.

This resolution deserves the support of every Member of this Congress to maintain the process that is outlined in our Constitution and to ensure the very integrity of the system of fair and honest representative government. I ask each and every Member to come down here and vote for this fair, honest, justice-seeking resolution.

Mr. GEJDENSON. Mr. Speaker, I yield 2 minutes to the gentleman from Texas [Mr. EDWARDS].

Mr. EDWARDS. Mr. Speaker, I grew up in a country that said Hispanic Americans could die for their country but not be buried in a public cemetery. I grew up in a community where Hispanic schoolchildren were punished for speaking their mother's native language on school grounds. I grew up in a neighborhood where a distinguished American veteran, a physician, was turned against and fought simply because he was Hispanic. Thank God, Mr. Speaker, those wrongs were righted years ago.

That is exactly why tonight I will be not a part of harassing an Hispanic American who was duly elected to this Congress and the thousands of Hispanic Americans who duly voted for her.

I must wonder, where are the philosophical conservatives tonight? Where are the Republicans who say we should limit the powers of government? Where are the Republicans who want to restrict the law enforcement powers of the ATF and the FBI? Where are the Republicans who say they believe in private property rights? Where are the Republicans who say they cherish our constitutional protections against unreasonable search and seizure by the Government?

How can those who believe in limited government want to give Robert Dornan, a private citizen, the right to subpoena American citizens' private property? If anyone should be offended by Mr. Dornan's subpoena power, it should be true philosophical conservatives.

Enough is enough. It is time to end the persecution of Hispanics now, right here in this House tonight.

Mr. THOMAS. Mr. Speaker, I yield myself 1 minute.

This resolution is to make sure that when those people become citizens and cast a vote, it is a vote that counts.

The problem is, there are some people out there preying on these people, misrepresenting the law, and getting them to register so that they commit, unwittingly, a felony. Your feelings should be directed to those people who are preying on these innocent people. The innocent people are the ones who wind up committing the felony, but they are the victims. It is the organizations such as Hermandad that should be punished.

All this resolution seeks to do is to get the Department of Justice to make sure that those very people you talked about, I tell the gentleman from Texas, when they become citizens can cast a vote and have the confidence that that vote will not be diluted by fraud or illegality. That is what we are doing.

Mr. GEJDENSON. Mr. Speaker, I yield 1 minute to the gentlewoman from Connecticut [Mrs. KENNELLY].

Mrs. KENNELLY of Connecticut. Mr. Speaker, we are approaching a resolution right now that Congress cannot force the Justice Department to prosecute. The committee has already received all the relevant evidence that Hermandad ever possessed. They have got the information. So why are we here tonight?

It is 10 months after the election. Who are we, this body? We should be doing the people's business. We should be doing campaign finance reform. We should be finishing the appropriations bills. Instead, we are here at 11:30 tonight talking about a woman whom I know well. I know LORETTA SANCHEZ. I know her so well, I saw her come to Congress as a proud woman to represent her district, to represent her constituents, to do the job she was elected to do.

We are spending 10 months saying this wonderful young woman cannot be allowed to do what she was sent here to do. Let us end it. Let us say tonight, let her serve. We will have another election in November, the following November. Let it happen. We are the body of the people. We represent the people. Let LORETTA serve.

Mr. THOMAS. Mr. Speaker, I yield 2 minutes to the gentleman from Maryland [Mr. GILCHREST].

Mr. GILCHREST. Mr. Speaker, I thank the gentleman for yielding me the time.

I would like to make the comment that I have been stopped several times by the guards questioning whether I was a Member of Congress. I may not look like a Member of Congress, the Scotch-Irish descent, but I have been stopped many times questioning whether I was a Member of Congress.

We are debating here tonight. It is a positive thing that we debate the issues. Oliver Wendell Holmes, a physician, a jurist, and a poet, said that the Constitution was made for people with differing opinions. We are seeing that to an extent tonight.

But this is a Nation of laws, not of rhetoric. This is a Nation where we have one man, one vote. And we are committed to that.

A World War II veteran who is committed to his country and always optimistic and positive about what America stood for says our lives are made up of five things: Humility, I ask that our colleagues tonight look at who has humility; commitment to justice; compassion to people; faith in the American people; and faith that people will be responsible, will be decent, will be honest, and allow themselves to have dignity.

We must allow the process, in my judgment, to work to make sure that those people that vote vote honestly, have dignity. The last word he used was love, not for self-serving reasons but love for the things that America, which is still a great country, stands for.

I encourage Members to vote for this resolution because it means that we are committed to justice in America, one man, one vote, and we want people to have responsibility to do the right thing. And if we give them that responsibility and show them what we stand for, there will be dignity for each and every citizen that their vote counts.

Mr. GEJDENSON. Mr. Speaker, how much time remains on both sides?

The SPEAKER pro tempore (Mr. GILLMOR). The gentleman from Connecticut [Mr. GEJDENSON] has 7½ minutes remaining, and the gentleman from California [Mr. THOMAS] has 7 minutes remaining.

Mr. GEJDENSON. Mr. Speaker, I yield 1 minute to the gentleman from New York [Mr. NADLER].

Mr. NADLER. Mr. Speaker, the central problem here is that this so-called investigation has been improper from its inception.

Normally a claimant seeking to invalidate an election has the burden of proof of fraud or irregularities. He should look at the records of people who vote, the records from the board of elections, from birth records, from naturalization records, and show his evidence.

Instead, the claimant has been given individual subpoena power, has used that power irresponsibly and to the deprivation of the constitutional rights of others. He has issued broad-based, fishing-expedition subpoenas, some struck down, some not yet.

□ 2330

Hermandad got such a broad subpoena which invaded the constitutional rights of many people. The District Court said the subpoena was okay. Hermandad is appealing that decision, but 8 days after the district court decision, while it is appealing that decision, they come up with this bill of attainder here which we are asked to pass, demanding criminal prosecution of this private group which has no role or should have no role in this at all.

Obviously, it is entirely politically motivated, as this entire process has been, and the motivation is to short-circuit the constitutional process and the constitutional rights of the individuals involved and should be voted down.

Mr. THOMAS. Mr. Speaker, I yield myself 1 minute.

I tell the gentleman from New York if he wants to know who gave Bob Dornan the right to subpoena, the CONGRESSIONAL RECORD, October 20th, 1999, on rollcall number 235, the yeas 311, nays 12, the legislation that was passed overwhelmingly on a bipartisan vote supported and defended by the court most recently and the House.

The fact that no one has used it, except for this particular time, does not mean it has not been there from the beginning. The point needs to be made that it is the statute that affords it. That is where it comes from. It is part of the Contested Election Act and it was passed overwhelmingly bipartisan.

Mr. Speaker, I reserve the balance of my time.

Mr. GEJDENSON. Mr. Speaker, I yield 1 minute to the gentleman from California [Mr. MARTINEZ].

(Mr. MARTINEZ asked and was given permission to revise and extend his remarks.)

Mr. MARTINEZ. Mr. Speaker, I hear over and over again that we are concerned about the integrity of our election process, and I agree with that, not only for the 46th Congressional District but for all over the United States.

This is not the only place where voter fraud has occurred. But I hear interjected into the debate the reference to the number of fraudulent votes in the 46th District. Then our friend from Texas gets up and states that the Hermandad is the crookedest organization around and guilty of all kinds of wrongdoing.

The problem I have with that is an investigating committee trying to investigate someone who has already made up his mind lends itself to the idea that since they have already made up their mind, their investigation is going to conclude with the conclusions they have already made.

Let me say in the same breath that the gentleman speaks about the high level of debate that began this debate. He rushes in to chastise one of our Members for pulling a race card. What greater race card was there pulled when on that side of the aisle they chose as their closing speaker someone of Hispanic descent?

So I ask the question, is this about voter fraud, is it about the gentlewoman from California's election, or is it is about intimidating Latino voters? I think it is the latter.

Mr. GEJDENSON. Mr. Speaker, I yield 1½ minutes to the gentleman from North Carolina [Mr. HEFNER].

Mr. HEFNER. Mr. Speaker, I have been around this for a long, long while, and I can remember when we kept people from voting because we had something called the poll tax. And most of us could not afford it, especially sharecroppers. And we were sharecroppers, and some of our black neighbors could not afford to vote.

We have talked about numbers here. My good friend from California said what we want to make sure is that every vote counts. Votes are not counted in the District of California. The gentlewoman from California is being harassed. And if we took the 300 votes or 400 votes, throw them out, she still won a majority. She is still the winner.

In politics, that is all that matters, is getting the majority of the vote. The gentlewoman is being denied the vote, in my opinion, simply because she beat one of the real radical exhibitionists that has ever been in this House. Some Members do not like it.

As for the gentleman that said it was the Democrats, he was the one that sent out a press release accusing me of missing votes when my sister-in-law had died and I was not even here. So I just wanted to make that clear.

This is a charade that should not be taking place. It does not become this House and it does not become us as the most respected governing body on the face of the earth, and we should be ashamed of our actions that are taking place today.

Mr. THOMAS. Mr. Speaker, I yield 4 minutes to the gentleman from Ohio [Mr. NEY], not only a member of the committee but a member of the task force, the vice chairman of the Committee on House Oversight.

Mr. NEY. Mr. Speaker, I thank the gentleman for yielding me this time.

Tonight I think it would become us, Mr. Speaker, since we are talking about what becomes this Chamber, it would become us to stick to the facts. The organization Hermandad Mexicana Nacional has, for nearly 5 months, refused to comply with the subpoena issued by a United States District Court judge. The Department of Justice says the matter is still under review, despite repeated letters from the Committee on House Oversight. That is a fact. The Department of Justice's failure to act has encouraged groups to ignore subpoenas, delaying the investigations.

This is no picnic for us, as any Member on either of the side of the aisle on this committee knows very well of this delay. It is not something we enjoy, it is not something we like, it is not something that has a political furtherance.

The other statement that is made that needs to be addressed is that the other side argues that most information requested in the subpoena to Hermandad has already been turned over. That is simply not true. Not all the information has been turned over. And if it had been, they would not be fighting so hard. Another thing is, they had all summer to file, but they did not. They filed in August because they wanted to delay the entire process.

It has been a great interesting night. First, Bob Dornan has no credibility. Bob Dornan has said things on the floor people do not like from that side of the aisle, but all of a sudden Bob Dornan is quoted tonight because he is now factual in what he says in the newspaper, because it is convenient to quote him tonight.

This is not about Bob Dornan, this is not about the gentlewoman from California [Ms. SANCHEZ], this is about the election process.

Politics? Here is the DCCC press release starting in February. Phone calls into districts trying to stop this, a legitimate inquiry of the U.S. House. There is a little politics there.

But I think we have seen it all tonight. What is in a name? Did Shakespeare say that or was it Hallmark? I am not sure. Somebody says that. What is in a name? Well, tonight it is in the Latino name. Tonight it is in the Latino name. Because all of a sudden, if one does not have a Latino name, something is wrong tonight.

Let me tell my colleagues something. We have Latino relatives. I do, in Fontana, California. The gentleman from Michigan [Mr. EHLERS] does. We have Latino relatives. My colleagues know it is not true that there is a bias to Latinos.

The words tonight, persecution, insulting, embarrassing, playing the race card, all the things that were raised tonight that my colleagues know are not true. My colleagues all know it. They know that is not accurate. They know it is not true. They know that is not the feelings we have.

We should stick to the facts, because what is not becoming of this Chamber is to use those scare tactics to Americans, Mr. Speaker, across this country. That does not become the energetic give and take of public debate. What becomes us is to stick to the facts, and if we do that, we will not have so much disgrace on the floor tonight by throwing out side innuendo that my colleagues know is simply not true. It is not fair to the American people and it is not fair to any Member of any gender, of any ethnic background on the floor tonight.

Mr. GEJDENSON. Mr. Speaker, I yield the balance of my time to the gentleman from Missouri [Mr. GEPHARDT], the distinguished minority leader.

(Mr. GEPHARDT asked and was given permission to revise and extend his remarks.)

Mr. GEPHARDT. Mr. Speaker, I rise in opposition to this ill-conceived resolution. I am not an expert on the legal dispute over Mr. Dornan's novel use of the power of subpoena. I do not know all of the facts surrounding the court cases that have come as a result of these subpoenas, but I have served in this House since 1977 and I have some sense of when it is appropriate for this House to speak to the judicial system.

Mr. Speaker, as far as I can determine, never in the 208-year history of this House has the majority decided to interfere so directly in a criminal matter by demanding that specific charges be brought against the particular party. In the best of circumstance, what is being done tonight would be a bad precedent that would only lead to mischief, but it is clear that the interference that is called for tonight in our judicial system is based on partisan political motives. And when that day comes, it is a sad day for this House of Representatives.

Make no mistake about it, the purpose is not law enforcement tonight, the purpose is to harass and intimidate. That is what this whole investigation has been about, arming Bob Dornan with subpoena authority. Unprecedented in the work of this committee, invading the privacy of thousands of Hispanic-Americans, all because a hardworking Hispanic businesswoman had the audacity to upset Bob Dornan in the 46th District of California. And Mr. Speaker, it was not even a close election.

Now we read in the newspapers that there is an effort, perhaps, to tell Mr. Dornan that the House is going to declare the seat vacant and call for a new election. I can only assume that these reports are just rumors and that they are wrong.

The gentlewoman from California [Ms. SANCHEZ] won this election by almost a thousand votes. If her election can be overturned on suspicion, with no facts, none of the facts that were brought have been found to be true, but on suspicion that there were noncitizens who voted, then who is next? Whenever there is a vote of under a thousand, do we go in and ask the INS to pull up all the records of new Americans in a district? Who is next? Which House race will we go into next time?

My colleagues, if this procedure goes on, if there is a move to vacate this election, this is no longer the people's House, it is the Republican Party's House, and I do not think any of us want any part of it.

Defeat this resolution and send this contest where it belongs. Dismiss it.

Mr. THOMAS. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, the gentleman from North Carolina said in politics all that matters is getting the most votes. I personally experienced that in a contested election in the Indiana 8th, because the votes in the Indiana 8th were counted not by any State.

I participated in a contested election contest in which the Democrats set the rules. Those rules did not exist in any State. They were made up. And then when, in following those rules they made up, Democrats were not going to win, they quit counting.

□ 2345

So I guess in politics, for some people all that matters is getting the most votes. But with this new majority, it is going to be determined by legal votes.

There has been some argument that we need to do some campaign finance reform. I will tell my colleagues, the vote tonight is the first vote on campaign finance reform, because I think fundamentally we must start with fundamental reform.

Far more important than the dollars spent in campaigns is who legally gets to vote; and, in this system, only citizens are supposed to legally vote. Let us start by enforcing that fact, and then we will look at other campaign changes.

Tonight, a vote for this resolution is a vote to uphold the law. Democracy works when it operates under the law. A lot of things have been said here. But I want Members, as they vote on this resolution, trying to get the Department of Justice to carry out the law, to remember that it is irrefutable that the question is not "Did fraud occur in the 46th District of California," the question is "How much?"

That has been the task of the task force. We have been stonewalled by people. People have refused to supply information. We have had to subpoena the Immigration and Naturalization Service. But I can assure my colleagues, no amount of intimidation, no amount of throwing around false charges of racism, no attempt to muddy the waters and obscor our purpose of determining how many legal votes were cast in that election, will deter us from making sure that every honest vote that was cast in that election gets its full, accountability, undiluted by fraudulent votes. That is our job, and we will do it.

I ask the House of Representatives tonight to assist us in asking, or, if you will, demanding that the Department of Justice enforce the law and make these people provide us with the information that will let us get to the bottom of how many fraudulent votes were cast in this particular district so that we can determine the true winner in California's 46th. I ask for a vote on the resolution.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise today in disgust with the way a former member is trying to manipulate the House of the people to create turmoil, to manipulate the election process and to spend tax payer monies—now more than $300,000 and counting—for nothing more than the purpose of stealing a seat out from under a duly elected Member, LORETTA SANCHEZ.

Bob Dornan has come to the floor of the House and shown himself not to be worthy of being allowed to appear on the floor as a former Member of the House.

He is trying to intimidate the voters of California's 46th Congressional District, the media, the INS, and now the Congress. He wants Congress to try to intimidate the U.S. attorney to file criminal charges against a political enemy of his. That's the meaning of this resolution and that's what he wants us to do.

Mr. Speaker, there has been absolutely no fraud found in this case and there has not been one shred of evidence that this renegade former member has been able to produce that illegal aliens have influenced the outcome of his defeat. He is defying the 28-year history of the Federal Contested Election Act and is using Republicans to carry on a crusade to get his seat back.

He needs to get out of denial that he lost an election and the people of Orange County have spoken. This is under-handed politics of the worst kind. This is nothing more than intimidation.

Mr. Speaker, I urge this distinguished body to end the saga of this misguided investigation. The people of California have legally ended their relationship with him—he embarrassed them until they had enough and now we should say we have had enough of his outrageous tactics and put an end to it once and for all. I urge my colleagues to vote against this travesty as they voted to show Mr. Dornan to the door of the House on one occasion and we should do it again today.

Mr. THOMAS. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. GILLMOR). All time for debate has expired.

PARLIAMENTARY INQUIRY

Mr. HEFNER. Mr. Speaker, parliamentary inquiry.

The SPEAKER pro tempore. The gentleman from North Carolina [Mr. HEFNER] will state his parliamentary inquiry.

Mr. HEFNER. Mr. Speaker, am I entitled to raise a point of personal privilege since the gentleman from California [Mr. THOMAS] mentioned my name and misquoted me?

The SPEAKER pro tempore. That is not in order as a response during debate.

The resolution is considered read for amendment.

Pursuant to House Resolution 253, the previous question is ordered on the resolution, as amended, and on the preamble.

The question is on the resolution, as amended.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. THOMAS. Mr. Speaker, I object to the vote on the ground that a quorum is not present.

The SPEAKER pro tempore. A quorum is present.

Mr. THOMAS. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were— yeas 219, nays 203, answered "present" 1, not voting 11, as follows:

[Roll No. 478]

YEAS—219

Aderholt	Burr	Cunningham
Archer	Burton	Davis (VA)
Armey	Buyer	Deal
Bachus	Callahan	DeLay
Baker	Calvert	Diaz-Balart
Ballenger	Camp	Dickey
Barr	Campbell	Doolittle
Barrett (NE)	Canady	Dreier
Bartlett	Cannon	Duncan
Barton	Castle	Dunn
Bass	Chabot	Ehlers
Bateman	Chambliss	Ehrlich
Bereuter	Chenoweth	Emerson
Bilbray	Christensen	English
Bilirakis	Coble	Ensign
Bliley	Coburn	Everett
Blunt	Collins	Ewing
Boehlert	Combest	Fawell
Boehner	Cook	Foley
Bonilla	Cooksey	Fowler
Bono	Cox	Fox
Brady	Crane	Franks (NJ)
Bryant	Crapo	Frelinghuysen
Bunning	Cubin	Gallegly
Ganske	Lewis (CA)	Rohrabacher
Gekas	Lewis (KY)	Ros-Lehtinen
Gibbons	Linder	Royce
Gilchrest	Livingston	Ryun
Gillmor	LoBiondo	Salmon
Gilman	Lucas	Sanford
Gingrich	Manzullo	Saxton
Goodlatte	McCollum	Scarborough
Goodling	McCrery	Schaefer, Dan
Goss	McDade	Schaffer, Bob
Graham	McHugh	Sensenbrenner
Granger	McInnis	Sessions
Greenwood	McIntosh	Shadegg
Gutknecht	McKeon	Shaw
Hastert	Metcalf	Shays
Hastings (WA)	Mica	Shimkus
Hayworth	Miller (FL)	Shuster
Hefley	Moran (KS)	Skeen
Herger	Morella	Smith (MI)
Hill	Myrick	Smith (NJ)
Hilleary	Nethercutt	Smith (TX)
Hobson	Neumann	Smith, Linda
Hoekstra	Ney	Snowbarger
Horn	Northup	Solomon
Hostettler	Norwood	Souder
Hulshof	Nussle	Spence
Hunter	Packard	Stearns
Hutchinson	Pappas	Stump
Hyde	Parker	Sunnana
Inglis	Paul	Talent
Istook	Paxon	Tauzin
Jenkins	Pease	Taylor (NC)
Johnson (CT)	Peterson (PA)	Thomas
Johnson, Sam	Petri	Thornberry
Jones	Pickering	Thune
Kasich	Pitts	Tiahrt
Kelly	Pombo	Traficant
Kim	Porter	Upton
King (NY)	Portman	Walsh
Kingston	Pryce (OH)	Wamp
Kirk	Quinn	Watkins
Knollenberg	Radanovich	Watts (OK)
Kolbe	Ramstad	Weldon (FL)
LaHood	Redmond	Weldon (PA)
Largent	Regula	Weller
Latham	Riggs	White
LaTourette	Riley	Whitfield
Lazio	Rogan	Wicker
Leach	Rogers	Wolf

NAYS—203

Abercrombie	Doggett	Kennelly
Ackerman	Dooley	Kildee
Allen	Doyle	Kilpatrick
Andrews	Edwards	Kind (WI)
Baesler	Engel	Klecska
Baldacci	Eshoo	Klink
Barcia	Etheridge	Kucinich
Barrett (WI)	Evans	LaFalce
Becerra	Farr	Lampson
Bentsen	Fattah	Lantos
Berman	Fazio	Levin
Berry	Filner	Lewis (GA)
Bishop	Flake	Lipinski
Blagojevich	Foglietta	LoBgren
Blumenauer	Forbes	Lowey
Bonior	Ford	Luther
Borski	Frank (MA)	Maloney (CT)
Boswell	Frost	Maloney (NY)
Boucher	Furse	Manton
Boyd	Gejdenson	Markey
Brown (CA)	Gephardt	Martinez
Brown (FL)	Goode	Mascara
Brown (OH)	Gordon	Matsui
Capps	Green	McCarthy (MO)
Cardin	Gutierrez	McCarthy (NY)
Carson	Hall (OH)	McDermott
Clay	Hall (TX)	McGovern
Clayton	Hamilton	McHale
Clement	Harman	McNulty
Clyburn	Hastings (FL)	McKinney
Condit	Hefner	McNulty
Conyers	Hilliard	Meehan
Costello	Hinchey	Meek
Coyne	Hinojosa	Menendez
Cramer	Holden	Millender-McDonald
Cummings	Hooley	Miller (CA)
Danner	Hoyer	Minge
Davis (FL)	Jackson (IL)	Mink
Davis (IL)	Jackson-Lee (TX)	Moakley
DeFazio	Jefferson	Mollohan
DeGette	John	Moran (VA)
Delahunt	Johnson (WI)	Murtha
DeLauro	Johnson, E. B.	Nadler
Dellums	Kanjorski	Neal
Deutsch	Kaptur	Oberstar
Dicks	Kennedy (MA)	Obey
Dingell	Kennedy (RI)	Olver
Dixon		

Ortiz	Sabo	Tauscher
Owens	Sanders	Taylor (MS)
Pallone	Sandlin	Thompson
Pascrell	Sawyer	Thurman
Pastor	Scott	Tierney
Payne	Serrano	Torres
Pelosi	Sherman	Towns
Peterson (MN)	Sisisky	Turner
Pickett	Skaggs	Velazquez
Pomeroy	Skelton	Vento
Poshard	Slaughter	Visclosky
Price (NC)	Smith, Adam	Waters
Rahall	Snyder	Watt (NC)
Rangel	Spratt	Waxman
Reyes	Stabenow	Wexler
Rivers	Stark	Weygand
Rodriguez	Stenholm	Wise
Roemer	Stokes	Woolsey
Rothman	Strickland	Wynn
Roybal-Allard	Stupak	
Rush	Tanner	

ANSWERED "PRESENT"—1

Sanchez

NOT VOTING—11

Gonzalez	Roukema	Yates
Hansen	Schiff	Young (AK)
Houghton	Schumer	Young (FL)
Oxley	Smith (OR)	

□ 0005

So the resolution, as amended, was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

LEGISLATIVE PROGRAM

(Mr. LEWIS of Georgia asked and was given permission to address the House for 1 minute.)

Mr. LEWIS of Georgia. Mr. Speaker, I asked for this time because I noticed that the majority leader, the gentleman from Texas [Mr. ARMEY], is on the floor of the House, and I would like to know something about the schedule for the rest of tonight and tomorrow.

Mr. Speaker, tomorrow is the beginning of a high holiday for many of our Members.

Mr. ARMEY. Mr. Speaker, will the gentleman yield?

Mr. LEWIS of Georgia. I yield to the gentleman from Texas.

Mr. ARMEY. Mr. Speaker, we are about to do a motion to instruct offered by the gentleman from Texas [Mr. DOGGETT]. The gentleman from Kentucky [Mr. WHITFIELD] is very much interested in this, as are other Members, and we should expect that we should have a discussion of this matter and a vote, another vote, before we complete our evening's business.

We will convene the House at 10 a.m. tomorrow morning, we will move as quickly as we can to a consideration of the rule on national monuments, and then again we will move as quickly as we can to consideration of national monuments. We should then have completed the legislative business we will have planned for tomorrow, and we should be in a position for our Members who are anxious about being home for the observation of holidays before the sun goes down tomorrow evening to do so, except that we still have 14 votes that were ordered on the Suspension Calendar, and should those votes be in fact required to be taken, it would work, I would guess, some hardship on all the Members who might have travel plans.

I would remind the House that it has been on the schedule of the House for some time that we would complete business by 3 o'clock tomorrow. I have been implored by many, many Members, and I think for a very good reason, to try to move that up. I will have done everything I can do by trying to complete as much work as possible tonight in order for that to be moved up to 12:15.

It would be, I think, a consideration that might be granted to those Members who have this serious religious concern that we all want to respect for those people that had requested votes ordered on the suspension vote to reconsider the extent to which they truly indeed need those orders and might want to vacate that request, and that would be, I would think, a much appreciated consideration given to Members by those who would be in a position to do so. But we obviously cannot deny a Member his or her right to insist on ordering those votes on those suspensions.

And I notice my friend from Georgia, and I will assure him that I am as committed as I can be to persuading and encouraging everybody to do what we can to facilitate the need that many Members have to transport themselves and their families with as much dispatch as possible.

Mr. LEWIS of Georgia. Mr. Speaker, I would like to yield to my colleague from Texas [Mr. EDWARDS] for further inquiry of the majority leader.

Mr. EDWARDS. Would the distinguished majority leader be willing to let me address a question to him? Does he feel it is fair to require Members of this body to choose between their religious faith and their responsibility?

I believe I have a right to ask this. I think this is a very serious issue, Mr. Speaker.

Mr. ARMEY. Mr. Speaker, if the gentleman will yield, I will respond to the gentleman.

The SPEAKER. The time of the gentleman from Georgia [Mr. LEWIS] has expired.

The Chair recognizes the gentleman from Texas [Mr. DOGGETT] to offer a privileged motion.

MOTION TO INSTRUCT CONFEREES ON H.R. 1757, FOREIGN RELATIONS AUTHORIZATION ACT, FISCAL YEARS 1998 AND 1999, AND EUROPEAN SECURITY ACT OF 1997

Mr. DOGGETT. Mr. Speaker, I offer a privileged motion.

The SPEAKER. The Clerk will report the motion.

The Clerk read as follows:

Mr. DOGGETT moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the bill, H.R. 1757, be instructed to reject section 1601 of the Senate amendment, which provides for payment of all private claims against the Iraqi Government before those of U.S. veterans and the U.S. Government (i.e., U.S. taxpayers).

MOTION TO ADJOURN

Mr. SCARBOROUGH. Mr. Speaker, I move that the House do now adjourn.

The SPEAKER. A motion to adjourn is in order.

Mr. SCARBOROUGH. Mr. Speaker, I had asked earlier for a question. We can do a motion to adjourn, if I can ask the gentleman from Texas a question?

The SPEAKER. A motion to adjourn is not debatable, and the gentleman was not recognized prior to this time.

□ 0015

Does the gentleman from Florida insist on his motion to adjourn?

Mr. SCARBOROUGH. Yes, Mr. Speaker.

Mr. DOGGETT. Mr. Speaker, has the motion been reduced to writing?

The SPEAKER. Yes. The question is on the motion to adjourn offered by the gentleman from Florida [Mr. SCARBOROUGH].

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. DOGGETT. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 206, nays 183, not voting 44, as follows:

[Roll No. 479]

YEAS—206

Aderholt	Cunningham	Horn
Archer	Davis (VA)	Hostettler
Armey	Deal	Hulshof
Bachus	DeLay	Hunter
Baesler	Diaz-Balart	Hutchinson
Ballenger	Dickey	Hyde
Barr	Dixon	Inglis
Barrett (NE)	Doolittle	Istook
Bartlett	Dreier	Jenkins
Barton	Duncan	Johnson (CT)
Bass	Ehlers	Johnson, Sam
Bateman	Ehrlich	Jones
Bereuter	English	Kasich
Bilbray	Ensign	Kelly
Bilirakis	Everett	Kim
Billey	Ewing	King (NY)
Blunt	Fawell	Kingston
Boehlert	Fiske	Klug
Bonilla	Foley	Knollenberg
Bono	Forbes	Kolbe
Brady	Fowler	LaHood
Bryant	Fox	Latham
Burr	Franks (NJ)	LaTourette
Burton	Frelinghuysen	Lazio
Buyer	Gallegly	Leach
Camp	Ganske	Lewis (CA)
Campbell	Gekas	Lewis (KY)
Cannon	Gibbons	Linder
Castle	Gilchrest	Livingston
Chabot	Gillmor	LoBiondo
Chambliss	Goode	Lucas
Chenoweth	Goodlatte	Manzullo
Christensen	Goodling	McCollum
Clyburn	Goss	McCrery
Coble	Graham	McHugh
Coburn	Granger	McIntosh
Collins	Gutknecht	McKeon
Combest	Hastert	Metcalf
Condit	Hastings (WA)	Mica
Conyers	Hayworth	Miller (FL)
Cook	Herger	Moran (KS)
Cooksey	Hill	Morella
Cox	Hilleary	Myrick
Crapo	Hobson	Nethercutt
Cubin	Hoekstra	Ney

APPENDIX H: FEDERAL COURT DECISIONS FEDERAL COURT DECISIONS

DORNAN V. SANCHEZ

FEDERAL COURT DECISIONS

Among the most important advances that this particular contested election made to promote the integrity of the nation's elections are the several Federal Court challenges that the Federal Contested Elections Act experienced.

The most significant Federal Court decision occurred on September 23, 1997 that was issued from the US District Court of the Central District of California. This court decision arose from an attempt by Hermandad Mexicana Nacional to stay the production of documents to the Contestant by the Orange County District Attorney. The District Attorney's office seized the documents pursuant to a search warrant. Hermandad challenged the constitutionality of the FCEA's subpoena provisions. The Contestee joined in the unconstitutionality argument. In the interest of defending the prerogatives of the institution, the House of Representatives filed an amicus brief with the Court. Judge Taylor held in that decision that * * * the deposition subpoena provisions of the Federal Contested Elections Act * * * are constitutional.

Another significant court decision involving this contested election occurred on March 13, 1997 that was also issued from the US District Court of the Central District of California. In this case, the Contestee sought relief from the Contestant's subpoenas that were issued from the District Court. Ultimately, Judge Taylor ruled that the blank subpoenas issued by the Magistrate Judge were irregular on their face and they were withdrawn. Any subsequent subpoenas would be issued by application to the District Court itself. Finally, the Court noted that "Any future request to quash or restrict * * * a § 388 subpoena document demand should be directed to the House and not the court. Based on this order the Contestant issued several subpoenas.

I HEREBY CERTIFY THAT THIS DOCUMENT WAS SERVED BY FIRST CLASS MAIL, POSTAGE PREPAID, TO ALL COUNSEL (OR PARTIES) AT THEIR RESPECTIVE MOST RECENT ADDRESS OF RECORD IN THIS ACTION, ON THIS DATE.
DATED: February 14 1997
DEPUTY CLERK

FILED
FEB 14 1997
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION AT SANTA ANA
BY
DEPUTY

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

In the Matter of the Contested Election of LORETTA SANCHEZ for the Office of House of Representatives to the United States Congress, ROBERT K. DORNAN, Contestant, v. LORETTA SANCHEZ, Contestee.	Case No. SA MISC. 915 ORDER TO ISSUE SUBPOENAS PURSUANT TO FEDERAL CONTESTED ELECTION ACT 2 U.S.C. §388

The application for issuance of subpoenas pursuant to Federal Contested Election Act 2 U.S.C. §388 filed February 13, 1997, by Contestant Robert K. Dornan is GRANTED.

The Clerk is instructed to issue subpoenas signed but otherwise in blank to Contestant or his attorneys in the same manner as would apply to the issuance of deposition subpoenas in cases pending in this court.

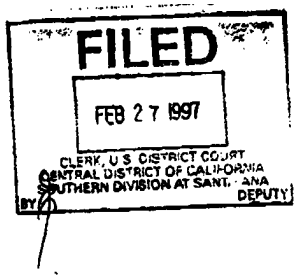
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The Clerk shall serve a copy of this order by first class mail on counsel for Contestant and counsel for Contestee.

Dated: February 14 1997

Elgin Edwards
United States Magistrate Judge



UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

In the Matter of the Contested Election of LORETTA SANCHEZ for the Office of House of Representatives to the United States Congress, ROBERT K. DORNAN, Contestant, v. LORETTA SANCHEZ, Contestee.	Case No. SA MISC. 915 ORDER DENYING *EX PARTE* APPLICATION TO VACATE ORDER TO ISSUE SUBPOENAS, ETC.

Contestee's "*Ex Parte* Application to Vacate Order to Issue Subpoenas [etc.]" filed February 21, 1997 and Contestant's opposition filed February 24, 1997 have been carefully considered.

The application seeks an order vacating this Court's order of February 14, 1997 and withdrawing certain subpoenas issued by the Clerk pursuant to that order. The basis for the applications is that the subpoenas were issued prematurely and not in compliance with the timetable for taking testimony set forth in 2 U.S.C. § 386(c). For reasons that follow, the application is DENIED.

As Contestee and Contestant both note, this Court has very limited jurisdiction in proceedings under the Federal Contested Election Act. It has a substantially ministerial, nondiscretionary duty under 2 U.S.C. § 388 to issue subpoenas "[u]pon application of any party." The Act plainly contemplates a minimal role for the courts in this dispute. For example, all motions are to be filed with the Committee on House Oversight of the House of Representatives pursuant to 2 U.S.C. § 393. Similarly, disputes over subpoenas duces tecum are to be resolved not by this court but by that committee pursuant to 2 U.S.C. § 388(e).

Contestant has given assurances that no testimonial depositions will be attempted outside the schedule set forth in 2 U.S.C. § 386(c). To the extent that this court's subpoenas are to be used for production of documents, i.e., not to obtain testimony, all disputes must be addressed by motion to the Committee on House Oversight under 2 U.S.C. § 393 and 2 U.S.C. § 388(e). This court obviously has no role in any such dispute, and the statute does not even call for copies of the motions to be filed here.

Contestee's *ex parte* application also seeks sanctions against Contestant and his counsel under the local rules and Rule 5, F.R.Civ.P., for seeking subpoenas without giving notice to Contestee. It is universally accepted, however, that subpoenas are issued upon request by a member of the bar of this court in any proceeding. Upon Contestant's filing of the application for issuance of subpoenas herein, counsel was entitled to forthwith issuance of subpoenas upon request. In fact, Rule 45(a)(3), F.R.Civ.P., provides that "[a]n attorney as officer of the court may also issue and sign a subpoena on behalf of . . . a court in which the attorney is authorized to

practice . . ." No motion is required, and, accordingly, counsel for Contestant was not required to give the notice that would be required if he had been making a motion.

Accordingly, there is no basis for imposing sanctions, and the application for sanctions is DENIED.

Dated: February 27, 1997

Elgin Edwards
United States Magistrate Judge

P.4

20:91 46. 82 83J
** TOTAL PAGE.05 **

RECEIVED
MAR 14 1997

(For Publication)

FILED
MAR 13 1997
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION AT SANTA ANA
BY DEPUTY

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

In the Matter of the Contested Election of LORETTA SANCHEZ to the House of Representatives of the United States Congress;	Case No. SA CV 97-176-GLT (SA Misc. 915)
	ORDER VACATING SUBPOENA ORDERS AND RECALLING SUBPOENAS
ROBERT K. DORNAN, Contestant, vs. LORETTA SANCHEZ, Contestee.	

On first impression, it is held a court's sole authorized participation in the Federal Contested Election Act, 2 U.S.C. § 381 and following, is to issue requested deposition subpoenas apparently regular on their face. This does not include authority to issue subpoenas in blank or for document production only.

I. BACKGROUND

Loretta Sanchez was elected to the United States House of Representatives in the 1996 general election, defeating incumbent Robert Dornan. Mr. Dornan filed a formal contest of the election results with the United States House of Representatives. See 2 U.S.C. § 381 and following. Mr. Dornan, through counsel, also filed an ex parte application to this court for an order to issue subpoenas under

§ 388 of the Act.

This court, through a Magistrate Judge, entered an order directing the Clerk of the Court "to issue subpoenas signed but otherwise in blank to Contestant [Mr. Dornan] or his attorneys in the same manner as would apply to the issuance of deposition subpoenas in cases pending in this Court."

Ms. Sanchez applied to vacate the subpoena order on the limited ground the subpoenas were untimely. The application was denied.

Mr. Dornan served numerous subpoenas requiring production of records to Mr. Dornan's representative by various third party custodians of records, without scheduled depositions. Ms. Sanchez and various parties served with "documents only" subpoenas sought relief from the subpoenas and the Magistrate Judge's order. This court set the challenge for hearing on an expedited basis, and the matter was fully argued on the merits. The court ruled that the orders of the Magistrate Judge be vacated, and the subpoenas issued thereunder be withdrawn. The court now issues its written order in furtherance of that ruling.

II. DISCUSSION

The court has jurisdiction and authority to review and change an order of its Magistrate Judge that is contrary to law. 28 U.S.C. § 636(b)(1)(A). The national election process is of such public importance that the court will expedite any review of orders in furtherance of that process.[1]

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[1] See Morgan v. United States, 801 F.2d 445, 450 (D.C. Cir. 1986) ("The pressing legislative demands of contemporary government have if anything increased the need for quick, decisive resolution of election controversies.").

Each House of Congress is the judge of the elections and returns of its own members. United States Constitution, Article I, Section 5. To aid in that function, in 1969 Congress enacted the Federal Contested Elections Act as a carefully drawn procedural mechanism for the contest of an election to the House of Representatives. 2 U.S.C. §§ 381-396. The parties agree there are no cases interpreting the discovery provisions of that Act.

The procedures the Act creates are specific, and the role allocated to the courts is very limited. Under § 388, upon the application of any party, "a subpena for attendance at a deposition shall be issued . . ." by the court or other designated persons.

The Act's subpoena process is entirely a creature of this statutory structure. There is no provision in the Act for engrafting onto it the provisions of the Federal Rules of Civil Procedure, or other aspects of the court's operation or supervision. The limit of a court's role under the Act is to issue requested deposition subpoenas apparently regular on their face.

Unlike other areas of law where the court retains inherent supervision over its own subpoenas, the role is more limited here. The Constitution's special reservation to Congress of judging its own elections and returns preempts inherent court power not specifically authorized by Congress.[2] The court may do what the Act authorizes and

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[2] The strict reservation of election contest jurisdiction to Congress is described by Scalia, J., (then sitting on the District of Columbia Circuit): "[T]he Constitution . . . unambiguously proscribes judicial review. . . . It is difficult to imagine a clearer case of 'textually demonstrable constitutional commitment' of an issue to another branch of government to the exclusion of the courts. . . . [T]he language . . . '[e]ach House shall be the Judge of the Elections, Returns and Qualifications of its own Members . . . [constitutes] [t]he exclusion of others -- and in particular of others who are

directs it to do, but no more.[3]

In performing its role of issuing requested deposition subpoenas apparently regular on their face, it is appropriate for the court to decline to issue subpoenas that do not appear to be regular on their face.

Reading §§ 386 through 388 together, Congress provided for depositions on oral examination (§ 386(a)), notice (§ 387), subpoenas to compel witness attendance at depositions (§ 386(e)), a limited court role of issuing those subpoenas (§ 388(a)), actual appearance and testimony in "every subpena" (§ 388(d), and the opportunity to "also" command the production of documents at the deposition (§ 388(e)).[4]

The statutory scheme does not provide for ex parte discovery, subpoenas to produce documents only, or early document discovery before depositions are taken. Such a subpoena may not be issued. If Congress had so intended, such a provision could have easily been included in the Act.

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judges . . . . [T]he Elections Clause is . . . [a] plain exclusion of judicial jurisdiction . . . [T]he command to 'be the Judge of . . . Elections' excludes other judges." Morgan v. United States, 801 F.2d 445, 446-47, 450 (D.C. Cir. 1986).

[3] The issues in this case do not involve the sort of extraordinary and fundamental Constitutional rights violation that might invoke broader court intervention. See, for example, Powell v. McCormack, 395 U.S. 486 (1969) (holding judicial intervention appropriate where House action goes beyond Constitutional power to judge elections); Morgan v. United States, 801 F.2d at 451 (recognizing possible "limited judicial interference" upon "a clear showing of such arbitrary and improvident use of the power [by the House] as will constitute a denial of due process of law. . . .").

[4] A court may acquire a different participation under the Act if a prosecution is brought for failure to make discovery. 2 U.S.C. § 390.

The reasons for requiring production of documents through an actual deposition are apparent. At a noticed deposition, potential ex parte discovery abuses can be avoided. All parties can be present and represented, receive information under oath, obtain copies of everything produced, discuss the matter fully with the document custodian, and make a record for consideration by the House of Representatives on any matter or dispute taken to it.

The Act does not provide for a court to issue subpoenas in blank, with a party or counsel to fill in the witness name and particulars. Such subpoenas may not be issued. Although that procedure may be permitted under the Federal Rules of Civil Procedure, it is not part of this Act.

The format and content of the subpoena are specified in the Act. A court may not issue a subpoena under the Act if a deviation from the prescribed format and content is apparent. Since the Federal Rules of Civil Procedure are not engrafted onto the Act, the subpoena text may not advise witnesses that the rights and obligations of the Federal Rules apply.

It is not part of the court's subpoena issuance role under § 388 to inquire or decide if the deposition is timely under § 386. An issue of untimeliness is properly addressed to the House rather than the court. The House may make any appropriate protective order.

The court finds the subpoenas sought in this case were irregular on their face in several respects. They were for the ex parte production of documents only, and not for an actual deposition. They were requested and issued in blank, in a format not as specified by the Act. Therefore, the court will vacate the prior subpoena authorization orders and recall the subpoenas.

As a result of this order, the various additional pending motions to quash the subpoenas or restrict their scope are moot. Any future request to quash or restrict (as unreasonable, overbroad, burdensome, etc.) a § 388 subpoena document demand should be directed to the House and not to the court. The court lacks authorization or jurisdiction to hear such a challenge, and under § 388(e) such authorization and jurisdiction is vested exclusively with the House.

Ms. Sanchez argued this court's Local Rules do not authorize reference of an Act subpoena issuance to a Magistrate Judge. Because of this ruling, the court does not reach that issue. However, in order to avoid delay in the House of Representatives election contest proceeding, the court directs that any future subpoena application to this District Court be submitted directly to the District Court Judge.

III. DISPOSITION

The subpoena order of the Magistrate Judge is VACATED, and the subpoenas issued thereunder are RECALLED.

DATED: March 13, 1997

GARY L. TAYLOR
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. SA CV 97-176-GLT Date May 27, 1997

Title: In the Matter of the Contested Election of Loretta Sanchez for the Office of House of Representatives to the United States Congress, Robert Dornan v. Loretta Sanchez

DOCKET ENTRY:

I hereby certify that this document was served by first class mail, postage prepaid, to all counsel for parties at their respective most recent address of record in this action on this date: 5/28/97
date
Deputy Clerk

PRESENT:

HON. Gary L. Taylor JUDGE

Robert Bolton	Sally Marshall
Deputy Clerk	Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS: Not Present

ATTORNEYS PRESENT FOR DEFENDANTS: Not Present

PROCEEDINGS: MOTION TO DISQUALIFY COUNSEL TAKEN OFF-CALENDAR

Counsel for Ms. Sanchez have moved the court to disqualify counsel for Mr. Dornan from further appearance in this court on this matter because of claimed misconduct in using subpoenas issued by this court. Request is also made that the matter be referred for additional action to the Central District's committee on admission. Under the U.S. Constitution and the appropriate election contest statutes, this motion must be presented to the U.S. House of Representatives, and not this Court. Therefore, this motion is ordered off-calendar.

Initials of Deputy Clerk

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. SA CV 97-176 GLT(EEx) Date 8/26/97

Title: IN THE MATTER OF THE CONTESTED ELECTION OF LORETTA SANCHEZ, et al. ROBERT K. DORNAN, v. LORETTA SANCHEZ

DOCKET ENTRY:

I hereby certify that this document was served by first class mail, postage prepaid, to all counsel for parties at their respective most recent address of record in this action on this date; date _____

_____
Deputy Clerk

PRESENT:

HON. Gary L. Taylor JUDGE

Robert Bolton
Deputy Clerk

None Present
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS: None Present

ATTORNEYS PRESENT FOR DEFENDANTS: None Present

PROCEEDINGS: MINUTE ORDER in re: NOTICE HEARING REMAINS ON CALENDAR

The hearing regarding constitutional issues will go forward as scheduled on Thursday, August 28, 1997 at 10:30 a.m. The matter is not moot. See City of Mesquite v. Aladdin's Castle, Inc., 455 U.S. 283, 289-90 (1982); Native Village of Noatak v. Blatchford, 38 F.3d 1505, 1510 (9th Cir. 1994).

Contestant Dornan may file a substantive reply to the Court's August 12, 1997 Order by 4:00 p.m. on Wednesday, August 28, 1997. Service is to be effected by fax or personal service.

Initials of Deputy Clerk _____

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. SA CV 97 176 GLT(EEx) Date 8/12/97

Title: IN THE MATTER OF THE CONTESTED ELECTION OF LORETTA SANCHEZ, et al. ROBERT K. DORNAN, v. LORETTA SANCHEZ

DOCKET ENTRY:

I hereby certify that this document was served by first class mail, postage prepaid, to all counsel for parties at their respective most recent address of record in this action on this date;
date 8-13-97
Deputy Clerk

PRESENT:

HON. Gary L. Taylor JUDGE

Robert Bolton
Deputy Clerk

None Present
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS: None Present

ATTORNEYS PRESENT FOR DEFENDANTS: None Present

PROCEEDINGS: MINUTE ORDER in re: STAY OF DEPOSITION PENDING RULING ON CONSTITUTIONAL OBJECTION

The Court has received and reviewed the application of Hermandad Mexicana Nacional to enjoin the deposition and production of documents sought by contestant Dornan from the Custodian of Records of the Orange County District Attorney. Among other issues, the applicant contests the constitutionality of the Federal Contested Election Act's discovery provisions.

Although the parties have alluded to the constitutionality issue at various earlier times, that issue has never before been fully briefed or squarely presented for decision.

The deposition and document production of the Custodian of Records, Orange County District Attorney, is hereby STAYED pending the Court's ruling on the constitutionality issue, as well as such other issues as the Court may address.

The parties are directed to file with the Court by August 20, 1997, any reply they may wish to make to the constitutional arguments asserted by Hermandad Mexicana Nacional.

Initials of Deputy Clerk KAM

SERVICE LIST

Counsel for Contestee, Loretta Sanchez

Stanley M. Brand
David B. Frulla
BRAND, LOWELL & RYAN
923 15th Street, N.W.
Washington, DC 20005
Fax: (202) 737-7565

William Ropeny
8001 Irvine Center Drive, Suite 1170
Irvine, CA 92618
Fax: (714) 453-1516

Fredric D. Woocher
Michael J. Strumwasser
STRUMWASSER & WOOCHER
100 Wilshire Blvd., Suite 1900
Santa Monica, CA 90401
Fax: (310) 319-0156

Wylie A. Aitken
Law Offices of Wylie A. Aitken
3 Imperial Promenade, Suite 800
Santa Ana, California 92707
Fax: (714) 434-3600

Counsel for Hermandad Mexicana Nacional, Hermandad Mexicana Nacional Legal Center, Inc.; Hermandad Sales and Marketing, Inc.; Citizens Former Gutierrez Group and Michael Farber

Mark S. Rosen
2107 North Broadway, Suite 202
Santa Ana, CA 92706

Counsel for the Orange County District Attorney

Wallace J. Wade
Assistant District Attorney,
Director of Special Operations
700 Civic Center Drive West
P. O. Box 808
Santa Ana, CA 92701

PROOF OF SERVICE
Section 1013A (3)

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the county of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 200 East Sandpointe, Fourth Floor, Santa Ana, California 92707-0507.

On August 22, 1997, I caused the foregoing document described as RESPONSE OF CONTESTANT, ROBERT K. DORNAN, TO EX PARTE APPLICATION OF HERMANDAD MEXICANA NACIONAL TO REJOIN ENFORCEMENT OF SUBPOENA to be served on the interested parties in this action by placing ( ) the original; (X) a true copy thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED SERVICED LIST.

__XX__ BY MAIL I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Santa Ana, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing in the affidavit.

__XXX__ BY FACSIMILE TRANSMISSION On August 22, 1997, in addition to service by mail, I served the above-referenced documents by facsimile transmission.

____ BY FEDERAL EXPRESS I caused such envelope to be placed for collection and delivery on this date in accordance with standard Federal Express overnight delivery procedures.

____ BY PERSONAL SERVICE I caused such envelope to be delivered by hand to the offices of the addressee.

Executed on August 22, 1997, at Santa Ana, California.

____ STATE I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

__XX__ FEDERAL I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Chae Lambi

Congress of the United States

Washington, DC 20515

September 8, 1997

Honorable Newt Gingrich
Speaker of the House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

As you know, the Bipartisan Legal Advisory Group of the U.S. House of Representatives filed an *amicus* brief on September 5th in the U.S. District Court proceeding concerning the election contest filed by Robert Dornan. We objected to the brief, and declined to join in it. This letter will explain our objections.

Simply stated, your brief endorses the conduct of this election contest by the House Oversight Committee. However, the Committee has not earned our endorsement. More than nine months after this election contest began, Mr. Dornan's contentions have come to naught. Yet Congresswoman Sanchez, her constituents, and the innocent third parties that Mr. Dornan dragged into this dispute remain hostages to a process that has proven neither fair nor efficient – and has cost the American taxpayers hundreds of thousands of dollars. As a consequence, we declined to join in the brief defending that process, and reiterate our view that the election contest should be dismissed immediately.

From the outset, the Committee's process has lacked basic fairness. The Committee has either been unwilling or unable to exercise any meaningful control over the election contest. For example, objections to subpoenas have been ignored for weeks or months, forcing subpoena recipients to comply with improper demands or to risk criminal charges under the Federal Contested Elections Act (FCEA or Act). Similarly, despite repeated requests, the Committee has denied subpoena recipients the opportunity to appear and present their objections. Also, the Committee has rejected serious and substantial constitutional objections to Mr. Dornan's subpoenas without comment or explanation, leaving subpoena recipients without guidance as to how to proceed.

We also have concerns regarding the specific contentions in the brief. First, the brief states that the discovery provisions of the Act have not been challenged previously. However, it fails to explain why those provisions have escaped challenge: this is the first

time the Committee has permitted a contestant to issue subpoenas in the twenty-eight years since the FCEA was enacted. In light of the way that discovery has proceeded in this case, that forbearance appears to have been wise.

Second, the brief defends the FCEA's delegation of subpoena authority to contestants in general terms, but ignores the manner in which Mr. Dornan has exercised that authority in this case. For example, Mr. Dornan subpoenaed Catholic Charities of Orange County for financial records, telephone records, employee lists and client lists. He subpoenaed thousands of student records from Rancho Santiago Community College. Also, he subpoenaed highly sensitive political and financial materials from Congresswoman Sanchez, and from a variety of his political opponents. These subpoenas raise substantial concerns because of their chilling effect on constitutionally protected activities.

Third, the brief asserts that the Act provides due process because the Committee is empowered to address objections to subpoenas before the recipient must comply. In theory, this power exists. In practice, however, Mr. Dornan has demanded compliance with subpoenas within days, while the Committee has permitted weeks or months to lapse without addressing objections. As noted previously, this practice places subpoena recipients in an unfair and untenable position. Either they must comply with subpoenas that they deem unconstitutional – and that plainly are intrusive and burdensome – or they must risk criminal sanctions under the FCEA.

Fourth, the brief contends that the discovery provisions of the Act satisfy separation of powers concerns because the House is merely exercising its constitutional authority to judge elections. Once again, the brief focuses on general concerns, while ignoring the Committee's actual practice in this case. The Committee repeatedly has blurred the line between this election contest and its general legislative jurisdiction over elections. For example, the Committee has subpoenaed the Immigration and Naturalization Service for information pertaining to registered voters throughout Orange County – which encompasses five congressional districts in addition to the 46th district. Thus, it is highly questionable whether the Committee has restricted its activities to the constitutional context asserted in the brief. Even if the scope of the Committee's activities fit within its constitutional mandate, however, the problems identified above demonstrate that this Committee has not conducted this election contest in a manner that protects the constitutional rights of Congresswoman Sanchez or the other recipients of Mr. Dornan's subpoenas.

Mr. Dornan had nine months to prove his allegations and has not done so. The time has come to dismiss this election contest, and to free Congresswoman Sanchez from the unreasonable burdens imposed upon her by Mr. Dornan and the Committee. The people of the 46th congressional district have been held hostage long enough. Therefore, we declined to join in your brief, and will oppose any further steps to perpetuate this outrage.

Sincerely Yours,

Richard A. Gephardt
Democratic Leader

David E. Bonior
Democratic Whip

Geraldine R. Gennet
Kerry W. Kircher
Michael L. Stern
Carolyn Betz
Office of the General Counsel
U.S. House of Representatives
219 Cannon House Office Building
Washington, D.C. 20515
(202) 225-9700

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

IN THE MATTER OF THE CONTESTED ELECTION OF LORETTA SANCHEZ, et al. ROBERT K. DORNAN, Contestant, v. LORETTA SANCHEZ, Contestee.	Case No. SA CV 97-176-GLT **AMICUS BRIEF OF THE BIPARTISAN LEGAL ADVISORY GROUP OF THE U.S. HOUSE OF REPRESENTATIVES**

The Bipartisan Legal Advisory Group of the U.S. House of Representatives,[1] as amicus curiae, through the Office of General Counsel of the House of Representatives, respectfully submits this brief in support of the constitutionality of the discovery provisions of the Federal Contested Elections Act ("FCEA"), 2 U.S.C. §§ 381, *et seq.*

Pursuant to Article I, section 5, clause 1 of the Constitution, each House of Congress is charged with judging its own elections. In the House, that responsibility is carried out in the first instance by the Committee on House Oversight (the "Committee"). In particular, the Committee is charged with the responsibility of hearing evidence in the election contest between Contestant Robert

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[1] The Bipartisan Legal Advisory Group represents the institutional interests of the House in litigation matters. Its members are the Speaker of the House, the Majority Leader, the Majority Whip, the Minority Leader and the Minority Whip. The Group determined on September 5, by majority vote, to file this brief, with the Minority Leader and the Minority Whip voting against the filing of the brief.

Dornan and Contestee Loretta Sanchez. Representative Sanchez and Hermandad Mexicana Nacional ("Hermandad") have challenged the constitutionality of the FCEA discovery provisions by which parties may obtain evidence relevant to the election contest. These discovery provisions, the origins of which date back to the very founding of the Republic, are integral to the performance of the House's constitutional function to judge its own elections. For the reasons that follow, those provisions are constitutional, and Hermandad's and Representative Sanchez's arguments must be rejected.

BACKGROUND

I. FEDERAL ELECTION CONTESTS

Federal election contests may be initiated by the House of Representatives itself, either based on a protest filed by a person outside the House or on a motion made by a member. *See* 1969 U.S.C.C.A.N. 1457. Historically, however, the vast majority of election contests have been initiated by private parties (usually another candidate), rather than the House itself. *See Relating to Election of a Representative from the Eighth District of Indiana*, H.R. Rep. 99-58, 99th Cong., 1st Sess. 3 (1985) ("It is no doubt unusual for the House to initiate its own investigation into the results of an election."). The House has generally recognized that such contests resemble in some respects public inquiries and in other respects private litigation, albeit obviously with a significant public interest. *See, e.g.*, 2 Hinds' Precedents of the House of Representatives § 988.

It was in 1798 that Congress first enacted a statute permitting parties to election contests to obtain subpoenas for the discovery of evidence. An Act of January 23, 1798, enacted by the Fifth Congress, provided that

> where any person . . . shall intend to contest an election for any member or members of the House of Representatives of the United States, or to support any such election so intended to be contested, and shall be desirous of obtaining testimony respecting such election, it shall be lawful for such person to make application to any judge of the Courts of the United States, or to any chancellor, justice, or judge, of a superior or county court, or court of common pleas, of any State, or to any mayor, recorder, or intendant, of a town or city, who shall thereupon issue his warrant or summons, directed to all such witnesses as shall be named to him by such applicant . . . and requiring the attendance of such witnesses before him . . . in order to be then and there examined [regarding] the subject matter of the aforesaid application.

9 Annals of Congress 3704-05.

Although this statute expired by its terms at the end of the first session of the Sixth Congress, the House on a number of occasions has authorized the taking of testimony by private parties even in the absence of any statutory authority. For example, in 1791 the House by resolution provided that the parties to the Georgia election contest of *Jackson v. Wayne* could take testimony before certain courts or magistrates. 1 Hinds' Precedents of the House of Representatives § 708. Similarly, in 1850, the House by resolution authorized the taking of testimony by deposition according to state law in election contests in Iowa and Pennsylvania. *Id.* §§ 718, 815.

In 1851, Congress enacted a new statute governing contested elections. This statute permitted any "contestant or returned member" to apply for a subpoena to any judge of any court of the United States or to certain other officers. *See* Rev. Stat. § 110; 18 Stat. 18-19; 1 Hinds' Precedents § 698. The statute then stated that "[t]he officer to whom the application . . . is made shall thereupon issue his writ of subpoena, directed to all such witnesses as shall be named to him, requiring their appearance before him, at some time and place named in the subpoena, in order to be examined respecting the contested election." Rev. Stat. § 111; 18 Stat. 19; 1 Hinds' Precedents § 698. The statute also provided that "[t]he officer shall have the power to require the production of papers." Rev. Stat. § 123; 18 Stat. 20; 1 Hinds' Precedents § 703. This statute, with a few amendments, remained in effect until 1969, when it was repealed and replaced by the FCEA.

The 1851 statute contained no mechanism for challenging the legal sufficiency of a notice of election contest at an early stage. *See* 1969 U.S.C.C.A.N. 1458. The contestant was automatically authorized to commence taking testimony upon receipt of the answer of the returned member (which answer was required by the statute to be served within 30 days of service of the notice of contest). Rev. Stat. § 107. Not surprisingly, therefore, many election contests under the 1851 statute involved the taking of testimony at least by the contestant. *See generally* 1 Hinds' Precedents §§ 598, 686, 712-733, 824, 831, 834, 843; 2 Hinds' Precedents §§ 852, 855, 857, 860, 864, 869, 875, 880, 898, 900, 936, 940, 956, 977, 981, 988, 1003, 1064, 1070, 1086; 2 Deschler's Precedents of the U.S. House of Representatives §§ 30, 46-62. In a number of election contests, the precedents specifically reflect that the parties utilized subpoenas to obtain testimony or other evidence. *See, e.g.*, 1 Hinds'

Precedents §§ 598, 712; 2 Hinds' Precedents §§ 852, 956, 1003, 1070; 2 Deschler's Precedents §§ 30, 46.2, 48.1, 55.3; *see also Contested-Election Case of George D. Stevens against William W. Blackney from the Sixth Congressional District of Michigan*, H.R. Rep. 1735, 81st Cong., 2d Sess. (1950).[2]

Congress became concerned in the 1960s that "[t]he 1851 law prescribes antiquated and cumbersome procedures which are unsuitable for the changed conditions of our time." 115 Cong. Rec. 30510 (Oct. 20, 1969) (remarks of Congressman Abbitt). In 1969, the 91st Congress enacted the FCEA to replace the 1851 statute. Pub.L. 91-138, 83 Stat. 284 (1969). The FCEA was intended to modernize election contest procedures, including the methods of taking testimony and other evidence, in accordance with the Federal Rules of Civil Procedure. H.R. Rep. No. 91-569, at 4-5.

Like the 1851 statute, the FCEA explicitly authorizes the parties to an election contest to obtain subpoenas for testimony and for production of documents. *See* 2 U.S.C. §§ 386-88; 115 Cong. Rec. 30510 (Oct. 29, 1969) ("Attendance of witnesses and production of documents and papers including ballots can be compelled by subpoena") (remarks of Congressman Abbitt). Such subpoenas may be issued by any judge or clerk of a federal district court, state court or county court for the jurisdiction in which the place of examination is located. 2 U.S.C. § 388. Unlike the 1851 statute, the FCEA explicitly authorizes the Committee on House Oversight upon timely motion to "(1) quash or modify the subpena if it is unreasonable or oppressive, or (2) condition denial of the motion upon the advancement by the party in whose behalf the subpena is issued of the reasonable cost of producing the books, papers, documents, or tangible things." *Id.* § 388(e).

The FCEA also replaced the "outdated" penalty provisions of the old contested elections law with criminal penalties identical to those provided for contumacious witnesses before Congress.[3]

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[2] It is reasonable to assume that subpoenas were also used in many of the other election contests, even though the precedents do not explicitly state how the testimony or other evidence was obtained.

[3] One weakness in the 1851 statute was the lack of an effective mechanism to punish a witness who refused to obey a subpoena in a contested election case. *See* Deschler's Precedents § 30.2 ("Although the election contest statute authorized the use of subpenas, there were instances of refusals to testify as well as ignoring of subpenas by witnesses; for this reason, a House elections

H.R. Rep. No. 91-569, at 4-5 (1969); *compare* 2 U.S.C. § 390 (penalty under FCEA for failure of witness to appear, testify or produce documents) *with* 2 U.S.C. § 192 (penalty for refusal of a witness to testify or produce papers in a matter before either House of Congress).

Nowhere in the legislative history of the FCEA have we located any expression of concern regarding the constitutionality of permitting private parties to obtain subpoenas in election contests or of requiring courts to issue such subpoenas.[4] Indeed, although this practice has occurred for 200 years under the explicit authority of the 1798 statute, the 1851 statute, the FCEA and various House resolutions, it does not appear previously to have been challenged or even questioned on constitutional grounds.

II. THE SANCHEZ CONTESTED ELECTION

This matter arises out of the November 5, 1996 election of Loretta Sanchez as Representative of California's 46th Congressional District. On November 26, 1996, the Registrar of Voters of Orange County Clerk certified Representative Sanchez the winner over incumbent Robert K. Dornan by a margin of 984 votes. On December 2, 1996, Contestant Dornan requested

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committee recommended that the laws be amended and some practical procedure be adopted by which witnesses could be required to obey process and give testimony."). *See also* 61 Cong. Rec. 6392-93 (1921) ("There is absolutely no law on the statute books today that will allow a United States district attorney or any other officer of the law to prosecute a man who refuses to come into court when summoned in a contested-election case. . . . It seems to me, Mr. Speaker, there should be teeth in the law that will compel men to be fair and square as citizens and give testimony as it is desired so that a man, whether he is a contestee or contestant, shall have accurate testimony before the body when he comes here.") (remarks of Congressman Tague).

[4] By narrowing the definition of permissible "contestant" in an election contest, the FCEA has the effect of limiting the persons with potential access to the subpoena power. In the debate over adoption of the FCEA, some objected to this narrowing of those permitted to challenge an election and utilize the subpoena power. *See* 115 Cong. Rec. 30511-13 (Oct. 20, 1969)(remarks of Congressman Ryan). In defending the bill, its sponsor, Congressman Abbitt, noted that the subpoena power "can be abused" and "[i]f everybody has a right to contest and subpena witnesses, he can run a House Member up and down the State and no one knows how long it would take to settle it." *Id.* at 30513. Despite this understanding of the potential for abuse, the disagreement was between those who believed the subpoena authority should be limited to actual candidates and those who believed it should be more widely available. There was no suggestion of eliminating the authority altogether.

a formal recount of votes cast in the 46th Congressional District election. The recount commenced on December 10, 1996 and continued until December 21, 1996. The recount of actual ballots cast resulted in a reduction of the differential by 5 votes to 979.

Contestant Dornan filed with the Clerk of the House a challenge to the election, dated December 23, 1996, pursuant to the FCEA, 2 U.S.C. §§ 381-396. Contestant Dornan challenged the election on the grounds of alleged errors in reconciling the number of registered voters with actual votes cast, illegal votes (*e.g.*, votes cast by illegal aliens, unregistered voters, convicted felons, etc.), and errors in counting ballots. Id. at ¶ 6. Pursuant to 2 U.S.C. § 383, Representative Sanchez filed a Motion to Dismiss Contestant Dornan's challenge, or, in the alternative, a Motion for a More Definite Statement, dated January 23, 1997. Contestant Dornan then filed his Opposition to Congresswoman Sanchez's Motion to Dismiss, dated February 7, 1997. At its February 26, 1997, meeting, the Committee postponed ruling on these motions until a hearing on the merits.[5] As a result of this ruling, the time for taking discovery began to run. 2 U.S.C. § 383(d).

On February 13, 1997, Contestant Dornan applied to the U.S. District Court for the Central District of California for the issuance of subpoenas pursuant to 2 U.S.C. § 388(a). This section provides that, upon application of any party, deposition subpoenas shall be issued, *inter alia*, by a "judge or clerk" of the United States district court for the district in which the examination is to occur. On February 14, 1997, U.S. Magistrate Edwards granted this application and ordered that signed but otherwise in blank subpoenas be issued to Contestant or his attorneys.

Following the issuance of these subpoenas, Contestant Dornan proceeded to serve numerous subpoenas requiring production of documents (without scheduled depositions). Representative Sanchez and various recipients of these subpoenas filed motions or objections with this Court, requesting relief from the subpoenas.[6] The Court scheduled a hearing on an expedited basis and, on

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[5] Representative Sanchez subsequently filed a renewed motion to dismiss, dated March 10, 1997.

[6] Objections were filed by Hermandad Mexicana Nacional, Legal Center of Hermandad Mexicana Nacional, Michael Farber, Orange County Superior Court, Registrar of Orange County, County of Orange Department of Social Services Administration, Nativo Lopez, Carpenters Locals

March 7, 1997, the matter was fully argued on the merits. The Court ruled that the FCEA did not authorize the issuance of subpoenas signed in blank or for document production only and therefore vacated all of the subpoenas previously issued. Order of March 13, 1997 at 5-6. The Court ruled that its role under the FCEA was limited solely to issuing subpoenas apparently regular on their face. Thus, all future subpoenas were required to be approved by the Court as to form, rather than signed in blank.

On March 17, 1997, pursuant to the Court's ruling, Contestant Dornan applied to the Court for the issuance of a number of deposition subpoenas. Apparently there were then substantial discussions among the parties and the Court, which ultimately led to the Court's approval of a subpoena form to be used in FCEA proceedings. Shortly thereafter, the Court executed some 38 subpoenas requested by Contestant Dornan.[7] These subpoenas were then served by Contestant Dornan on the subpoenaed parties and on counsel for Representative Sanchez.[8]

The recipients of these subpoenas then proceeded to file motions to quash with the Committee. Between March 20 and May 21, the Committee received motions to quash 25 subpoenas. *See* Subpoena Status Chart (Attachment A hereto). It appears from these motions that most of the recipients were served more than three days in advance of the response date. Moreover, most, if not all, of the recipients had been served in the initial round of subpoenas in February and thus had actual notice long before service of the second subpoena.

In virtually every case, the subpoena recipient was able to file its motion to quash with the Committee on or before the deposition date contained in the subpoena. In the few cases where the motion to quash was filed after the deposition date, the motion was nonetheless considered by the

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803 and 2361, Laborers International Union of North America Local 652, Rancho Santiago Community College and Michael Farber.

[7] It appears that in at least one instance the Court refused to execute a requested subpoena on the ground that it was not addressed to an entity within the Court's jurisdiction.

[8] Contestant Dornan also applied for an additional 13 subpoenas from the Court on May 20. These subpoenas were issued for deposition dates in late May and early June.

Committee.[9] *See* Subpoena Status Chart (Attachment A). The Committee is unaware of any contention by any subpoenaed person or entity that they received inadequate notice of the deposition date or that they were unable to file a motion to quash within the time provided.

The uniform practice in the cases where motions to quash were filed was to postpone compliance with the subpoena until such time as the Committee ruled. This was the case even where the motion to quash was not filed by the recipient of the subpoena, but by a third party. The Committee's position is and was that any party who filed a timely motion to quash was not required to comply with the subpoena until the Committee ruled on the motion.[10] The Committee is unaware of any contrary position being taken by Contestant Dornan or Representative Sanchez, and it is unaware of any recipient of a subpoena raising a question or concern along these lines.

On April 18 and May 21, 1997, the Committee ruled on all but one of the motions to quash that had been filed up to that point. The Committee quashed in whole or in part or otherwise modified each of the subpoenas at issue. In many instances the Committee entered protective orders and/or required confidentiality agreements to be executed.[11] Hermandad not only filed with the Committee motions to quash subpoenas it had received from Contestant Dornan, but it also filed motions to quash subpoenas issued to others which requested information affecting Hermandad.

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[9] Two governmental entities, the Immigration and Naturalization Service and the U.S. District Court, Naturalization Division, filed motions to quash after the deposition dates. Both motions were considered and granted. Representative Sanchez also filed motions to quash three subpoenas directed to third parties after the deposition date contained in the subpoenas. These motions were also considered and granted. In no case where a motion to quash has been filed after the deposition date has the Committee refused to consider the motion because of untimeliness.

[10] When the Committee ruled on the motions to quash in April, it provided 15 days for compliance with its rulings.

[11] The Committee has developed and utilized three types of protective orders governing discovery in the case. The first requires that the documents be produced under seal with the Committee, and are not to opened unless the investigation absolutely requires. The second requires that the documents be produced directly to the Committee, not through Contestant Dornan or his attorneys. The third type of protective order conditions the production of documents on the understanding that neither Contestant Dornan nor his attorneys will make the contents thereof public. The Committee has issued the appropriate type of protective order in numerous instances during discovery in this case.

The Committee granted those motions in part and modified the subpoenas.

Following the Committee's rulings, additional motions to quash 5 subpoenas were filed with the Committee.[12] These motions dealt with subpoenas that the Court issued at the request of Contestant Dornan on May 20.[13] These motions have not yet been ruled on by the Committee. As before, no depositions or document production have taken place pending a ruling by the Committee.

One of the subpoenas issued by the Court in March was directed to the Orange County District Attorney. Contestant Dornan and the District Attorney's office entered into an agreement in March to postpone full compliance with this subpoena, apparently because of concerns regarding the District Attorney's investigation and ongoing litigation between the District Attorney and Hermandad regarding whether the DA was required to return Hermandad documents. Representative Sanchez was informed of the subpoena and the possibility of additional compliance in the future. Sanchez Br. at 5 & Ex. C. On July 14, 1997, the District Attorney sent a letter to Judge William R. Froeberg notifying him of his intent to comply with the subpoena issued by Mr. Dornan subject to a confidentiality agreement. Herm.Br. Ex. B. The letter was copied to counsel for Hermandad and for Representative Sanchez. On July 22, 1997, Assistant District Attorney Wallace Wade spoke with Hermandad's attorney, Mr. Rosen, about the subpoena and their intent to comply with it. Herm.Br. Ex. C.

The House recessed from August 1, 1997 to September 3, 1997. Hermandad filed with the Committee a Motion to Quash or Modify Subpoena Served on Custodian of Records Orange County

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[12] These motions were filed by Humbert Corona; Rancho Santiago College and divisions thereof; Carpenters Union, Locals 803 and 2361; NAS; Active Citizenship Campaign; Michael Farber; R. Scott Moxley; Loretta Sanchez; and Nativo Lopez.

[13] The Committee has ruled that Contestant Dornan's time for taking discovery extended through April 9, 1997. Letter of June 12, 1997 from the Honorable Bill Thomas and the Honorable Vernon J. Ehlers to the Honorable Sam Gejdenson and the Honorable Steny Hoyer. Thus, "[a]fter that date, the Contestant may no longer serve new subpoenas but may reissue an original and timely subpoena where service has been unsuccessfully attempted, where there was not full compliance with the original subpoena, or where the original subpoena has been modified by the Court or the Committee after the deadline." *Id.* The Committee has not yet ruled on whether any or all of the subpoenas obtained by Contestant Dornan on May 20 were timely.

District Attorney, Wallace Wade, dated August 5, 1997.[14] On August 12, 1997, Hermandad filed an ex parte application with the Court, requesting that the Court either strike the subpoena or stay it until the Committee had an opportunity to rule on it. On August 28, 1997, Contestant Dornan withdrew the subpoena.

Hermandad contends that it was unaware of the subpoena to the District Attorney prior to receiving the District Attorney's letter of July 14, 1997. We note, however, that the fact of this subpoena was a matter of public record and was known to Representative Sanchez long before that date. Moreover, Hermandad was in fact given notice of the subpoena in sufficient time to file motions both with the Committee and with the Court. This, however, does not condone the apparent intent of Contestant Dornan's attorneys to proceed with the deposition in the absence of a ruling by the Committee on Hermandad's motion to quash.

At the present time, the status of discovery in this contested election is as follows:

* The Committee has quashed 7 subpoenas

* 6 subpoenas have been complied with

* The Committee has ruled that 7 subpoenas shall not be complied with at this time

* 7 subpoenas have been entirely ignored (recipient neither complied nor filed a motion to quash)

* 9 subpoenas have been withdrawn

* 10 subpoenas have not been complied with despite order of the Committee to do so

* Motions to quash 5 subpoenas are pending with the Committee.

Subpoena Status Chart (Attachment A).

This record does not support the conclusion that subpoena recipients are being deprived of "due process." If anything, it appears that there has been an abundance of process, with many parties (including Hermandad) filing multiple motions with both the Committee and the Court. Many parties, including Hermandad, have refused to produce information even where their motions to

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[14] This motion was not received by the Committee until August 11, 1997. Moreover, it does not appear that the motion was filed with the Clerk of the House, as required by 2 U.S.C. § 384(b).

quash have been rejected by both the Court and the Committee. This delay is inconsistent with the FCEA's objective of obtaining a speedy resolution of contested election matters.

ARGUMENT

I. THE COURT SHOULD ADDRESS ONLY THOSE CONSTITUTIONAL ISSUES SQUARELY PRESENTED

It is "an established and salutary principle of the law of federal courts that constitutional issues affecting legislation will not be determined 'in advance of the necessity of deciding them' or 'in broader terms than are required by the precise facts to which the ruling is to be applied.'" *Hastings v. Judicial Conference of the United States*, 770 F.2d 1093, 1101 (D.C. Cir. 1985) (*quoting Rescue Army v. Municipal Court of Los Angeles*, 331 U.S. 549, 569 (1947)). Thus, "even when jurisdiction exists it should not be exercised unless the case 'tenders the underlying constitutional issues in clean-cut and concrete form.'" *Socialist Labor Party v. Gilligan*, 406 U.S. 583, 588 (1972) (*quoting Rescue Army*, 331 U.S. at 584). The Supreme Court has stated that "[p]roblems of prematurity and abstractness may well present 'insuperable obstacles' to the exercise of the Court's jurisdiction, even though that jurisdiction is technically present." *Socialist Labor Party*, 406 U.S. at 588.

Here the subpoena issued by Contestant Dornan to the District Attorney has been withdrawn and cannot be reissued without the express consent of the Committee. Therefore, the issues peculiar to that subpoena, namely that Hermandad filed a motion to quash a third party subpoena at a time that the House was in recess and that the parties were apparently unwilling or unable to agree to defer the matter until the Committee was able to rule on the motion, are clearly moot and need not be considered at this time.[15]

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[15] In its Minute Order of August 26, the Court suggested that the case was not moot, citing *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283 (1982), and *Native Village of Noatak v. Blatchford*, 38 F.3d 1505 (9th Cir. 1994). The Court cited language in both cases which suggests that the mere voluntary cessation of illegal activity does not render a case moot. However, both cases also indicate that where there is no reasonable expectation that the allegedly illegal activity will

The Committee recognizes that the Court may believe that the question of the constitutionality of the discovery provisions of the FCEA is not moot because there are other subpoenas outstanding which may be void ab initio if these provision are facially unconstitutional. See 8-28-97 Tr. 13. We respectfully disagree inasmuch as no other subpoena recipients have sought relief from the Court, and the Court lacks jurisdiction to render an opinion that cannot affect the rights of parties before it. *Native Village of Noatak*, 38 F.3d at 1509.

However, should the Court continue to believe that it has jurisdiction to resolve the constitutional issues raised, it should, at a minimum, limit its consideration to those issues that can be decided without reference to any specific subpoena or concrete set of circumstances (i.e., the facial constitutional challenges to the discovery provisions of the FCEA). This caveat is significant because Hermandad and Representative Sanchez have raised a number of issues, such as the relationship between the time limits contained in the FCEA, the Committee's rules and the House's legislative calendar, which are difficult, if not impossible, to address in the abstract. It would be inappropriate as well as premature to consider at this time possible constitutional problems which might arise under a hypothetical set of circumstances. Such questions should await a specific subpoena which is challenged on the basis of concrete circumstances and actual alleged injury to the moving party.

II. THE DISCOVERY PROVISIONS OF THE FCEA ARE CONSTITUTIONAL

A. Delegation of Authority

Hermandad contends that "Congress has [in the FCEA] delegated a power fundamental to its ability to carry out a function delegated in the Constitution to each House— the power to determine the elections of its members. Herm.Br. at 17. Hermandad argues that because the FCEA fails to provide an "intelligible principle" or "meaningful guidelines" for the exercise of this power, the statute violates the "delegation doctrine." Herm.Br. at 11-18. Hermandad fundamentally misapprehends the nature of the House's constitutional role in judging elections, the FCEA and the

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resume, then its voluntary cessation *will* render a case moot. *City of Mesquite*, 455 U.S. at 289 n.10. That, of course, is precisely the case here. There is no reasonable expectation that Mr. Dornan will re-subpoena the District Attorney.

delegation doctrine.

Article I, § 5, of the Constitution provides that "[e]ach House shall be the Judge of the Elections, Returns and Qualifications of its own Members." This power is "not legislative, but judicial, in character" and "'carries with it authority to take such steps as may be appropriate and necessary to secure information upon which to decide concerning elections.'" *Barry v. United States ex rel. Cunningham*, 279 U.S. 597, 613 (1929) (*quoting Reed v. County Commissioners*, 277 U.S. 376, 388 (1928)). Thus, "[i]n exercising the power to judge of the elections, returns, and qualifications of its members, the Senate acts as a judicial tribunal, and the authority to require the attendance of witnesses is a necessary incident of the power to adjudge, in no wise inferior under like circumstances to that exercised by a court of justice." *Barry*, 279 U.S. at 616.[16]

The FCEA does not implicate, much less contravene, the delegation doctrine because a "fundamental precept of the delegation doctrine is that the *lawmaking* function belongs to Congress . . . and may not be conveyed to another branch or entity." *Loving v. United States*, 116 S.Ct. 1737, 1743-44 (1996) (emphasis added). As *Barry* held, the House's power to judge elections is judicial, not legislative, in nature. It makes no more sense to view the FCEA's discovery provisions as a delegation of congressional power than to view the discovery provisions of the Federal Rules of

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[16] In *Barry*, the Court held that the Senate had inherent authority, without the benefit of a statute, to issue a warrant of arrest to compel the attendance of a material witness to an election contest. In so concluding, the Court relied upon the fact that the same authority was provided by statute to federal courts, and that there was no question that the authority was a constitutional exercise of the judicial power. 279 U.S. at 616-17.

There can be no doubt, of course, that private parties to a litigation in federal court may validly obtain subpoenas for the purpose of procuring evidence. *See, e.g.*, Fed. R. Civ. P. 45. The reasoning of *Barry* indicates that the House has *inherent* authority, even without benefit of statute, to authorize parties to election contests to obtain subpoenas for such a purpose.

In any event, the FCEA explicitly authorizes private parties to an election contest to obtain subpoenas. Since Congress has the power to legislate with respect to federal elections, it clearly may create a statutory mechanism for obtaining discovery in election cases. As Judge Learned Hand pointed out in rejecting a motion to vacate a subpoena issued by a notary public pursuant to the 1851 statute, "[i]t is not necessary even to say that [the subpoena] issued out of the House as a court; it is enough if it be the mere creation of the statute." *In re Voorhis*, 291 F. 673, 675 (S.D.N.Y. 1923).

Civil Procedure as a delegation of judicial power.

Moreover, Hermandad is simply wrong in asserting that the FCEA lacks "intelligible principles" to guide the conduct of discovery. The FCEA provides that "[w]itnesses may be examined regarding any matter, not privileged, which is relevant to the subject involved in the pending contested election case, whether it relates to the claim or defense of the examining party or the claim or defense of the opposing party, including the existence, description, nature, custody, condition and location of any books, papers, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts." 2 U.S.C. § 386(b). Furthermore, the FCEA states that "the committee . . . may . . . quash or modify the subpena if it is unreasonable or oppressive." 2 U.S.C. § 388(e).

In short, the FCEA permits a party to issue a subpoena for relevant, nonprivileged information so long as the subpoena is not unreasonable or oppressive in terms of the burden it imposes on the recipient. This standard is, and was intended to be, essentially identical to that governing litigants under the Federal Rules of Civil Procedure.[17] Thus, even assuming the delegation doctrine were relevant here (which it is not), the FCEA more than satisfies that doctrine's requirement of an "intelligible principle" to guide the exercise of the delegated power.[18] *See, e.g.*, *Loving*, 116 S.Ct. at 1750 (noting that since 1935 the Supreme Court has "upheld, without exception, delegations under standards phrased in sweeping terms").

B. Due Process

Hermandad also contends that the discovery provisions of the FCEA violate the due process clause because the FCEA's procedure for filing motions to quash is "illusory, both under the normal conditions allowed by the short notice periods in the Act, and by the reality in this case that Congress

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[17] As Congressman Kyl noted in the debate on adopting the FCEA, "[t]he procedures [the FCEA] contains for pleading, taking testimony and briefing a case are patterned roughly after the Federal Rules of Civil Procedure." 115 Cong.Rec. 30510 (Oct. 20, 1969).

[18] Hermandad cites language from the Supreme Court's recent decision in *Printz v. United States*, 117 S.Ct. 2365, 2380-81 (1997), as evidence of the Supreme Court's intent to reinvigorate the delegation doctrine. *See* Herm.Br. at 14-15. We note that the language quoted appears to suggest quite the opposite.

cannot and will not act on the motion to quash before the documents have been produced." Herm.Br. at 18. Hermandad also contends that there is a due process right to notice to third parties when a subpoena might affect the rights of third parties. Herm.Br. at 19-21. Hermandad challenges the FCEA both on its face and as applied. Herm.Br. at 22.

At the outset, we simply quote Hermandad's representations to this Court:

> On March 18, 1997, Judge Taylor signed new subpoenas. Several of the subpoenas were directed at Hermandad or affiliated entities, and at banks holding accounts of Hermandad or affiliated entities. In each instance, Hermandad filed a motion to quash with the House of Representatives upon learning of the subpoenas. In each instance, the Committee on House Oversight modified the subpoenas, or struck them altogether.

Herm.Br. at 7 (emphasis added). In other words, Hermandad admits that in every case (other than the now withdrawn subpoena which initially gave rise to its application), the FCEA's "illusory" procedure not only provided it with an opportunity to file a motion to quash (including where subpoenas were directed to third parties) before any documents were produced, but that it received much of the relief it sought from the Committee. This alone would seem to defeat Hermandad's contention that the FCEA was applied to it in a manner that violated due process.

In order to succeed in its claim that the FCEA is unconstitutional on its face, Hermandad "must establish that no set of circumstances exists under which the Act would be valid." *United States v. Salerno*, 481 U.S. 739, 745 (1987). The fact that the statute's procedures may be "insufficient in some particular circumstances" is not enough to invalidate a statute on procedural due process grounds. *Id.* at 751.

Hermandad contends that the FCEA violates due process because it provides only three days notice to subpoenaed witnesses, and the Committee requires, under its rules, seven days notice to rule on a motion to quash. Herm.Br. at 21. This is incorrect. Although the rules provide for one week notice of Committee hearings (except for good cause), the Committee decides motions to quash in meetings, not hearings, and the rules require no particular notice to convene a meeting of the Committee. Moreover, while the FCEA requires at least three days notice, it does not at all follow that a recipient would be penalized in circumstances where this notice was unreasonably short. In any event, the statute certainly permits more notice to be given, and most of the subpoenas

in this case were served more than three days in advance of the response date. Recipients of subpoenas here were able to file a motion to quash with the Committee on or before the response date. Thus, while the time periods in the FCEA are certainly compressed (because of the need to resolve contested elections expeditiously), there is nothing that would remotely support the conclusion that the statute on its face violates due process.

Moreover, there is no basis for Hermandad's claim that the FCEA violates due process because it does not explicitly state that parties who file a motion to quash are excused from compliance until the Committee rules. 8-28-97 Tr. 49. It is clear that parties who file timely motions to quash cannot be penalized for "willfully" failing to comply, *see* 2 U.S.C. § 390, when the Committee has not yet ruled.[19] Hermandad would have this Court adopt an unreasonable interpretation of the FCEA in order to strike the statute down as unconstitutional. It would have the Court do this even though Hermandad does not contend that the Committee or anyone else has advanced such an interpretation, much less that it faces the threat of prosecution based on such an interpretation.[20] Hermandad's position is the directly contrary to the canon that statutes will be construed to *avoid* serious constitutional questions. *See New York v. Ferber*, 458 U.S. 747, 769 n.24 (1982). The Court should reject Hermandad's invitation to invalidate a federal statute based upon a theoretical interpretation which has in no way injured or threatened to injure Hermandad.[21]

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[19] The courts also recognize that "[a] subpoena, obtainable as of course from the Clerk of the Court, is not of the same order as one issued by a judicial officer in the resolution of a specific dispute." *Waste Conversion, Inc. v. Rollins Envtl. Servs.*, 893 F.2d 605, 608 (3d Cir. 1990) (in banc). Thus, noncompliance with a subpoena will not result in sanctions when the noncomplying party has filed objections or otherwise acted in good faith. *Pennwalt Corp. v. Durand-Waylan, Inc.*, 708 F.2d 492, 494 (9th Cir. 1983); *Cruz v. Meachum*, 159 F.R.D. 366, 368 (D.Conn. 1994).

[20] Hermandad asserts that those who filed motions to quash risk "contempt of Congress." 8-28-97 Tr. 56-57. If by this it refers to the House's inherent power to punish for contempt, a power that was last used in 1934, its assertion is both totally fanciful and beyond the power of this Court to redress. If Hermandad is referring instead to the penalty provisions of the FCEA, those provisions, of course, can only be enforced in federal court. Thus, Hermandad asks this Court to strike down a statute on the grounds that another federal court might penalize it in a manner that violates due process. To state this argument is to refute it.

[21] Even if Hermandad's interpretation of the statute were adopted, it is by no means apparent that due process would be violated. Indeed, there are many situations where litigants are placed in

Finally, Hermandad's contention that the FCEA violates due process because it does not require notice to third parties of subpoenas borders on the absurd. There is simply no due process requirement that third parties who might be affected by a subpoena be notified. *See, e.g., Cinel v. Connick*, 15 F.3d 1338,1343 (5th Cir.) ("Appellant fails to state a claim that the state actors denied him his procedural due process rights by not notifying him of the subpoena duces tecum. Appellant has submitted no legal authority to this Court, and we have found none in our independent research, that creates an affirmative duty of a nonparty or a governmental official in possession of documents to notify the owner of the subpoenaed documents."), *cert. denied*, 513 U.S. 868 (1994). Notwithstanding Hermandad's citation to Rules 26(c) and 45(c) of the Federal Rules of Civil Procedure, nothing in either rule requires notice to third parties who may be affected by a subpoena.[22] The protections of those rules apply to recipients and parties, not to third parties.

In circumstances far more compelling than presented here, the federal courts have rejected the assertion of a right to third party notice of a subpoena. In *Securities and Exchange Comm'n v. Jerry T. O'Brien, Inc.*, 467 U.S. 735, 741(1984), the Supreme Court held that even a target of an investigation has no right to notice of a subpoena which affects the target. The court found that the imposition of such a notification requirement on either the issuing party or the recipient would be overly burdensome and could possibly hinder the interests of justice if the third party then took action to restrain compliance. *Id.* at 748; *see also Reporters Committee for Freedom of the Press v. ATT*, 593 F.2d 1030, 1043 (D.C. Cir. 1977) (journalists had no right to notice that telephone company had received subpoena ordering production of journalists' long distance telephone

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a position where they must either comply with a subpoena or judicial order or risk the possibility of contempt. For example, contempt is the only mechanism available to contest a congressional subpoena. *Eastland v. United States Serv. Fund*, 421 U.S. 491, 498 (1975). Similarly, in many cases a party cannot appeal from an order to produce privileged materials without going into contempt.

[22] Hermandad's claim that such notice is required under California law is beside the point. Such a requirement has no application to a federal election contest. Even if it did, it obviously would not somehow make the FCEA unconstitutional.

records).[23]

C. Separation of Powers

Representative Sanchez contends that the FCEA's discovery provisions violate separation of powers principles to the extent that (1) "it divests a Federal court of authority to review the scope of an FCEA-based subpoena *duces tecum* issued pursuant to its authority and processes," and (2) "purports to confer authority upon a committee of Congress to decide the legitimacy of a judicially issued subpoena." Sanchez Br. at 8, 13. These arguments are without merit.

Representative Sanchez relies on cases holding that "Congress cannot 'withdraw from [Art. III] judicial cognizance any matter which, from its nature, is the subject of a suit at the common law, or in equity, or admiralty.'" *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 69 n. 23 (1982) (*quoting Murray's Lessee v. Hoboken Land & Improvement Co.*, 59 U.S. 272, 284 (1855)). This reliance is puzzling— to say the least— since those cases make clear that this proposition applies only to matters of "private right." *See, e.g., Crowell v. Benson*, 285 U.S. 22, 50 (1932) (distinguishing between cases of "private right" and those of "public right," *i.e.*, "those which arise between the government and persons subject to its authority in connection with the performance of the constitutional functions of the executive or legislative departments"); *Northern Pipeline Constr. Co.*, 458 U.S. at 67-68; *Ex parte Bakelite Corp.*, 279 U.S. 438, 451-52 (1929). By contrast, in matters of "public right," "'Congress may reserve to itself the power to decide, may delegate that power to executive officers, or may commit it to judicial tribunals.'" *Crowell*, 285 U.S. at 50-51 (*quoting Ex parte Bakelite Corp.*, 279 U.S. at 451).

Obviously the judging of elections is not a matter of "private right" which cannot be withdrawn from judicial cognizance. On the contrary, the judging of elections is a "matter which the Constitution commits exclusively to the House's judgment." *Morgan v. United States*, 801 F.2d

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[23] Of course, Hermandad acknowledges that it was able to learn of the third party subpoenas which affected it. Even in the case of the now withdrawn subpoena to the District Attorney, Hermandad admits that it received notice several weeks before the deposition was to take place. Moreover, since all of the subpoenas are a matter of public record (and particularly since the time for discovery has now closed), there is no reason whatsoever to believe that Hermandad has been or will be injured by the absence of third party notice.

445, 450 (D.C. Cir. 1986) (Scalia, J.). Thus, there simply is no question that the House of Representatives is empowered by the Constitution to conduct all aspects of an election contest, including the obtaining of evidence, without the participation or aid of the judiciary or any other entity. *See Reed*, 277 U.S. at 388 (Senate is "fully empowered, and may determine [matters relating to election contest] without the aid of the House of Representatives or the Executive or Judicial Departments.").

Representative Sanchez contends that having given the judiciary a role— that of issuing subpoenas— Congress was constitutionally required to give the courts the power to review the scope of those subpoenas. Sanchez Br. at 12. None of the cases she cites, however, supports this "all or nothing" proposition. Indeed, in *Murray's Lessee*, the Supreme Court expressly rejected the argument that Congress, having provided for a limited judicial role in the adjudication of a matter of "public rights," was constitutionally required to provide that the controversy was "subject to the judicial power alone." 59 U.S. at 282-83.

Moreover, any greater judicial role— beyond the ministerial role of issuing subpoenas— would create a serious constitutional problem of encroachment on the exclusive jurisdiction of the House of Representatives to judge its elections. It was precisely this concern which impelled Judge Learned Hand to reject a motion to vacate a notary public subpoena issued in a contested election case under the 1851 statute:

> Again, the House is the exclusive judge of the 'elections, returns and qualifications of its own members.' Assuming that the ancillary power to perpetuate testimony must have the sanction of Congress, clearly it is the House alone which must on the contest, as a court, determine whether the procedure so created has been regularly followed. Consider the effect of a contrary notion. I am invited here to declare that the notice given under section 105 is insufficient. . . . But that question is justiciable by the House, and by the House alone. Suppose I were to take sides with the petitioner, and my decision were affirmed by the Circuit Court of Appeals, or perhaps by the Supreme Court on certiorari? Is the House to yield to that decision? Clearly not; the Constitution has put that matter exclusively in its own hands. Suppose that it reaches another conclusion. Though the contestant have followed the established procedure, as determined by the House having plenary jurisdiction, it must lose the benefit of the evidence which would otherwise be forthcoming.

In re Voorhis, 291 F. at 675.[24] Indeed, similar considerations led this Court to conclude correctly that its role under the FCEA's discovery provisions was "very limited." Order of March 13, 1997 at 3 ("The Constitution's special reservation to Congress of judging its own elections and returns preempts inherent court power not specifically authorized by Congress.").

As Judge Hand warned, judicial review of subpoenas in election contests would pose a grave threat of interference with the House's exclusive constitutional jurisdiction. This threat would be even greater in cases where a party objected to a subpoena on grounds that required an inquiry into the relevance of the information sought by the subpoena. In addition, as the Seventh Circuit noted in another case involving an attempt to obtain judicial review of a contested election matter, "both sides may be tempted to employ the courts more to obtain publicity than to achieve justice." *McIntyre v. Fallahay*, 766 F.2d 1078, 1087 (7th Cir. 1985).

Finally, Representative Sanchez's objection to the Committee's role in quashing or modifying subpoenas is simply mystifying. The House's constitutional power to judge elections "necessarily involves the ascertainment of facts, the attendance of witnesses, the examination of such witnesses, with the power to compel them to answer pertinent questions, to determine the facts and apply the appropriate rules of law, and, finally, to render a judgment which is beyond the authority of any other tribunal to review." *Barry*, 279 U.S. at 613. It is difficult to see how, either as a constitutional or a practical matter, any entity outside of the House could be expected to make judgments as to the relevance of information sought by subpoenas or as to whether the burden imposed outweighs such relevance. Representative Sanchez's argument (Sanchez Br. at 14-15) that this amounts to an exercise of a judicial function is of course misplaced; it is precisely a judicial function that the House is supposed to be performing when it resolves election contests.[25]

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[24] Representative Sanchez attempts to distinguish *In re Voorhis* on the ground that it involved a notary public subpoena, rather than a subpoena issued by a federal court. Sanchez Br. at 11 n.19. However, Judge Hand's reasoning is equally applicable to either situation. Moreover, holding that only one type of subpoena is subject to judicial review would seem to be a clear invitation for forum shopping.

[25] It is also difficult to understand how Representative Sanchez could claim— if she does— that she was injured by the Committee's exercise of its power to modify or quash subpoenas. With

D. The Historical Record

The constitutionality of the FCEA's discovery provisions is strongly bolstered by the historical record. In addition to the FCEA (enacted by the 91st Congress), both the Act of January 23, 1798 (Fifth Congress) and the 1851 statute (57th Congress) authorized federal, state and local courts to issue subpoenas upon application of parties to election contests in the House of Representatives. Moreover, on other occasions, including in the Second Congress, the House by resolution provided for the issuance and use of such process. In addition, as we have discussed earlier, there have been numerous election contests involving the taking of testimony and other evidence, in any one of which a question regarding the constitutionality of the discovery mechanism could have been raised by a recipient of a subpoena, a party to the election contest, or a member of the House committee hearing the contest. Finally, this discovery mechanism has been discussed and considered by the courts, including the Supreme Court. *See Thomas v. Loney*, 134 U.S. 949, 950-51 (1890) (discussing the fact that "Congress has regulated by law the form in which notice of a contested election may be given and answered, and the time and manner in which depositions on oath of witnesses in such cases may be taken and returned to the House of Representatives by a judge of any court of the United States. . . ."). Yet in this 200 year period, it does not appear that a single question of the constitutionality of this discovery mechanism has been raised until now.[26]

The importance of this historical evidence cannot be overstated. Of particular significance are the resolution of the House in the Second Congress and the Act of January 23, 1798, enacted by the Fifth Congress. As the Supreme Court has recently reemphasized:

> [E]arly congressional enactments "provid[e] 'contemporaneous and

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respect to subpoenas issued by Contestant Dornan, it would appear that only the Contestant could possibly be injured by the Committee's exercise of this power.

[26] Interestingly, a constitutional objection to the very concept of a federal statute governing contested elections was considered at the time of the adoption of the 1851 statute. The objection was that the statute infringed on the privileges of the House by limiting the manner in which it would proceed to judge elections. Representative William Strong, the sponsor of the 1851 statute and later a Justice of the Supreme Court, answered this objection by noting that the statute did not restrain the power of the House to proceed in a different manner. 1 Hinds' Precedents of the House of Representatives § 713.

> weighty evidence' of the Constitution's meaning. *Bowsher v. Synar*, 478 U.S. 714, 723-724, 106 S.Ct. 3181, 3186, 92 L.Ed. 583 (1986) (*quoting Marsh v. Chambers*, 463 U.S. 783, 790, 103 S.Ct. 3330, 3335, 77 L.Ed. 1019 (1983)). Indeed, such "contemporaneous legislative exposition of the Constitution . . ., acquiesced in for a long term of years, fixes the construction to be given its provisions." *Myers v. United States*, 272 U.S. 52, 175, 47 S.Ct. 21, 45, 71 L.Ed. 160 (1926) (citing numerous cases).

Printz, 117 S.Ct. at 2370. Indeed, in addressing a challenge to another statute originally enacted by the Fifth Congress, the Court noted that "[t]he Act is almost as old as the Constitution, and it would savor of doctrinaire audacity now to find the statute offensive to some emanation of the Bill of Rights." *Ludecke v. Watkins*, 335 U.S. 160, 171 (1948) (Frankfurter, J.).

The only attempt by either Hermandad or Representative Sanchez to deal with the historical record is Representative Sanchez's statement that "Section 388(e)'s committee review provision was not part of any election contest statute predating the FCEA's 1969 enactment." Sanchez Br. at 8 n.15. However, the claim that the prior statutes were less objectionable because they contained no explicit provision for review of subpoenas by *any* entity makes no sense.[27] In any event, even under the prior statutes, the House's authority over subpoenas in election contests was implicit in its jurisdiction over the contest itself (*i.e.*, it could always order a party to withdraw or modify its subpoena).

In short, this historical record is weighty and indeed dispositive evidence of the constitutionality of the FCEA's discovery provisions.

III. THE COURT'S ROLE UNDER THE FCEA IS PURELY MINISTERIAL

Representative Sanchez also contends that this Court's role under the FCEA is not limited to issuing subpoenas, but that it also has the authority to "police" (*i.e.*, to modify or quash) those

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[27] If anything, the earlier statutes were considerably more susceptible to the constitutional challenges now brought than is the FCEA. Under the prior statutes, any voter could bring an election contest and there was no mechanism for dismissing meritless complaints before discovery commenced. Moreover, there were no explicit provisions prohibiting discovery of privileged matters, or allowing a subpoena to be quashed on the grounds that it was unreasonable or oppressive. The 1851 statute did require a minimum of five days notice to a subpoenaed witness, *see* Rev. Stat. § 114, which the FCEA shortened to three days in light of improvements in the speed of modern communication and transportation. It can scarcely be argued that this difference is of constitutional dimension.

subpoenas. Sanchez Br. at 15-16. Representative Sanchez contends that "[g]iven the fundamental nature of a court's inherent authority to supervise the use of its processes, any such divestiture of the court's authority must be express." Sanchez Br. at 16. We disagree.

At the outset, we address the Court's question regarding why the FCEA provides that subpoenas be issued by courts if Congress did not want the courts to enforce them. 8-28-97 Tr. 113. The answer is historical. The 1851 statute provided that subpoenas could be issued by (a) any federal court judge; (b) any state or local chancellor, judge, or justice; (c) any mayor, recorder, or intendent of any town or city; or (d) any register in bankruptcy or notary public.[28] Rev. Stat. 110. The clear intent was to enable parties to obtain subpoenas from the most convenient official. There is no indication in the statute itself, the legislative history or the historical record that Congress intended these officials to have any role other than the ministerial one of issuing subpoenas (and recording and notarizing testimony). If Congress had intended them to perform a substantive judicial role, it would not have included mayors, registers in bankruptcy or similar officials.

When Congress enacted the FCEA in 1969, it eliminated the archaic references to officials who no longer issue subpoenas, but continued to permit subpoenas to be issued by federal, state or local courts. There is nothing in the legislative history to suggest that this was done in order to permit judicial supervision of subpoenas. If Congress had intended such supervision, it would not have included local municipal courts or even state courts in the statute. Apart from the problem inherent in inviting such courts to consider sensitive matters involving federal elections, the statute creates a situation where a subpoena for any particular witness can be issued by at least two and possibly three different courts. If these courts were to play a substantive role in supervising these subpoenas, there would be constant forum shopping and inconsistent rulings.[29] This obviously was not the intent of Congress. Indeed, counsel for Representative Sanchez has admitted that this was

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[28] The Act of January 23, 1798 was similar except it did not include registers in bankruptcy or notaries public.

[29] Admittedly, there does not seem to be a particularly good reason to have subpoenas issued by three different courts even if their role is purely ministerial. This merely confirms, however, that the reason for the provision is historical.

not the intent of Congress.[30]

Furthermore, even if the FCEA's meaning were not clear, "'[f]ederal statutes are to be so construed as to avoid serious doubt of their constitutionality.'" *Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833, 841 (1986) (*quoting Machinists v. Street*, 367 U.S. 740, 749 (1961)). For the reasons discussed in section II (c), *supra*, construing the FCEA to permit the federal courts to quash or modify subpoenas would raise a substantial issue of judicial encroachment on the House's exclusive jurisdiction to judge its elections, and would create a significant potential for conflict between the judicial and legislative branches.

Construing the judicial role as ministerial would also be consistent with the approach taken by the Supreme Court to avoid separation of powers problems in other cases. For example, in *Morrison v. Olson*, 487 U.S. 654, 680-81 (1988), the Court held that the exercise by the Special Division of the U.S. Court of Appeals for the D.C. Circuit of certain powers relating to the office of independent counsel (such as granting extensions, referring matters to the independent counsel upon request, and receiving and deciding to make public the final report) did not violate separation of powers because they were essentially ministerial. Just as a more substantive judicial role in *Morrison* would have encroached on the executive function of the independent counsel, so would a more substantive judicial role here encroach upon the House's function of judging its elections.

The cases cited by Representative Sanchez do not support the proposition that a court's issuance of a subpoena necessarily means the court must have the power to enforce or police the subpoena. For example, in *Matter of Certain Complaints Under Investigation*, 783 F.2d 1488, 1494-96 (11th Cir. 1986), the Eleventh Circuit scrutinized the language and structure of the statute in question and concluded that it was Congress' intent that the court of appeals have the power to enforce its own subpoenas. The Eleventh Circuit did not suggest that such congressional intent was to be presumed in every case absent an express statutory directive to the contrary.

Moreover, the language and structure of the FCEA does not support the conclusion that

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[30] *See* 8-28-97 Tr. 129 ("Did they want the court to get involved? No. I suspect they did not want the court to get involved in enforcing the subpoenas. They just wanted to get the court's power and jurisdiction to issue the subpoena.").

Congress intended courts to modify or quash the subpoenas they issue. In the first place, the statute expressly provides that the Committee shall have this power. 2 U.S.C. § 388 (e). It is completely silent on any such role for the courts. It would be particularly inappropriate to infer a judicial role from this silence given the unwieldy consequences of concurrent jurisdiction over the same subpoena. *See Matter of Certain Complaints*, 783 F.2d at 1497 ("[W]e are disinclined to find concurrent jurisdiction [over a subpoena] absent express congressional authorization.").

The FCEA also contains an express provision that failure to appear, testify or produce documents is a misdemeanor punishable by fine or imprisonment. 2 U.S.C. § 390. It is evident that Congress intended subpoenas to be enforced through this provision, rather than through judicial contempt proceedings. As Judge Hand pointed out, judicial involvement at the later misdemeanor trial stage is more consistent with the House's exclusive jurisdiction than would be judicial involvement at the earlier stage of a motion to quash or compel:

> The court would not in [the later trial] actively interfere in the proceedings of the House itself. While its decision might not accord with that of the House upon the same issues, the only result would be not to enforce the statutory penalties.

In re Voorhis, 291 F. at 675.

Representative Sanchez also argues that the courts have inherent authority to supervise matters before them. As this Court has pointed out, however, this argument is based on the flawed premise that the mere issuance of a subpoena under the FCEA creates a "case" before the judiciary. 8-28-97 Tr. 89-90. In fact, the case here is pending— as it constitutionally must be— before the House of Representatives, not the judiciary. Thus, the limited judicial role of issuing subpoenas does not entail the power or the duty to supervise discovery in contested election cases. *Cf. Morrison*, 487 U.S. at 681 (ministerial judicial role under independent counsel statute did not give court the power to supervise independent counsel in exercise of investigative or prosecutorial functions).

Indeed, the logic of Representative Sanchez's position would apply equally to subpoenas issued by state and local courts, as her counsel has acknowledged. 8-28-97 Tr. 129. Thus, under Representative Sanchez's theory, once a state or local court issued a subpoena there would be a "case" or judicial proceeding before that court, and the parties would be subject to the state laws of

contempt, perjury, and the like.

The Supreme Court, however, long ago rejected precisely that theory. In *Thomas v. Loney*, the Court considered the case of a witness who was convicted of perjury under state law based upon his testimony in an election contest. The state argued that the conviction was proper because the testimony was taken before a notary public— a state official— pursuant to the 1851 statute, and that the witness had therefore committed perjury in a state judicial proceeding. 134 U.S. at 951. The Court rejected this argument, finding that "[t]estimony taken with the single object of being returned to and considered by the House of Representatives of the United States exercising the judicial power, vested in it by the Constitution, of judging the elections of its members" must be considered testimony before that tribunal (and therefore subject to federal laws on perjury), rather than a state "judicial proceeding" subject to state perjury laws. *Id.* The Court noted that "[t]he administration of justice in the national tribunals would be greatly embarrassed and impeded if a witness testifying . . . upon a contested election of a member of Congress, were liable to prosecution and punishment in the courts of the State upon a charge of perjury, preferred by a disappointed suitor or contestant, or instigated by local passion or prejudice." *Id.* This decision therefore establishes that the role of issuing subpoenas or taking testimony in a contested election case is a ministerial role only, and that the actual case or proceeding is before the House of Representatives alone.

For all these reasons, this Court was correct when it held that "[t]he limit of a court's role under the Act is to issue requested deposition subpoenas apparently regular on their face." Order of March 13, 1997 at 3. The Court should reaffirm its order that "[a]ny future request to quash or restrict (as unreasonable, overbroad, burdensome, etc.) a § 388 subpoena document demand should be directed to the House and not to the court."[31] *Id.* at 6.

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[31] The Court did not hold then, and has no need to hold now, that there are no circumstances whatsoever in which judicial relief would be warranted. *See* Order of March 13, 1997 at 4 n.3. Given that no specific subpoena is now before the Court, there is obviously no occasion to consider whether there has been "the sort of extraordinary and fundamental Constitutional rights violation that might invoke broader court intervention." *Id.*

CONCLUSION

For the reasons set forth herein, the Federal Contested Elections Act is constitutional and must be upheld.

Respectfully submitted,

GERALDINE R. GENNET
General Counsel

KERRY W. KIRCHER
Deputy General Counsel

MICHAEL L. STERN
Senior Assistant Counsel

CAROLYN BETZ
Assistant Counsel

Office of the General Counsel
U.S. House of Representatives
219 Cannon House Office Bldg.
Washington, D.C. 20515
202/225-9700

September 5, 1997

CERTIFICATE OF SERVICE

I certify that on September 5, 1997, I caused one copy of the foregoing Amicus Brief to be served by facsimile and first-class mail on the following:

Mark S. Rosen, Esq.
Attorney At Law
2700 North Main Street
Suite 630
Santa Ana, CA 92705
Fax: (714) 285-9840

William R. Hart, Esq.
Hart, King & Coldren
200 E. Sandpointe
Suite 400
Santa Ana, CA 92707
Fax: (714) 546-7457

Wylie A. Aitken, Esq.
Law Offices of Wylie A. Aitken
One Imperial Promenade
Suite 800
Santa Ana, CA 92707-0555
Fax: (714) 434-3600

Frederick D. Woocher, Esq.
Strumwasser & Woocher
100 Wilshire Boulevard
Suite 1900
Santa Monica, CA 90401
Fax: (310) 319-0156

Michael L. Stern

SUBPOENA STATUS CHART

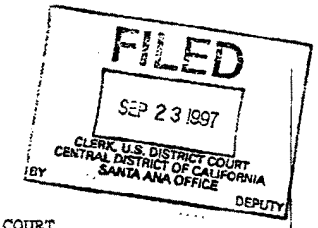
DEPONENTS	SUB. ISSUED	DEPO. DATE	RESPONSE OF DEPONENTS	STATUS	COMPLIANCE
Sanchez for Congress (and Loretta Sanchez)	March 18	March 25	Motion March 25	April 18, Committee modified subpoena in part.	No compliance with modified subpoena
Hermandad Mexicana Nacional	March 18	March 24	Motion March 20	April 18, Committee modified subpoena	No compliance with modified subpoena
Hermandad Sales & Marketing	March 18	March 24		Withdrawn	Withdrawn
Hermandad Mexicana Nacional Legal Center	March 18	March 24	Motion March 20	April 18, Committee modified subpoena	No compliance with modified subpoena
Nativo Lopez for School Board	March 18	March 24	No response		None
Laborers Union	March 18	March 27	Motion March 27	April 18, Committee modified subpoena. May 21, Committee quashed subpoena.	Quashed
Carpenters Union, Local 803	March 18	March 27	Motion March 27	April 18, Committee modified subpoena. Compliance held in abeyance.	Compliance held in abeyance
Carpenters Union, Local 2361	March 18	March 27	Motion March 27	April 18, Committee modified subpoena. Compliance held in abeyance.	Compliance held in abeyance

Communica-tions Workers of America, Local 9510	March 18	April 20	Motion April 9	April 18, Committee modified subpoena; May 21, quashed subpoena	Quashed
One-Stop Immigration	March 18	March 25	Motion March 24	May 21 Committee modified subpoena, and called for compliance by May 21. On June 4, One-Stop filed a motion for additional time to respond to Committee's modification of the subpoena.	No compliance with modified subpoena
Catholic Charities of Orange County	March 18	March 26	Motion March 25	On April 18, Committee modified supboena and quashed in part.	No compliance with modified subpoena
Southwest Voter Registration Education	March 18	March 25	Motion March 24	Modified by Committee on May 21	No compliance with modified subpoena
Active Citizenship Campaign	March 18	April 10	Motion April 9	Committee modified subpoena	No compliance with modified subpoena
Rancho Santiago College	March 18	March 27	Motion March 27	April 18, Committee modified subpoena; compliance held in abeyance	Compliance held in abeyance
Rancho Santiago College: Centennial Education Center	March 18	March 27	Motion March 27	April 18, Committee modified subpoena; compliance held in abeyance	Compliance held in abeyance
Rancho Santiago College: Garden Grove Center	March 18	March 27	Motion March 27	April 18, Committee modified subpoena; compliance held in abeyance	Compliance held in abeyance

Rancho Santiago College: Orange Adult Learning Center	March 18	March 27	Motion March 27	April 18, Committee modified subpoena; compliance held in abeyance	Compliance held in abeyance
Rancho Santiago College: Orange Campus	March 18	March 27	Motion March 27	April 18, Committee modified subpoena; compliance held in abeyance	Compliance held in abeyance
Bank of America	March 18	April 10	Sanchez filed motion to quash March 25	April 18, Committee modified in part	No compliance with modified subpoena
Fidelity Bank	March 18	March 24	Complied	Complied	Complied
Union Bank of California	March 18	March 26	Hermandad, Hermandad Sales & Marketing, Hermandad Legal Ctr., Citizens Forum, Lou Correa, and Guttenberg Group filed motion to quash March 26.	April 18, Committee ordered compliance pursuant to a protective order; May 21, modified subpoena and ordered compliance w/ respect to Citizens Forum, Lou Correa, and Guttenberg Group.	No compliance
Wells Fargo Bank	March 18	March 26	Hermandad, Hermandad Sales & Marketing, Hermandad Legal Ctr., Citizens Forum, and Guttenberg Group filed motion to quash on March 26	April 18, Committee ordered compliance pursuant to a protective order; May 21, modified subpoena and ordered compliance w/ respect to Citizens Forum, and Guttenberg Group	No compliance
INS	March 18	March 24	Motion April 15	Committee quashed subpoena.	Quashed
Orange County District Atty	March 18	March 24	Partial compliance	Withdrawn	Withdrawn

Orange County Superior Court, Jury Commissioner	March 18	March 27	Asked for agreement with contestant	Agreement with Contestant	Compliance pursuant to agreement with contestant
Orange County Social Services, Welfare Reform	March 18	March 27	None		None.
Orange County Registrar of Voters	March 18	March 31	Asked for agreement with contestant	Agreement with Contestant	Compliance pursuant to agreement with contestant
U.S. Dist. Ct., Naturalization Division	March 18	March 24	Motion April 15	Quashed	Quashed
Southern Cal. Edison	March 18	April 18	Sanchez filed Motion to quash on April 23	Committee quashed on May 21	Quashed
City of Garden Grove, Water Dept.	March 18	April 18	Sanchez filed Motion to quash on April 23	Committee quashed on May 21	Quashed
Southern Cal. Gas Co.	March 18	April 18	Sanchez filed Motion to quash on April 23	Committee quashed on May 21	Quashed
Humbert Corona	March 18	April 9	none		None
Michael Farber	March 18	April 10	Not served	Withdrawn and reissued	Withdrawn
Larry J. Hollis	March 18	April 18		Withdrawn	Withdrawn

Rosalyn Lever	March 18	April 14	Appeared; complied.	Complied.	Compliance
Nativo Lopez	March 18	April 8	Not served	Withdrawn and reissued	Withdrawn
Jim Prince	March 18	April 7	Deposed	Deposed.	Compliance
Loretta Sanchez	March 18	April 11	Motion March 25 & April 11	Committee action pending	Pending decision of Committee
Active Citizenship Campaign	May 20	May 30	Motion June 11	Committee action pending	Pending decision of Committee
GTE	May 20	June 6		Withdrawn	Withdrawn
Pacific Bell	May 20	June 6		Withdrawn	Withdrawn
Union Bank of Cal.	May 20	June 6	none		None
Loretta Sanchez	May 20	May 27	none		None
Rosalyn Lever	May 20	May 27	Complied	Complied	Complied
Humbert Corona	May 20	May 29	None		None
E. Scott Moxley	May 20	May 29	Motion June 18	Committee action pending	Pending decision on Motion
Michael Farber	May 20	June 2	Motion June 2	Committee action pending	Pending decision on Motion
Stephen Brixey	May 20	June 3	Motion May 23	Withdrawn	Withdrawn
Nativo Lopez	May 20	June 4	Motion June 20	Committee action pending	Pending decision on Motion
Larry J. Hollis	May 20	June 5		Withdrawn	Withdrawn
Benny Hernandez	May 20	June 5	None		None



(For Publication)

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

In the Matter of the Contested Election of LORETTA SANCHEZ to the House of Representatives to the United States Congress ROBERT K. DORNAN, Contestant, vs. LORETTA SANCHEZ, Contestee.	Case No. SA CV 97-176-GLT[CC] ORDER

The court holds, among other things, the deposition subpoena provisions of the Federal Contested Elections Act, 2 U.S.C. § 381 and following, are constitutional.

I. BACKGROUND

By less than a thousand votes, incumbent Robert Dornan was defeated by challenger Loretta Sanchez in the 1996 general election for the 46th Congressional District seat in the United States House of Representatives. Dornan filed an election contest in the House of Representatives under the Federal Contested Elections Act (referred to as "FCEA" or "the Act") 2 U.S.C. § 381 and following. That contest is currently pending before the House of Representatives Committee on House Oversight.

Under the discovery authority of FCEA, Dornan requested this court to issue numerous subpoenas for depositions and extensive production of documents. This court previously held a court's only authorized participation in the FCEA is to issue requested deposition subpoenas apparently regular on their face. Dornan v. Sanchez, 955 F.Supp. 1210, 1211 (C.D. Cal. 1997) (construing 2 U.S.C. § 388(a) and other provisions of the Act). Dornan served a large number of issued subpoenas, and numerous discovery disputes followed.

In the present dispute, an immigrants assistance organization, Hermandad Mexicana Nacional (Hermandad) sought a stay from this court of a deposition and documents production under a Dornan subpoena to the Orange County district attorney seeking Hermandad records the D.A. had previously seized. Among other things, Hermandad challenged the constitutionality of the FCEA's subpoena provisions. Ruling that unconstitutionality of the enabling statute would render the court's subpoenas "irregular on their face," the court temporarily stayed the D.A.'s deposition until the constitutionality issue could be ruled on.

In briefing, Hermandad also contends the notice to it of the district attorney's deposition was untimely. Sanchez joins in the unconstitutionality argument, and also asserts Dornan's counsel should be disqualified for alleged subpoena use misconduct.

Pending the hearing, Dornan withdrew the subpoena to the district attorney, and contended the matter had now become moot. By minute order, the court ruled it appeared the matter was not moot, and ordered the matter to go forward. The matter has now been fully briefed and heard, and is ready for decision.[1]

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[1] In addition to briefs from the parties and Hermandad Mexicana Nacional, the court has received and considered an amicus brief from the Office of the General Counsel of the U.S.

II. DISCUSSION

Each House of Congress is the exclusive judge of the elections and returns of its own members. United States Constitution, Article I, Section 5. The Federal Contested Elections Act establishes the procedure for an election contest in the House of Representatives. 2 U.S.C. §§ 381-396.

The court holds the discovery subpoena provision of the FCEA are constitutional. No ruling is made on the motion to disqualify counsel, and questions of timely deposition notice must be decided by the House of Representatives.

A. CONSTITUTIONALITY OF THE ACT'S DISCOVERY SUBPOENA PROVISION

The Federal Contested Elections Act provides for discovery depositions in preparation for the election contest, and issuance of deposition subpoenas by a judge or clerk of a federal district, state, or county court upon application by any party to the election contest. Id. §§ 386-388.

Sanchez and Hermandad Mexicana Nacional challenge the constitutionality of the discovery subpoena provisions in the Federal Contested Elections Act, 2 U.S.C. §§ 381 and following, on several different grounds.

In order to succeed in a claim that the FCEA is unconstitutional on its face, the challengers "must establish that no set of circumstances exists under which the Act would be valid." United States v. Salerno, 481 U.S 739, 745 (1987). The fact the statute's procedures may be "insufficient in some particular circumstances" is

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House of Representatives, representing the institutional interests of the House in litigation matters. The court has quoted liberally from the House's brief concerning the historical record of the Federal Contested Elections Act.

not enough. Id. at 751. Statutes will be construed to avoid serious constitutional questions. See New York v. Ferber, 458 U.S. 747, 769 n.24 (1982). The court is obligated, whenever possible, to interpret a statute in a manner which renders it constitutionally valid. Comm. Workers of America v. Beck, 487 U.S. 735, 762 (1988). The court must begin with the presumption that the challenged statute is valid; its wisdom is not the concern of the court, and if a challenged action does not violate the Constitution it must be upheld. INS v. Chadha, 462 U.S. 919, 944 (1983).

1. Mootness

Dornan has withdrawn the subpoena to the district attorney. He argues this makes the constitutional issue moot. It is "an established and salutary principle of the law of federal courts that constitutional issues affecting legislation will not be determined 'in advance of the necessity of deciding them' or 'in broader terms than are required by the precise facts to which the ruling is to be applied.'" Hastings v. Judicial Conference of the United States, 770 F.2d 1093, 1101 (D.C. Cir. 1985) (quoting Rescue Army v. Municipal Court of Los Angeles, 331 U.S. 549, 569 (1947)). "[E]ven when jurisdiction exists it should not be exercised unless the case 'tenders the underlying constitutional issues in clean-cut and concrete form.'" Socialist Labor Party v. Gilligan, 406 U.S. 583, 588 (1972) (quoting Rescue Army, 331 U.S. at 584).

But, it is also well-settled that "a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice." City of Mesquite v. Aladdin's Castle, Inc., 455 U.S. 283, 289 (1982). "Only if there is no reasonable expectation the action will recur is such a

case deemed moot." Native Village of Noatak v. Blatchford, 38 F.3d 1505, 1510 (9th Cir. 1994) (citing United States v. W.T. Grant Co., 345 U.S. 629, 632-33 (1953)).

The question of the Act's discovery subpoena provision's constitutionality is important and is squarely presented by the parties for decision. Although the subpoena to the district attorney has been withdrawn, Dornan could seek to revive it. Additionally, the parties acknowledge several other subpoenas remain outstanding, and the House's Committee has ruled they remain valid and enforceable. The court's subpoenas would be void if the portion of the Act which authorizes them is unconstitutional. Therefore, the court finds the issue is not moot, and should be decided.

2. The Historical Record

The early history and prior interpretation of federal contested election laws can provide important guidance for constitutional interpretation of the present Act. The Supreme Court recently reemphasized in Printz v. United States, 117 S.Ct. 2365, 2370 (1997),

> [E]arly congressional enactments "provid[e] 'contemporaneous and weighty evidence' of the Constitution's meaning. Bowsher v. Synar, 478 U.S. 714, 723-724 (1986) (quoting Marsh v. Chambers, 463 U.S. 783, 790(1983)). Indeed, such "contemporaneous legislative exposition of the Constitution . . ., acquiesced in for a long term of years, fixes the construction to be given its provisions." Myers v. United States, 272 U.S. 52, 175 (1926) (citing numerous cases).

In addressing a challenge to another statute originally enacted by the Fifth Congress, the Court noted "[t]he Act is almost as old as the Constitution, and it would savor of doctrinaire audacity now to find the statute offensive to some emanation of the Bill of Rights." Ludecke v. Watkins, 335 U.S. 160, 171 (1948) (opinion of Frankfurter, J.).

Federal election contests may be initiated by the House of Representatives itself, based either on a protest filed by a person outside the House or on a motion made by a member. See S. Rep. No. 91-546 (1969), reprinted in 1969 United States Code of Congressional and Administrative News 1456, 1457. Historically, however, the vast majority of election contests have been initiated by private parties (usually another candidate), rather than the House itself. See Relating to Election of a Representative from the Right District of Indiana, H.R. Rep. No. 99-58, at 3 (1985) ("It is no doubt unusual for the House to initiate its own investigation into the results of an election."). The House has generally recognized such contests resemble in some respects public inquiries and in other respects private litigation, although obviously with a significant public interest. See e.g., 2 Asher C. Hinds, Hinds' Precedents of the House of Representatives § 988 (1907).

In 1798, Congress first enacted a statute permitting parties to election contests to obtain subpoenas for evidence discovery. An Act of January 23, 1798, enacted by the Fifth Congress, provided

> where any person. . . shall intend to contest an election for any member or members of the House of Representatives of the United States, or to support any such election so intended to be contested, and shall be desirous of obtaining testimony respecting such election, it shall be lawful for such person to make application to any judge of the Courts of the United States, or to any chancellor, justice, or judge, of a superior or county court, or court of common pleas, of any State, or to any mayor, recorder, or intendant, of a town or city, who shall thereupon issue his warrant or summons, directed to all such witnesses as shall be named to him by such applicant. . . and requiring the attendance of such witnesses before him. . . in order to be then and there examined [regarding] the subject matter of the aforesaid application.

9 Annals of Congress 3704-05 (1799) (emphasis added).

Although this statute expired by its own terms at the end of the

first session of the Sixth Congress, the House on a number of occasions has authorized the taking of testimony by private parties in the absence of any statutory authority. For example, in 1791 the House by resolution provided the parties to the Georgia election contest of Jackson v. Wayne could take testimony before certain courts or magistrates. 1 Hinds, supra p. 6, § 708. Similarly, in 1850, the House by resolution authorized the taking of testimony by deposition according to state law in election contests in Iowa and Pennsylvania. Id. §§ 718, 815.

In 1851, Congress enacted a new statute governing contested elections, permitting any "contestant or returned member" to apply for a subpoena to any judge of any court of the United States or to certain other officers. See Act of Feb. 19, 1851, § 3, 9 Stat. 568 (Brightly's 1857); 1 Hinds, supra, § 698. The statute stated "[t]he officer to whom the application . . . is made shall thereupon issue his writ of subpoena, directed to all such witnesses as shall be named to him, requiring their appearance before him, at some time and place named in the subpoena, in order to be examined respecting the contested election." Act of Feb. 19, 1851, § 3; 1 Hinds, supra, § 698. The statute also provided "said magistrate shall have power to require the production of papers." Act of Feb. 19, 1851, § 8; 1 Hinds, supra, § 703. This statute, with a few amendments, remained in effect until 1969, when it was repealed and replaced by the present FCEA.

The 1851 statute contained no mechanism for challenging an election contest notice at an early stage. See S. Rep. No. 91-546 (1969), reprinted in 1969 U.S.C.C.A.N. 1456, 1458. The contestant was automatically authorized to start taking testimony upon receipt of the

answer of the returned member (which answer was required within 30 days of service of the notice of contest). Act of Feb. 19, 1851, §2. Many election contests under the 1851 statute involved taking testimony at least by the contestant. See generally 1 Hinds, supra p.6, §§ 598, 686, 712-733, 824, 831, 834, 843; 2 Hinds, supra, §§ 852, 855, 857, 860, 864, 869, 875, 880, 895, 900, 936, 940, 956, 977, 981, 988, 1003, 1064, 1070, 1086; 2 Lewis Dreschler, Dreschler's Precedents of the U.S. House of Representatives §§ 30, 46-62 (1977). In a number of election contests, the parties used subpoenas to obtain testimony or other evidence. See, e.g., 1 Hinds, supra, §§ 598, 712; 2 Hinds, supra, §§ 852, 956, 1003, 1070; 2 Dreschler, supra, §§ 30, 46.2, 48.1, 55.3; see also Contested-Election Case of George D. Stevens against William W. Blackney from the Sixth Congressional District of Michigan, H.R. Rep. No. 1735 (1950).

Congress became concerned in the 1960s that "[t]he 1851 law prescribes antiquated and cumbersome procedures which are unsuitable for the changed conditions of our time." 115 Cong. Rec. 30510 (daily ed. Oct. 20, 1969) (remarks of Congressman Abbitt). In 1969, Congress enacted the FCEA to replace the 1851 statute. Pub.L. No. 91-138, 83 Stat. 284 (1969)(codified as amended at 2 U.S.C. § 381 et seq. (1997)). The FCEA was intended to modernize election contest procedures, including the methods of taking testimony and other evidence. H.R. Rep. No. 91-569, at 4-5 (1969), reprinted in 1969 U.S.C.C.A.N. 1456 [hereinafter House Report].

Like the 1851 statute, the FCEA authorizes election contest parties to obtain subpoenas for testimony and production of documents. See 2 U.S.C. §§ 386-88. Such subpoenas may be issued by any judge or clerk of a federal district court, state court or county court for the

jurisdiction in which the place of examination is located. Id. § 388. Unlike the 1851 statute, the FCEA authorizes the Committee on House Oversight upon timely motion to "(1) quash or modify the subpoena if it is unreasonable or oppressive, or (2) condition denial of the motion upon the advancement by the party in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things." Id. § 388(e).

The FCEA also replaced the penalty provisions of the old contested elections law with criminal penalties identical to those provided for noncooperating witnesses before Congress.[2] House Report, supra p.8, at 4-5. Compare 2 U.S.C. § 390 (penalty under FCEA for failure of witness to appear, testify or produce documents), with 2 U.S.C. § 192 (penalty for refusal of a witness to testify or produce papers in a matter before either House of Congress).

The legislative history of the FCEA apparently does not contain any expression of concern about the constitutionality of permitting private parties to obtain subpoenas in election contests or of

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[2] One weakness in the 1851 statute had been the lack of an effective mechanism to punish a witness who refused to obey a subpoena in a contested election case. See Dreschler, supra p. 8, § 30.2 (finding "[a]lthough the election contest statute authorized the use of subpoenas, there were instances of refusals to testify as well as ignoring of subpoenas by witnesses; for this reason, a House elections committee recommended that the laws be amended and some practical procedure be adopted by which witnesses could be required to obey process and give testimony."). See also 61 Cong. Rec. 6392-93 (1921) (stating "[t]here is absolutely no law on the statute books today that will allow a United States district attorney or any other officer of the law to prosecute a man who refuses to come into court when summoned in a contested election case. . . It seems to me, Mr. Speaker, there should be teeth in the law that will compel men to be fair and square as citizens and give testimony as it is desired so that a man, whether he is a contestee or contestant, shall have accurate testimony before the body when he comes here.") (remarks of Congressman Tague).

requiring courts to issue the subpoenas.[3] Although this practice has occurred for 199 years under the authority of the 1798 statute, the 1851 statute, the FCEA and various House resolutions, and the courts have taken up contested elections various times, it does not appear to have been questioned on constitutional grounds. This unbroken history supports the constitutionality of the FCEA's discovery provisions.

3. The Delegation Doctrine

Hermandad argues the Act's delegation of subpoena power to a private individual (here, Contestant Dornan) is an unconstitutional delegation of legislative power. Relying on cases which establish guidelines for delegation of legislative power, Hermandad claims the FCEA is unconstitutional because it does not establish a sufficient "intelligible principle to which the person or body authorized to [act] is directed to conform." Loving v. United States, 116 S.Ct. 1737, 1750 (1996) (quoting J.W. Hampton, Jr. & Co. v. United States, 276 U.S. 394, 409 (1928)); see also Mistretta v. United States, 488 U.S. 361, 390(1989); Muller Optical Co. v. EEOC, 743 F.2d 380, 388 (6th Cir. 1984)("Congress may not delegate legislative authority without establishing a set of standards to guide, direct and

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[3] By narrowing the definition of permissible "contestant" in an election contest, the FCEA has the effect of limiting the persons with access to the subpoena power. In the debate over adoption of the FCEA, some objected to this narrowing of those permitted to challenge an election and use the subpoena power. See 115 Cong. Rec. 30511-13 (Oct 20, 1969) (remarks of Congressman Ryan). In defending the bill, its sponsor, Congressman Abbitt, noted the subpoena power "can be abused" and "[i]f everybody has a right to contest and subpoena witnesses, he can run a House Member up and down the State and no one knows how long it would take to settle it." Id. at 30513. Despite this understanding of the potential for abuse, the disagreement was between those who believed the subpoena authority should be limited to actual candidates and those who believed it should be more widely available. There was no suggestion of eliminating the authority altogether.

circumscribe the exercise of that authority").[4] The Court disagrees, and holds the Act does not unconstitutionally delegate legislative authority to a private individual.

It is doubtful if the discovery provisions of the Act implicates the delegation doctrine. The cases cited by Hermandad deal with the delegation of legislative authority. But, the House's power to judge its own elections is not legislative, but judicial.[5] The interests at stake are different from those involved when Congress delegates its legislative power. In the traditional delegation doctrine case, Congress delegates legislative authority, and then ceases to control the exercise of that authority. Here, however, the House maintains continuous oversight during the election contest. It is reasonable that Congress would not detail guidelines for the exercise of the subpoena power with the same level of detail as it must in an

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[4] The delegation of legislative power by Congress has very rarely been held unconstitutional. The only two cases in which the Supreme Court has declared a delegation of legislative power unconstitutional are often described as aberrations and are easily distinguishable. See Kenneth Culp Davis and Richard J. Pierce, Jr., Administrative Law § 2.6 (3d ed. 1994) (discussing Panama Refining Co. v. Ryan, 293 U.S. 388 (1935) and A.L.A. Schechter Poultry Corp. v. United States, 295 U.S. 495 (1935) and concluding "[t]he decisions are best understood in their unique historical context."). In fact, extremely broad delegations of legislative power have been upheld as constitutional by the Supreme Court. See, e.g., Mistretta v. United States, 488 U.S. 361 (1989)(upholding Congress' statutory delegation of broad power to issue binding sentencing guidelines to Sentencing Commission); Skinner v. Mid-American Pipeline Co., 490 U.S. 212 (1989)(concluding the broad delegation of taxing power to an executive agency was constitutional).

[5] The Supreme Court has described the power to judge elections as "judicial in character." Barry v. United States ex rel. Cunningham, 279 U.S. 597, 613 (1929). The creation of a discovery system to aid that function can be analogized to the federal courts' creation of the discovery scheme in the Federal Rules of Civil Procedure, which is not questioned as being an unconstitutional delegation of judicial power.

unsupervised legislative delegation.

Even if the delegation doctrine is applicable here, the FCEA has established well-ordered standards for discovery. Provision is made for depositions on oral examination, 2 U.S.C. § 386, and the method of service, filing, and notice to parties and witnesses is specified. Id. §§ 384, 387. Depositions must seek non-privileged, relevant material, and examination and cross-examination is provided for. Id. § 386(b). Time limits are set, Id. § 386 (a, c), and a deposition officer authorized to administer oaths is required. Id. § 386(d). Attendance can be compelled by subpoena, Id. § 386(e), testimony must be recorded and under oath, Id. § 386(g), and a party may act through an agent or attorney. Id. § 386(f). A party may raise objections, and an opposing party may ask questions through written interrogatories. Id. § 386(g). The witness may read the completed opposition, make changes, and sign it, and a party having objections may move to suppress. Id. § 386(h). As an alternative, stipulated testimony by affidavit is allowed. Id. § 387(c). The completed deposition is certified and filed, with a copy provided to any party or witness. Id. § 391.

To facilitate depositions, subpoenas are authorized. Id. § 388. A minimum notice to witnesses is set, Id. § 388(b), limitations on the place of examination are established, Id. § 388(c), and the subpoena form is outlined. Id. § 388(d). Provision is made to require production of documents with the opportunity to move to quash or modify if the demand is unreasonable or oppressive, or to obtain reimbursement of production costs. Id. § 388(e). Non-compliance with discovery requirements may be punished as a misdemeanor. Id. § 390.

The FCEA contemplates the House exercising oversight of discovery

proceedings in an election contest. In this way an election contest discovery is similar to discovery proceedings before a district court.[6] In both cases the adversarial system regulates the propriety of a particular subpoena.

The Court concludes Congress has created "intelligible guidelines" for a contestant's exercise of discovery and subpoena power under the Act. Accordingly, the Court holds the FCEA's grant of subpoena power to a private individual is not an unconstitutional delegation of power.

4. Due Process

Hermandad claims the FCEA's discovery provisions raise due process concerns because the FCEA allows depositions on only two days notice to a party, and only three days notice to a witness, Id. §§ 387(a); 388(b), while the Committee Rules allow insufficient time to object and are in conflict with the Act's notice requirements. Hermandad also argues the constitutional rights of third parties are inadequately protected because the FCEA doesn't require notice to third parties whose constitutional rights might be compromised by a deponent's subpoena compliance.

a. Opportunity for Objection

The FCEA's provisions for objecting to a subpoena do not violate a deponent's right to due process under the Fifth or Fourteenth Amendments.

Under the Act the opposing party must be given written notice of

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[6] Under the Federal Rules, attorneys and parties have the power to obtain discovery subpoenas just as under the FCEA. Like the Act, the Federal Rules allow parties to obtain discovery "which is relevant to the subject matter involved in the pending action." Fed.R.Civ.P. 26(b)(1). The Federal Rules prohibit discovery of privileged materials. Fed.R.Civ.P. 26(b)(1).

a deposition two days before the examination date. Id. § 387. Similarly, the FCEA requires a witness be served with a subpoena no later than three days before the day on which attendance is directed. Id. § 388. Either may move to quash or modify the subpoena. See Id. § 388(e).

Although the parties may disagree as to the adequacy of two or three days notice, the Court cannot conclude the time periods provided are so short that they rise to the level of a due process violation.[7] Through passage of the Act, Congress has decided two days notice to a party and three days notice to a witness is sufficient. As long as the opportunity to object and the power of the House to quash or modify are available under the Act, due process is satisfied.[8]

There is no necessary conflict between the Committee's Rules and the Act's notice provision. Although Hermandad correctly notes the Committee Rules require seven days notice for a hearing,[9] there is no

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[7] In support of its due process argument, Hermandad cites Donoghue v. County of Orange, where the Ninth Circuit affirmed the trial court's determination that one week was not sufficient notice for a subpoena which "sought far reaching and extensive data pertaining to twenty years of employment records . . . ." 848 F.2d 926, 931 (9th Cir. 1988). Donoghue, however, does not support Hermandad's position. The court there did not hold one week was constitutionally insufficient; it merely stated the district court's conclusion one week was not sufficient under the circumstances present there was not an abuse of discretion.

[8] At oral argument, Hermandad argued the Act is both unconstitutional on its face and as applied. According to Hermandad, the slow pace at which the Committee has decided motions to quash is a violation of due process. However, neither Congresswoman Sanchez nor Hermandad has shown either's constitutional rights have actually been violated. The fact motions to quash remain outstanding is not sufficient for a finding the Act is unconstitutional as applied.

[9] Rule 9 requires:

> The Chairman, in the case of hearings to be conducted by the Committee, shall make public announcement of the

requirement the Committee hold a noticed hearing on a motion to quash or modify. Rule 6 authorizes the Committee "to sit and act at such times and places within the United States, whether the House is in session, has recessed, or has adjourned . . . ." to carry out any of its functions and duties. Committee on House Oversight Rule 6(a). Under its rules, the Committee can, as it has done in this case, take up subpoena contests without a formal hearing, and issue orders to stay depositions until objections may be considered. Neither the Committee's rules nor their application make the Act's discovery scheme unconstitutional.[9]

5. Third-Party Rights

The Court holds the Act's failure to require notice be given to third parties whose constitutional rights might be compromised by a witness' compliance with a subpoena does not rise to the level of a constitutional defect.

Although this Court has held the Federal Rules of Civil Procedure cannot be engrafted onto the FCRA, see Dotman, 955 F.Supp. at 1212, the Federal Rules of Civil Procedure and the case law construing the Rules provide a helpful analogy in determining whether third parties have a constitutional right to notice. The parties have cited no

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> date, place and subject matter of any hearing to be conducted on any measure or matter at least 1 week before the commencement of that hearing unless the Committee determines that there is good cause to begin such hearing at an earlier date.

Committee on House Oversight Rule 9(a).

[9] Even if the Rules create a slow or cumbersome procedure, Hermandad has not made "a clear showing of such arbitrary and improvident use" of Congress' power as to constitute a denial of due process of law. See Barry, 279 U.S. at 620.

authority,[11] and the Court finds none, which holds a third party has such a notice right under federal law.[12]

Hermandad contends FCSA subpoenas directed toward two specific subjects potentially compromise the rights of third parties: those to obtain membership lists of an organization, and those directed toward bank records.

Membership lists of organizations, especially those of a political nature, are potentially protected under the First Amendment. See NAACP v. Alabama ex rel. Patterson, 357 U.S. 449, 459 (1958); see also Gibson v. Florida Legislative Investigation Comm'n., 372 U.S. 539 (1963). There is at least the potential for a violation of the constitutional rights of Hermandad's members when the organization's records are subpoenaed.

The organization, however, has standing on behalf of its members to raise constitutional objections to the production of its membership lists. See Hunt v. Wash. State Apple Advertising Comm'n., 432 U.S. 333, 343 (1977). This can be done on a motion under the Act to quash

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[11] In support of its position, Hermandad cites California law which requires notice be given to individuals whose bank records have been subpoenaed. See, e.g., Valley Bank of Nevada v. Superior Court, 15 Cal.3d 652 (1975); Schlimeyer v. Dept. of General Services, 17 Cal.App.4th 1072 (1993). These cases, however, base the notice requirement on the California Constitution's right of privacy, not on any federal right of privacy. The election contest at issue is based exclusively on the Federal Contested Elections Act, a federal question to which federal law would apply.

[12] See Cinel v. Cornick, 15 F.3d 1338, 1343 (5th Cir.) cert. denied, 513 U.S. 868 (1994)("Appellant fails to state a claim that the state actors denied him his procedural due process rights by not notifying him of the subpoena duces tecum. Appellant has submitted no legal authority to this Court, and we have found none in our independent research, that creates an affirmative duty of a nonparty or a governmental official in possession of documents to notify the owner of the subpoenaed documents.").

or modify the subpoena. 2 U.S.C. § 388(e). The FCEA provides sufficient process to prevent the violation of the First Amendment rights of Hermandad's members.

The potential for membership list production being a constitutional violation should be addressed on motion to the House, not by attempting to have the court hold the Act's discovery provisions unconstitutional. The Supreme Court has implicitly rejected such a per se approach to alleged First Amendment objections raised in the context of discovery. See, e.g., Bates v. City of Little Rock, 361 U.S. 516, 523-25 (1960)(reversing convictions upon failure to disclose membership lists because interference with associational rights outweighed government interest in disclosure). A party objecting to disclosure must first make out a prima facie case of an encroachment on liberty. Only then does the burden shift to the proponent to show there is a compelling need for the discovery. New York State Nat. Organization for Women v. Terry, 886 F.2d 1339, 1355 (2d Cir. 1989), cert. denied, 495 U.S. 947 (1990).

Concerning the discovery of third parties' bank records, "an American depositor has no reasonable expectation of privacy in copies of his or her bank records . . . ." In re Grand Jury Proceedings, 40 F.3d 959, 963 (9th Cir. 1994), cert. denied, 515 U.S. 1132 (1995)(citing United States v. Miller, 425 U.S. 435, 442 (1976)). Although this analysis is usually raised in a Fourth Amendment context, it is equally applicable here. As the Supreme Court held in Miller, where an individual's Fourth Amendment rights are not implicated, obtaining these documents does not violate protected rights. See Miller, 425 U.S. at 445. Accordingly, the Act's failure to require notice to bank depositors whose records are subpoenaed is

not unconstitutional.

5. Separation of Powers

Sanchez contends the FCEA's discovery provisions violate the principle of separation of powers because they divest a federal court of authority to review the scope of subpoenas, and they confer on a Congressional committee the authority to decide the legitimacy of a judicially-issued subpoena.[13] This, Sanchez argues, is an unconstitutional delegation of authority to the legislative branch over a "case" pending in federal court.[14] In support of her position, Sanchez cites the fundamental principle that the "'judicial power of the United States' must be reposed in an independent Judiciary."

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[13] In effect, Sanchez is arguing this court is incorrect in holding its sole authority is to issue subpoenas regular on their face and motions to quash or modify must be handled by the House. The constitutionally correct ruling, Sanchez contends, is that the court has power to supervise its own subpoenas.

[14] Sanchez also argues the Court has inherent authority to "protect the integrity of its processes," and therefore it must have jurisdiction to interpret and enforce its subpoenas. See Matter of Certain Complaints Under Investigation, 783 F.2d 1488, 1496 (11th Cir.), cert. denied, 477 U.S. 904 (1986). According to Sanchez, this inherent authority includes the authority to rule on motions to quash FCEA subpoenas.

In Matter of Certain Complaints, the Eleventh Circuit held it had the authority to enforce subpoenas it issued pursuant to the Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§ 332(d)(1), 372(c)(9)(A) (JCDA). Comparing the language of the JCDA and the Federal Rules of Civil and Criminal Procedure, the Eleventh Circuit concluded Congress "was legislating in [the JCDA] against the backdrop" of the Federal Rules. Id. Accordingly, the court relied on the Federal Rules in concluding "the court under whose seal the subpoena was issued must have jurisdiction to enforce its subpoena and vindicate its own process, as Fed.R.Civ.P. 45(f) and Fed.R.Crim.P. 17(g) recognize." Id.

Here, the Act was not legislated against the backdrop of the Federal Rules. As this Court has already held, the Federal Rules cannot be engrafted upon the Act. See Dornan, 955 F.Supp. at 1212. Contrary to the JCDA, the Act at issue here has created a penalty other than contempt for failing to comply with a subpoena: a witness' failure to comply is made a misdemeanor punishable by fine or imprisonment. 2 U.S.C. § 390.

Northern Pipeline Constr. Co., 458 U.S. 50, 60 (1982); see also Bowsher v. Synar, 478 U.S. 714 (1986); Crowell v. Benson, 285 U.S. 22 (1932).

The separation of powers concept is probably not applicable in this situation. In making her separation of powers argument, Sanchez relies on cases holding "Congress cannot 'withdraw from judicial cognizance any matter which, from its nature, is the subject of a suit at the common law, or in equity, or admiralty.'" Northern Pipeline Constr., 458 U.S. at 69 n.23 (quoting Murray's Lessee v. Hoboken Land & Improvement Co., 59 U.S. 272, 284 (1855)). However, these cases apply the concept only to matters of "private right." See, e.g., Crowell, 285 U.S. at 50 (distinguishing between cases of "private right" and those of "public right," that is, "those which arise between the government and persons subject to its authority in connection with the performance of the constitutional functions of the executive or legislative departments"); Northern Pipeline Constr. Co., 458 U.S. at 67-68; Ex parte Bakelite Corp., 279 U.S. 438, 451-52 (1929). By contrast, in matters of "public right," "'Congress may reserve to itself the power to decide, may delegate that power to executive officers, or may commit it to judicial tribunals.'" Crowell, 285 U.S. at 50-51 (quoting Ex parte Bakelite Corp., 279 U.S. at 451). This election contest is a matter of "public right."

Even if the separation of powers concept is applicable, it has not been violated here. The Supreme Court's recent separation of powers cases raise the question whether Congress has aggrandized its own role in a function not constitutionally entrusted to it. See, e.g., Morrison v. Olson, 487 U.S. 654, 678 (1988)(placement of the appointment power of an Independent Counsel in the Judicial Branch to

investigate and prosecute crime, without summary removal power in the President); Bowsher v. Synar, 478 U.S. at 715 (retention of removal power over the Comptroller General whose functions entailed executive responsibilities); Chadha, 462 U.S. at 957-58 (use of the legislative veto without passing new legislation subject to the President's veto).

Here, the power to judge its elections is constitutionally vested in the House alone. U.S. Const. art.I, §5, cl. 1. The exclusive nature of this mandate was confirmed in Morgan v. United States, 801 F.2d 445, 447 (D.C.Cir. 1986), cert. denied, 480 U.S. 911 (1987)("It is difficult to imagine a clearer case of 'textually demonstrable constitutional commitment' of an issue to another branch of government to the exclusion of the courts" (citing Baker v. Carr, 369 U.S. 186, 217 (1962))).

In the review of its discovery process, Congress is not seizing a function not constitutionally entrusted to it, and there is no separation of powers violation. On the contrary, the pending "case" is the election contest before the House, and there is no "case" pending in federal court. Already having the power to adjudicate all phases of its election contest under Article I, section 5 of the Constitution, it cannot be said exercise of this power "impermissibly trespass[es] upon the authority" of the Judicial branch. See Morrison v. Olson, 487 U.S. at 689.

Sanchez also contends Congress cannot give a court part of its judicial power -- the power to issue subpoenas -- without ceding to it the whole of that particular judicial power -- the power to review and enforce those subpoenas. She argues the House cannot delegate a power to the court, yet retain the ability to "interfere" with that power.

See Chadha, 462 U.S. at 954-55.[15]

Sanchez is correct in noting Northern Pipeline requires "the judicial power" be exercised by an Article III court. 102 S.Ct. at 2865. But, in the context of the FCRA, the Court is not called on to exercise its own judicial power. Through the Act, Congress has authorized the Court to perform a very limited, purely ministerial part of the House's judicial role: to issue subpoenas. As the Supreme Court held in Morrison, powers granted to the judiciary which are "themselves essentially ministerial," do not violate the principle of separation of powers. See Morrison, 487 U.S. at 681.

By requiring courts to issue subpoenas upon a contestant's application, Congress has not trespassed on the judicial branch. The performance of this function does not compromise the independence or integrity of the judicial branch. On the contrary, by limiting the scope of the judiciary's involvement to issuing subpoenas, the Act maintains the line between the political and judicial branches. In this way, the judiciary is kept out of the charged and partisan

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[15] In Chadha, the Supreme Court struck down a statute permitting the House to "veto" the Attorney General's determination to suspend deportation of an individual alien. Once the authority to suspend a deportation was delegated to the Attorney General by Congress, the Court concluded the House could not later interfere with the exercise of that delegated authority without following the legislative procedures set out in Article I of the Constitution. Id. at 954-55.

Chadha is not controlling here. Because Chadha dealt with a delegation of legislative power, the Court held the House could not unilaterally "veto" the exercise of that power. According to the Court, any action by the House which would be legislative in nature (which is how the Court construed the "veto"), must be taken by Constitutional procedures, i.e., through bicameral passage and presentment to the President. Id. The Court held "Congress must abide by its delegation of authority until that delegation is legislatively altered or revoked." Id. That constraint is not present here.

environment of an election contest, as is required by the Constitution.

The Court holds the discovery subpoena provision of the Federal Contested Elections Act does not violate the principle of separation of powers.

B. MOTION TO DISQUALIFY COUNSEL

In May 1997, Sanchez moved to disqualify Dornan's counsel from appearing before this Court for alleged misconduct concerning how he made use of various subpoenas. The Court took the motion off calendar, holding Sanchez' motion must be asserted in the House, not the Court. Sanchez has renewed her motion to disqualify.

The court has authority to regulate the conduct of attorneys appearing before it. But, it is a matter of discretion when and how to exercise that authority. Here, the conduct complained of was not claimed misconduct in the obtaining of the subpoenas from the court, but in the use of the subpoenas afterward. This is within the House's purview.

The Constitution and the FCEA place control over election contests in the hands of the Legislature--the political branch of government. An election contest, and allegations of misconduct in its discovery and adjudication, involve political questions which courts should refrain from adjudicating. See Baker, 369 U.S. 186; see also Morgan, 801 F.2d 445. Accordingly, the Court exercises its discretion and declines to rule on Sanchez' motion. The proper forum for such a motion is the House of Representatives.

C. OBJECTION TO TIME OF SERVICE

Hermandad contends the notice to it of the district attorney's deposition was not timely given. It contends notice was improperly delivered at the end of a business day on the second day before the scheduled deposition, by FAX and with no proof of service. The court holds this objection is not to a defect appearing on the face of the subpoena, and must be addressed to the House of Representatives, not to this court.

In its March 1997 order in this matter, the court ruled that under the FCEA courts only have authority to issue subpoenas regular on their face, and disputes outside that narrow authority must be addressed to the House. Since that order was made, the parties have asserted various subpoena objections to the court, and the court has issued several orders further defining, within that broad principle, which subpoena objections may be resolved by the court and which must go to the House.

The court determined several of the matters presented to it fell within a determination whether a subpoena is "regular on its face," and decided the matter. For instance, the court declined to issue a subpoena to a party in Florida, holding that, on its face, this was outside the geographical area authorized by the Act. A subpoena format not specifying the deposition officer or containing blanks was rejected as irregular on its face. However, a deposition for an entity's "custodian of records" was ruled regular on its face, as a sufficient identification of a "person" under section 386(a). And, a deposition for a "hearing" was rejected as irregular since the Act only authorizes deposition subpoenas.

However, the court held that various other subpoena disputes presented to it did not involve irregularities on the subpoena face, and so must be presented to the House for resolution. The court held a subpoenaed state or federal agency desiring to assert a statutory privilege must present it to the House. Several objections that subpoenas were overbroad, burdensome, or requested improper disclosures were held to raise non-facial defects that must be asserted to the House.

As held in the court's March 1997 order, the court's sole authorized participation under the Act is to issue requested deposition subpoenas apparently regular on their face. Hermandad's objection that a deposition notice was improperly served is not a defect appearing on the face of the subpoena. Under the Constitution and the FCEA, this aspect of the election contest must be presented to the House of Representatives for decision.

III. DISPOSITION

Concerns that the House's determination of this election contest may have been cumbersome and far from the "quick, decisive" standard stressed by Morgan, 801 F.2d at 450, or that the subpoena process may have been overused, must be addressed to the House itself. Under the Constitution's mandate, the House has the power to make appropriate rule changes to make its system work better.

The court holds the discovery subpoena provision of the Federal Contested Elections Act, 2 U.S.C. § 381 and following, is constitutional. The court declines to rule on the motion to disqualify contestant's counsel, and rules an objection that a deposition notice was untimely served must be addressed to the U.S. House of Representatives.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. SA CV 97-176-GLT Date October 20, 1997

Title: In the Matter of the Contested Election of Loretta Sanchez for the Office of House of Representatives to the United States Congress, Robert Dornan v. Loretta Sanchez

==========

DOCKET ENTRY:

I hereby certify that this document was served by first class mail, postage prepaid, to all counsel for parties at their respective most recent address of record in this action on this date:
date 10.21.97
Deputy Clerk

==========

PRESENT:

HON. Gary L. Taylor JUDGE

Kathy Gault Peterson	None Present
Deputy Clerk	Court Reporter (SM)

ATTORNEYS PRESENT FOR PLAINTIFFS:	ATTORNEYS PRESENT FOR DEFENDANTS:
Not Present	Not Present

PROCEEDINGS: HERMANDAD, ETC., MOTION TO ENJOIN ENFORCEMENT FOR INTERVENE

The Court DENIES the motion of Hermandad Mexicana Nacional, Hermandad Mexicana Nacional Legal Center, Michael Farber, and Nativo Lopez to stay subpoenas, permit intervention, and/or rule certain subpoenas untimely, for the same reasons stated in the court's order of September 23, 1997. The Court declines to certify this ruling for interlocutory review under 28 U.S.C. § 1292(b); the issue is already adequately presented for review in the order previously certified.

Initials of Deputy Clerk

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED
OCT 24 1997
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

In the Matter of the Contested Election of LORETTA SANCHEZ to the House of Representatives to the United States Congress,	No. 97-80553
	DC# CV-97-176-GLT Central California (Santa Ana)
ROBERT K. DORNAN, Contestant-Respondent, vs. LORETTA SANCHEZ, Contestee.	ORDER
HERMANDAD MEXICANA NACIONAL, Petitioner.	

Before: THOMPSON and T.G. NELSON, Circuit Judges

The petition for permission to appeal pursuant to 28 U.S.C. § 1292(b) is denied.

FILED
OCT 24 1997
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In the Matter of the Contested Election of LORETTA SANCHEZ to the House of Representatives to the United States Congress,	No. 97-80561
ROBERT K. DORNAN, Contestant-Respondent,	DC# CV-97-176-GLT Central California (Santa Ana)
vs.	
LORETTA SANCHEZ, Contestee-Petitioner.	ORDER

Before: THOMPSON and T.G. NELSON, Circuit Judges

The petition for permission to appeal pursuant to 28 U.S.C. § 1292(b) is denied.

FILED
OCT 24 1997
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In the Matter of the Contested Election of LORETTA SANCHEZ to the House of Representatives to the United States Congress, ROBERT K. DORNAN, Contestant-Respondent, vs. LORETTA SANCHEZ, Contestee.	No. 97-80553 DC# CV-97-176-GLT Central California (Santa Ana) ORDER
HERMANDAD MEXICANA NACIONAL, Petitioner.	

Before: THOMPSON and T.G. NELSON, Circuit Judges

The petition for permission to appeal pursuant to 28 U.S.C. § 1292(b) is denied.

FILED
OCT 24 1997
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In the Matter of the Contested Election of LORETTA SANCHEZ to the House of Representatives to the United States Congress,	No. 97-80561
	DC# CV-97-176-GLT Central California (Santa Ana)
ROBERT K. DORNAN,	
Contestant-Respondent,	
vs.	
LORETTA SANCHEZ,	ORDER
Contestee-Petitioner.	

Before: THOMPSON and T.G. NELSON, Circuit Judges

The petition for permission to appeal pursuant to 28 U.S.C. § 1292(b) is denied.

HART, KING & COLDREN
200 East Sandpointe, 4th Floor
Santa Ana, California 92707
714-432-8700 (phone)
714-546-7457 (fax)

FACSIMILE TRANSMISSION COVER SHEET
FAX NO. (714) 546-7457

DATE:	**October 27, 1997** **FILE NO: 71362.001**
TO:	**Chairman, Bill Thomas: (202) 225-9957** **Secretary of State Bill Jones: (916) 653-4795**
cc:	**John Kelliher: (202) 226-1966** **Mark Braden: (202) 861-1783** **Michael Stern: (202) 226-1360** **Robert K. Dornan: (703) 321-8616**
FROM:	**William R. Hart**
RE:	**Dornan/Sanchez Election Contest**
MESSAGE:	**Please find enclosed the order from the United States Court of Appeals for the Ninth Circuit received today denying Loretta Sanchez's and Hermandad Mexicana Nacional's petitions for permission to appeal Judge Taylor's United States District Court ruling regarding the constitutionality of the FCEA.**

NO. OF PAGES (including cover sheet): 3

ORIGINAL WILL NOT FOLLOW: X

ORIGINAL WILL FOLLOW BY: ____

Regular Mail	____
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If there are any questions regarding the FAX transmittal, please contact Chae Ianni at (714) 432-8700.

This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original to us at the above address via United States Postal Service.

MARK S. ROSEN Bar No 72431
Attorney at Law
2700 No. Main Street
Suite 630
Santa Ana, California 92705

(714) 972-8040

Attorney for Petitioner
Hermandad Mexicana Nacional

FILED
ORANGE COUNTY SUPERIOR COURT
JAN - 6 1998
ALAN SLATER, Executive Officer/Clerk
BY S. MUELLER

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

HERMANDAD MEXICANA NACIONAL Petitioner, VS. MICHAEL CAPIZZI, in his capacity as District Attorney of the County of Orange; WILLIAM JONES, in his capacity as Secretary of State of the State of California, Respondents.	CASE NO: M-7915 SPECIAL PROCEEDING ORDER STAYING DISSEMINATION OF ITEMS SEIZED PURSUANT TO SEARCH WARRANT PENDING HEARING DATE: January 16, 1998 TIME:9:00 a.m. DEPT:36

Counsel for Hermandad Mexicana Nacional and Michael Capizzi, District Attorney of the County of Orange, having met with the court, and good cause having been shown,

IT IS HEREBY ORDERED AS FOLLOWS:

1. Pending further hearing or a further order of the court, none of the records seized by the District Attorney from Hermandad Mexicana Nacional, or copies thereof, shall be conveyed, by any means, either verbatim or in substance, to any other persons, including, but not limited to, any agency, department, representative, or other affiliation of the United States

Government or any other official or unofficial body, and including the Internal Revenue Service and any committee or subcommittee of the House of Representatives.

2. The hearing on Hermandad Mexicana Nacional's motion for return of the seized items is set for January 16, 1998, at 9:00 a.m. in Department 36.

DATED: January 6, 1998

JUDGE OF THE SUPERIOR COURT
WILLIAM R. FROEBERG

JAN - 6 1998

SHARON L. MUELLER

MICHAEL R. CAPIZZI, DISTRICT ATTORNEY
COUNTY OF ORANGE, STATE OF CALIFORNIA
MAURICE L. EVANS,
CHIEF ASSISTANT DISTRICT ATTORNEY
GUY N. ORMES, SUPERVISING DEPUTY DISTRICT ATTORNEY
DEPUTY-IN-CHARGE, SPECIAL ASSIGNMENTS UNIT
BRUCE A. MOORE, DEPUTY DISTRICT ATTORNEY
STATE BAR NO. 141609
POST OFFICE BOX 808
SANTA ANA, CALIFORNIA 92702
TELEPHONE: (714) 834-3600

Attorneys for Plaintiff

FILED
ORANGE COUNTY SUPERIOR COURT
JAN 23 1998
ALAN SLATER, Executive Officer/Clerk
BY S. MUELLER

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

HERMANDAD MEXICANA NACIONAL
Petitioner,

vs.

MICHAEL CAPIZZI, in his capacity as District Attorney of the County of Orange
Respondent.

CASE NO. M-7915

ORDER TO RETURN PROPERTY

It is hereby ordered that all original materials seized pursuant to a search warrant from the offices of Hermandad Mexicana Nacional at 825 North Broadway, Santa Ana on January 14, 1997, by the District Attorney's office, and not previously returned, be returned forthwith to Hermandad Mexicana Nacional. The Ex Parte order issued by this court on January 6, 1998 is hereby dissolved. ~~This court does not order the return of copied materials.~~ THIS ORDER DOES NOT APPLY TO COPIES MADE OF SUCH MATERIAL.

DATED: January 23, 1998

William R. Froeberg
Judge of the Superior Court

THIS INSTRUMENT IS A CORRECT COPY OF THE ORIGINAL ON FILE IN THIS OFFICE
ATTEST (DATE) JAN 28 1998
ALAN SLATER, CLERK OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF ORANGE
BY S. MUELLER DEPUTY

SUPERIOR COURT ORANGE COUNTY CALIFORNIA

APPENDIX I: INS PRODUCTION

IMMIGRATION AND NATURALIZATION SERVICE PRODUCTION

On April 24, 1997, the Committee wrote to INS Director Doris Meissner requesting assistance from the INS. Nearly a week later, the Committee wrote a letter to Attorney Janet Reno to request assistance from the INS. However, on May 1st, instead of providing the Committee the information it requested, the INS wrote a letter to the Committee indicating that the INS would decide at some future date whether and when the INS would assist the Committee. The INS letter appeared to reflect, almost point-for-point, the concerns expressed by the Democratic Minority in a letter sent to the INS just days earlier.

Faced with these obstructionist tactics, the Committee issued two subpoenas to the INS on May 14th. These subpoenas compelled the INS to assist the Committee with its adjudication of the Contested Election in California's 46th District.

Over the next 6 months, the Committee made several requests for additional information including naturalization status, summaries of alien files, copies of signatures, and birthplace information. Of the more than 20 information requests the Committee made the INS completed only two of them within the time requested by the Committee. In fact, the INS's continued to deliver material to the Committee on the Friday after it had dismissed the contested election, a month after the Committee's deadline.

In total, the INS has produced 7,868 alien file summary worksheets.



U.S. Department of Justice

RECEIVED
97 MAR 27 AM 9:48
COMMITTEE ON
HOUSE OVERSIGHT

Washington, D.C. 20530

RB: 21606

March 24, 1997

The Honorable William M. Thomas
Chairman
Committee on House Oversight
U.S. House of Representatives
1309 Longworth Building
Washington, D.C. 20515

Re: In the Matter of the Contested Election of
Loretta Sanchez to the House of Representatives

Dear Mr. Chairman:

I am writing pursuant to 2 U.S.C. § 388(e) to request an extension of time in which to comply with and/or object to two separate subpoenas that were served by the Contestant, Robert K. Dornan, in the above-captioned matter. (Copies of the subpoenas are attached.) By order dated March 18, 1997, the United States District Court for the Central District of California directed that all issues raised by these subpoenas be directed to this Committee.

The first subpoena was directed to and served upon the Custodian of Records for the Los Angeles office of the Immigration and Naturalization Service (INS); the other was directed to and served upon the Custodian of Records for the United States District Court, Naturalization Division (Clerk of Court), in Los Angeles. Both subpoenas were served on March 19, 1997, and call for the voluminous production of documents as well as employee testimony. The return date for both subpoenas is March 24, 1997.

Each subpoena raises significant legal questions, including potential objections to the disclosure of privileged or other protected information. Because of the vast scope of the production requests and the very limited time (three business days) in which to review and consider the requests, the United States Department of Justice (DOJ), INS and the Clerk of Court have been unable to resolve the legal issues raised by these subpoenas. Further, even assuming resolution of the legal issues, because of the very broad scope of the production

requests, it would be impossible to comply with either subpoena by the return date.

In light of the significant issues presented by these subpoenas, DOJ counsel representing the subpoenaed individuals contacted counsel for the Contestant and asked if he would agree to continue the return date of the subpoenas for three weeks. Counsel did not agree to any extension. Given Contestant's position, we must formally object to responding to these subpoenas at this time, because they are unreasonable insofar as the return date is March 24, 1997.

Because INS and the Clerk of Court require more time to resolve the many issues raised by the extensive scope of these subpoenas, I respectfully request an extension of time of three weeks, until April 14, 1997, in which substantively to comply with and/or object to the subpoenas. The attorney with primary responsibility for these matters is Elizabeth Strange, who may be reached at (202) 514-4781.

Respectfully,

David J. Anderson
Director
Federal Programs Branch
Civil Division

Enclosures

cc: The Honorable Sam Gejdenson
Ranking Minority Member
William R. Hart, counsel for Contestant
(w/o enclosures)
The Honorable Gary L. Taylor

Issued by the
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
PURSUANT TO THE FEDERAL CONTESTED ELECTION ACT
2 USC 386, 388, 390 et seq.

COMMITTEE ON HOUSE OVERSIGHT
1309 Longworth Building
Washington, D.C. 20515

IN THE MATTER OF THE CONTESTED ELECTION OF LORETTA SANCHEZ TO THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES CONGRESS,

ROBERT K. DORNAN, Contestant

vs.

LORETTA SANCHEZ, Contestee.

SUBPOENA IN FEDERAL ELECTION CONTEST

CASE NUMBER: SACV 97-176-GLT

TO: Custodian of Records
Immigration and Naturalization Service
300 North Los Angeles Street, Room 8108
Los Angeles, CA 90012

☒ YOU ARE COMMANDED to appear at the place, date and time specified below to testify at the taking of a deposition in the above case:

PLACE OF DEPOSITION:		DATE AND TIME:
HART, KING & COLDREN 200 East Sandpointe, Suite 400 Santa Ana, California 92707	(714) 432-8700	March 24, 1997 2:00 p.m.

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date and time specified below:

SEE ATTACHMENT "A" FOR LIST OF DOCUMENTS.

PLACE:		DATE AND TIME:
HART, KING & COLDREN 200 East Sandpointe, Suite 400 Santa Ana, California 92707	(714) 432-8700	March 24, 1997 2:00 p.m.

Any organization not a party to this election contest that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify.

ISSUING OFFICER SIGNATURE AND TITLE:

The Honorable Gary L. Taylor
Judge of the United States Court,
Central District of California

ATTACHMENT "A"

1. The electronic data base and printed hard-copy record containing the names, addresses, dates of birth, place of birth, and alien number and/or social security number, for every person who filed a Form N-400 at the time they resided in Santa Ana, Anaheim, and/or Garden Grove, California, for the period January 1, 1995 to the present.

2. The electronic data base and printed hard-copy record containing the names, addresses, dates of birth, place of birth, and alien number and/or social security number, for every person who filed a late amnesty application at the time they resided in Santa Ana, Anaheim, and/or Garden Grove, California, for the period January 1, 1995 to the present.

3. The electronic data base and printed hard-copy record containing the names, addresses, dates of birth, place of birth, and alien number and/or social security number, for every person who was/is the holder of a green card or Form I-551 and was/is a resident of Santa Ana, Anaheim, and/or Garden Grove, California, for the period January 1, 1995 to the present.

4. The electronic data base and printed hard-copy record containing the names, addresses, dates of birth, place of birth, and alien number and/or social security number, for every person who filed a Form I-589 and was/is a resident of Santa Ana, Anaheim, and/or Garden Grove, California, for the period January 1, 1995 to

the present.

5. The electronic data base and printed hard-copy record containing the names, addresses, dates of birth, place of birth, and alien number and/or social security number, for every person who filed a ~~Form I-130~~ and was/is a resident of Santa Ana, Anaheim, and/or Garden Grove, California, for the period January 1, 1995 to the present.

6. The electronic data base and printed hard-copy record containing the names, addresses, dates of birth, place of birth, and alien number and/or social security number, for every person who filed a ~~Form I-130~~ and was/is a resident of Santa Ana, Anaheim, and/or Garden Grove, California, for the period January 1, 1995 to the present.

7. The electronic data base and printed hard-copy record containing the names, addresses, dates of birth, place of birth, and alien number and/or social security number, for every person who filed a ~~Form I-130~~ and was/is a resident of Santa Ana, Anaheim, and/or Garden Grove, California, for the period January 1, 1995 to the present.

8. The electronic data base and printed hard-copy record containing the names, addresses, dates of birth, place of birth, and alien number and/or social security number, for every person who was residing in Santa Ana, Anaheim, and/or Garden Grove,

California, and on whose behalf an application was filed by relatives for family preference visas for the period January 1, 1995 to the present.

9. The electronic data base and/or printed hard-copy record containing the names, addresses, dates of birth, place of birth, and alien number and/or social security number, for every person who applied for "unique non-immigrant status" for Mexican Nationals under NAFTA and was residing in Santa Ana, Anaheim, and/or Garden Grove, California, for the period January 1, 1995 to the present.

10. The electronic data base and printed hard-copy record containing the names, addresses, dates of birth, place of birth, and alien number and/or social security number, for every person who filed a Form G-325A and Form G-325B and was residing in Santa Ana, Anaheim, and/or Garden Grove, California, for the period January 1, 1995 to the present.

11. The electronic data base and printed hard-copy record containing the names, addresses, dates of birth, place of birth, and alien number and/or social security number, for every person who filed a Form N-426, and was residing in Santa Ana, Anaheim, and/or Garden Grove, California, for the period January 1, 1995 to the present.

12. The electronic data base and printed hard-copy record containing the names, addresses, dates of birth, place of birth,

and alien number and/or social security number, for every person who filed a [redacted] and was residing in Santa Ana, Anaheim, and/or Garden Grove, California, for the period January 1, 1995 to the present.

13. The electronic data base and printed hard-copy record containing the names, addresses, dates of birth, place of birth, and alien number and/or social security number, for every person who filed a [redacted] and was residing in Santa Ana, Anaheim, and/or Garden Grove, California, for the period January 1, 1995 to the present.

14. The electronic data base and printed hard-copy record containing the names, addresses, dates of birth, place of birth, and alien number and/or social security number, for every person who filed a [redacted] and was residing in Santa Ana, Anaheim, and/or Garden Grove, California, for the period January 1, 1995 to the present.

15. The electronic data base and printed hard-copy record containing the names, addresses, dates of birth, place of birth, and alien number and/or social security number, for every person who filed a [redacted] and was residing in Santa Ana, Anaheim, and/or Garden Grove, California, for the period January 1, 1995 to the present.

16. The electronic data base and printed hard-copy record

containing the names, addresses, dates of birth, place of birth, and alien number and/or social security number, for every person who filed a Form G-56 and was residing in Santa Ana, Anaheim, and/or Garden Grove, California, for the period January 1, 1995 to the present.

17. The electronic data base and printed hard-copy record containing the names, addresses, dates of birth, place of birth, and alien number and/or social security number, for every person who filed a Form I-151, and was residing in Santa Ana, Anaheim, and/or Garden Grove, California, for the period January 1, 1995 to the present.

18. The electronic data base and printed hard-copy record containing the names, addresses, dates of birth, place of birth, and alien number and/or social security number, for every person who filed a Form FD-258 and was residing in Santa Ana, Anaheim, and/or Garden Grove, California, for the period January 1, 1995 to the present.

19. The electronic data base and printed hard-copy record containing the names, addresses, dates of birth, place of birth, and alien number and/or social security number, for every person who filed a Form N-600 and was residing in Santa Ana, Anaheim, and/or Garden Grove, California, for the period January 1, 1995 to the present.

20. The electronic data base and printed hard-copy record containing the names, addresses, dates of birth, place of birth, and alien number and/or social security number, for every person who filed a Form N-565, and was residing in Santa Ana, Anaheim, and/or Garden Grove, California, for the period January 1, 1995 to the present.

21. The electronic data base and printed hard-copy record containing the names, addresses, dates of birth, place of birth, and alien number and/or social security number, for every person who filed a [redacted] and was residing in Santa Ana, Anaheim, and/or Garden Grove, California, for the period January 1, 1995 to the present.

22. The electronic data base and printed hard-copy record containing the names, addresses, dates of birth, place of birth, and alien number and/or social security number, for every person who filed a [redacted] H1 and H1B visas and was residing in Santa Ana, Anaheim, and/or Garden Grove, California, for the period January 1, 1995 to the present.

23. The electronic data base and printed hard-copy record containing the names, addresses, dates of birth, place of birth, and alien number and/or social security number, for every person who resided in Santa Ana, Anaheim, and/or Garden Grove, California, with respect to orders to show cause re: deportation for the period January 1, 1995 to the present.

24. The electronic data base and printed hard-copy record containing the names, addresses, dates of birth, place of birth, and alien number and/or social security number, for every person who resided in Santa Ana, Anaheim, and/or Garden Grove, California, with respect to notice of intent to reopen naturalization proceedings and to revoke naturalization for the period January 1, 1995 to the present.

25. The electronic data base and printed hard-copy record containing the names, addresses, dates of birth, place of birth, and alien number and/or social security number, for every person who resided in Santa Ana, Anaheim, and/or Garden Grove, California, with respect to INS electronic data base known as Naturalization Application Casework System (NACS) for the period January 1, 1995 to the present.

26. The electronic data base and printed hard-copy record containing the names, addresses, dates of birth, place of birth, and alien number and/or social security number, for every person who resided in Santa Ana, Anaheim, and/or Garden Grove, California, with respect to the INS electronic data base known as Naturalization Index Tracking System (NITS) for the period January 1, 1995 to the present.

27. The electronic data base and printed hard-copy record containing the names, addresses, dates of birth, place of birth, and alien number and/or social security number, for every person

who resided in Santa Ana, Anaheim, and/or Garden Grove, California, with respect to the INS electronic data base known as **Central Index System** (CIS) for the period January 1, 1995 to the present.

28. The electronic data base and printed hard-copy record containing the names, addresses, dates of birth, place of birth, and alien number and/or social security number, for every person who resided in Santa Ana, Anaheim, and/or Garden Grove, California, with respect to the INS electronic data base known as **Alien File Accountability and Control System** (AFACS) for the period January 1, 1995 to the present.

29. The electronic data base and printed hard-copy record containing the names, addresses, dates of birth, place of birth, and alien number and/or social security number, for every person who resided in Santa Ana, Anaheim, and/or Garden Grove, California, with respect to the INS electronic data base known as **Alien Status Verification Index** (ASVI) for the period January 1, 1995 to the present.

30. The electronic data base and printed hard-copy record containing the names, addresses, dates of birth, place of birth, and alien number and/or social security number, for every person who resided in Santa Ana, Anaheim, and/or Garden Grove, California, with respect to the INS electronic data base known as **Computer-Linked Application Management Information System** (CCAIMS) for the period January 1, 1995 to the present.

31. The electronic data base and printed hard-copy record containing the names, addresses, dates of birth, place of birth, and alien number and/or social security number, for every person who resided in Santa Ana, Anaheim, and/or Garden Grove, California, with respect to the INS electronic data base known as Office of Internal Audit System (OIAS) for the period January 1, 1995 to the present.

32. The electronic data base and printed hard-copy record containing the names, addresses, dates of birth, place of birth, and alien number and/or social security number, for every person who resided in Santa Ana, Anaheim, and/or Garden Grove, California, with respect to the INS electronic data base known as "deportable aliens" (DATS) for the period January 1, 1995 to the present.

33. Any other electronic data bases, containing the names, addresses, dates of birth, place of birth, and alien number and/or social security number, evidencing, substantiating or supporting the non-citizenship status of persons residing in Santa Ana, Anaheim and/or Garden Grove, California, for the period January 1, 1995 to the present.

34. List of all persons naturalized from January 1, 1996 to the present, along with the dates of naturalization who, at the time of naturalization, were residing in the cities of Santa Ana, Anaheim and/or Garden Grove, California.

Issued by the
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
PURSUANT TO THE FEDERAL CONTESTED ELECTION ACT
2 USC 386, 388, 390 et seq.

COMMITTEE ON HOUSE OVERSIGHT
1309 Longworth Building
Washington, D.C. 20515

IN THE MATTER OF THE CONTESTED ELECTION OF LORETTA SANCHEZ TO THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES CONGRESS,

ROBERT K. DORNAN, Contestant

vs.

LORETTA SANCHEZ, Contestee.

SUBPOENA IN FEDERAL ELECTION CONTEST

CASE NUMBER: SACV 97-176-GLT

TO: Custodian of Records
United States District Court
Naturalization Division
312 North Spring, Room G-8
Los Angeles, CA 90012

☒ YOU ARE COMMANDED to appear at the place, date and time specified below to testify at the taking of a deposition in the above case:

PLACE OF DEPOSITION:		DATE AND TIME:
HART, KING & COLDREN 200 East Sandpointe, Suite 400 Santa Ana, California 92707	(714) 432-8700	March 24, 1997 3:00 p.m.

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date and time specified below:

SEE ATTACHMENT "A" FOR LIST OF DOCUMENTS.

PLACE:		DATE AND TIME:
HART, KING & COLDREN 200 East Sandpointe, Suite 400 Santa Ana, California 92707	(714) 432-8700	March 24, 1997 3:00 p.m.

Any organization not a party to this election contest that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify.

ISSUING OFFICER SIGNATURE AND TITLE:

The Honorable Gary L. Taylor
Judge of the United States Court,

PROOF OF SERVICE

DATE: PLACE:

SERVED:

SERVED ON: MANNER OF SERVICE:

SERVED BY: TITLE:

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____
DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

2 USC §§ 388, 389, 390 provides, in summary:

(1) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises must appear in person at the place of inspection for deposition, hearing or trial.
(2) Service of the subpena shall be made upon the witness no later than three days before the day on which his attendance is directed. A subpena may be served by any person who is not a party to the contested election case and is not less than eighteen years of age. Service of a subpena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering to him the fee for one day's attendance and the mileage allowed by section 10 [2 USC § 389]. Written proof of service shall be made under oath by the person making same and shall be filed with the Clerk.
(3) A witness may be required to attend an examination only in the county wherein he resides or is employed, or transacts his business in person, or is served with a subpena, or within forty miles of the place of service.
(4) Every subpena shall state the name and title of the officer issuing same and the title of the contested election case, and shall command each person to whom it is directed to attend and give testimony at a time and place and before an officer specified therein.
(5) A subpena may also command the person to whom it is directed to produce the books, papers, documents, or other tangible things designated therein, but the committee, upon motion promptly made to the Committee on House Oversight, U.S. House of Representatives, Washington, D.C., and in any event at or before the time specified in the subpena for compliance therewith, may (1) quash or modify the subpena if it is unreasonable or oppressive, or (2) condition denial of the motion upon the advancement by the party in whose behalf the subpena is issued of the reasonable cost of producing the books, papers, documents, or tangible things. In the case of public records or documents, copies thereof, certified by the person having official custody thereof, may be produced in lieu of the originals.
(6) Witnesses whose depositions are taken shall be entitled to receive from the party at whose instance the witness appeared the same fees and travel allowance paid to witnesses subpoenaed to appear before the House of Representatives or its committees.
(7) Every person who, having been subpoenaed as a witness under this Act to give testimony or to produce documents, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the contested election case, shall be deemed guilty of a misdemeanor punishable by fine of not more than $1,000 nor less than $100 or imprisonment for not less than one month nor more than twelve months, or both.

ATTACHMENT "A"

All documents including, but not limited to, in printed hard copy and/or in an electronic computer data format, that contain the name, address, date of birth, and/or date of naturalization of all persons who have become naturalized United States citizens in your district until October 1, 1994.

WILLIAM M. THOMAS, CALIFORNIA,
CHAIRMAN

ROBERT W. NEY, OHIO
JOHN A. BOEHNER, OHIO
VERNON J. EHLERS, MICHIGAN
KAY GRANGER, TEXAS

SAM GEJDENSON, CONNECTICUT,
RANKING MINORITY MEMBER

STENY H. HOYER, MARYLAND
CAROLYN CHEEKS KILPATRICK, MICHIGAN

STACY CARLSON,
STAFF DIRECTOR
ROBERT J. BASKIN,
MINORITY STAFF DIRECTOR

Congress of the United States
House of Representatives
COMMITTEE ON HOUSE OVERSIGHT
1309 LONGWORTH HOUSE OFFICE BUILDING
(202) 225-8281
Washington, DC 20515-6250

April 24, 1997

Commissioner Doris M. Meissner,
Immigration and Naturalization Service
Chester Arthur Building, Room 7100
425 I Street, N.W.
Washington, D.C. 20536

Dear Commissioner Meissner:

As you may be aware, the Committee on House Oversight is currently in the process of judging the merits of an election contest in the 46th Congressional District of California. The U.S. House of Representatives has the Constitutional responsibility for judging the elections, returns and qualifications of its own Members under Article I, Section 5 of the U.S. Constitution. This authority has been specifically delegated to the Committee on House Oversight.

The California Secretary of State and the District Attorney for Orange County, California are currently conducting a criminal investigation into voter fraud in the 46th District. On March 14, 1997, you received a request from California Secretary of State Bill Jones for a review and comparison of the Orange County voter file with the relevant Immigration and Naturalization Service databases to assist in determining how many non-citizens may have illegally registered and voted in the November 1996 general election.

The Secretary of State has testified at our committee hearing in Orange County on April 19, 1997 that his investigation has revealed over 300 instances where non-citizens illegally registered and cast ballots in the 46th Congressional District in the November 1996 elections. The Secretary of State testified that he believes there may well be other non-citizens who have illegally registered and/or voted in the 46th District and in Orange County. Such widespread election fraud could have affected the outcome of the November 1996 election for Congress.

The Secretary of State has provided you with access to a computer extract of the voter registration records for Orange County and asked you to compare the identifying information pertaining to every person registered to vote in Orange County with the identifying information contained in the INS Central Index System and subsystems. The Secretary of State has asked you to provide him with those individual voter registration records that your information indicates were non-citizens at the time they registered to vote.

As agreed to between the INS and the Secretary of State, those records identified would contain a naturalization date after the date of voter registration or would indicate that an individual had not been naturalized at the time of the comparison.

In order to properly complete our Constitutionally mandated investigation of the election contest in the 46th Congressional District of California, the Committee on House Oversight requires information that can be obtained through an Immigration and Naturalization Service computerized comparison between the identifying information pertaining to registered voters in the Orange County voter registration file and the identifying information of persons whose records are included in INS's Central Index System and subsystems, including SDSC, RAPS, DACS, NACS and any other pertinent databases.

The Committee on House Oversight therefore requests that the INS compare the identifying information pertaining to every person registered to vote in Orange County with the identifying information contained in the Central Index System and its subsystems and provide us with a list of persons whose names appear on INS's Central Index System and its subsystems as non-citizens at the time they registered to vote.

The Committee is aware of the difficulties that may be involved with identifying residents of only one congressional district. The 46th District boundaries do not precisely match the boundaries of zip codes, cities, or other political subdivisions. Because the 46th District is located entirely within Orange County, the Committee requests that the INS provide in its report to the Committee the number and identity of persons throughout Orange County, who were not citizens of the United States at the time they registered to vote for the November 1996 election, as based on your records.

I appreciate your cooperation in assisting the House fulfill its Constitutional duties. Please respond no later than Thursday, May 1.

If you have any questions, please contact Roman Buhler, Counsel at the Committee on House Oversight at 202-225-8281.

Best regards,

Bill Thomas
Chairman

cc: Attorney General Janet Reno
CA Secretary of State Bill Jones
Orange County District Attorney Michael Capizzi

WMT/rbn

WILLIAM M. THOMAS, CALIFORNIA,
CHAIRMAN

ROBERT W. NEY, OHIO
JOHN A. BOEHNER, OHIO
VERNON J. EHLERS, MICHIGAN
KAY GRANGER, TEXAS

SAM GEJDENSON, CONNECTICUT,
RANKING MINORITY MEMBER

STENY H. HOYER, MARYLAND
CAROLYN CHEEKS KILPATRICK, MICHIGAN

STACY CARLSON,
STAFF DIRECTOR
ROBERT J. BARON,
MINORITY STAFF DIRECTOR

Congress of the United States

House of Representatives

COMMITTEE ON HOUSE OVERSIGHT
1309 LONGWORTH HOUSE OFFICE BUILDING
(202) 225-6281
Washington, DC 20515-6219

April 30, 1997

Attorney General Janet Reno
Department of Justice
Main Justice Building, Room 5111
10th & Constitution Avenue, N.W.
Washington, DC 20530

Commissioner Doris M. Meissner
Immigration and Naturalization Service
Chester Arthur Building, Room 7100
425 "I" Street, N.W.
Washington, DC 20536

Dear Madame Attorney General and Commissioner Meissner:

By letter dated April 24, 1997, the Chairman of the Committee on House Oversight ("Committee") asked the Immigration and Naturalization Service ("INS") to compare the voter registration list for Orange County, California with all "pertinent" INS databases, and to provide the Committee with "a list of persons whose names appear on the INS' Central Index System and its subsystems as non-citizens at the time they registered to vote." The Chairman stated that the Committee required this information in connection with its consideration of the contested election in the 46th district of California.

INS records were the subject of substantial discussion during a recent field hearing held by the Task Force considering the election contest in the 46th district. For example, questions were raised whether INS records provide an accurate or reliable basis to determine eligibility to vote. Questions also were raised regarding the burden and expense that the INS would incur in conducting a record review of the sort requested by the Chairman. Finally, it was suggested that privacy concerns – such as those embodied in the Privacy Act, the Immigration Reform and Control Act of 1986 and INS regulations – may affect the INS' ability to provide the sort of information requested by the Chairman.

During his testimony at the field hearing, INS District Director Richard Rogers stated that questions regarding requests for INS records should be directed to national INS officials. Accordingly, we have several questions regarding the Chairman's request.

1. Does the information contained in INS databases provide an accurate basis to determine whether an individual is an American citizen? How can the INS ensure that it will not identify American citizens as noncitizens?

2. Are all INS records contained in electronic databases? Is there any practical way to access information that is not contained in electronic databases?

3. Are INS records up-to-date? How long does it take the INS to transfer new information from paper records to an electronic database?

4. How far back in time do INS records reach? If an individual was naturalized earlier than INS records reach, how can the INS determine whether that individual is a citizen?

5. Do INS records contain information regarding individuals who were born overseas, but whose parents were American citizens? If not, how can the INS determine whether an individual who was born overseas but does not appear in INS records is a citizen?

6. Are there cultural groups whose naming practices create particular inaccuracies in INS records. For example, Vietnamese-Americans may state their family names before their given names. Similarly, Hispanic-Americans may use both their father's family name and their mother's family name. How can the INS ensure that it provides accurate information in such circumstances?

7. Are INS databases updated to reflect name changes? For example, if a woman is naturalized under her maiden name and changes her name upon marriage, would INS records reflect this change?

8. Does the INS normally maintain information in the form requested by the Chairman or would special efforts be required to obtain the information he requested? In either event, what steps would be necessary to comply with the Chairman's request? For example, would it be necessary to write new computer programs? Would it be necessary to review files by hand?

9. How much would it cost the INS to extract the information requested by the Chairman? Please include personnel costs in your answer. Also, does the INS have funds allocated for these costs, or would the INS be forced to divert funds from other uses? Could INS employees perform the work, or would INS need to employ outside consultants?

10. How long would it take to compare the Orange County voter registration list with INS records in a manner that ensures sufficient accuracy for the comparison to prove useful?

11. What steps can the INS take to protect the privacy of individuals whose names appear in INS databases? Would providing the information to the Committee be tantamount to public release of the information?

12. Is this request duplicative of other requests? In this regard, please identify all pending requests for the INS to review voter registration records and provide copies of all correspondence documenting those requests.

Thank you for you assistance with this matter. If you have any questions, please contact James Portnoy, General Counsel to the Minority of the Committee on House Oversight at (202) 225-2061. We look forward to hearing from you at your earliest convenience.

Sincerely,

Sam Gejdenson
Ranking Member,
Committee on House Oversight

Steny H. Hoyer
Ranking Member,
Task Force on the Contested
Election in the 46th District of
California

U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

May 1, 1997

Honorable William M. Thomas
Chairman, Committee on House Oversight
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter will confirm a conversation between members of our staffs earlier today and respond to your letter to Immigration and Naturalization Service (INS) Commissioner Doris Meissner in which you requested certain information about the approximately 1.3 million registered voters in Orange County, California. As our staffs discussed, we will be prepared to inform you within the next two weeks of the extent to which reliable and responsive information exists in INS databases and whether, when, and in what form INS will be able to retrieve and provide to you such information.

The INS has already assisted the District Attorney of Orange County in his criminal investigation of allegations of voter fraud associated with the November 1996 general election. The INS responded to a request to analyze identifying information on 1,160 registered voters who were assisted in registration by a single organization and provided information to California officials on whether these individuals were naturalized citizens, whether they had not become citizens, and whether INS lacked records on these individuals. The INS also has been in contact with the California Secretary of State regarding a similar request.

In order to help the INS provide responsive information in this regard and recognizing your particular jurisdiction relating to the recent 46th Congressional District election in California, we would like your views on refining the Committee's request to information regarding individuals who were registered in the 46th Congressional District and who voted in the November 1996 general election. In addition, we would like to know whether the Committee's request for information pertains to the identity of persons who, as described in the eighth paragraph of your letter, "registered to vote for the November 1996 election" or to all voters.

This information will help us determine the number of individuals whose files will need to be checked to provide you the most reliable information possible. The breadth of your request is a significant factor in our ability to evaluate the time and resources necessary to provide you responsive and reliable information. As you may know, INS databases are not organized for this purpose and there are inherent limitations on their use to match against lists of registered voters. For example, with only two common identifiers--name and date of birth--there is a potential for false "matches" and duplicate matches for a single registered voter. Also, the INS does not typically update files of individuals after they are naturalized. Thus, a woman who naturalizes and later changes her name because of marriage and registers to vote under the married name would not show up in the INS database under the married name. In addition, automated databases do not necessarily contain records pertaining to individuals who naturalized prior to 1973. Therefore, records of long-time naturalized citizens would not necessarily be easily retrievable from INS databases. Finally, the INS does not, of course, maintain records on native-born United States citizens.

Let me again assure you of our intention to be responsive and helpful to your inquiry. Any guidance you can provide with regard to the parameters of your request and the use of the data will assist us in providing accurate, appropriate and reliable information.

Sincerely,

Andrew Fois
Assistant Attorney General

cc: Honorable Sam Gejdenson
Ranking Minority Member

SUBPOENA 1 **Subpena Duces Tecum**

By Authority of the House of Representatives of the Congress of the United States of America

To Doris Meissner, Commissioner, INS

You are hereby commanded to produce the things identified on the attached schedule before the ..... Committee on House Oversight of the House of Representatives of the United States, of which the Hon. Bill Thomas ..... is chairman, by producing such things in Room 1309 of the Longworth House Office Building ....., in the city of Washington, on Wednesday, May 21, 1997, at the hour of 12:00 Noon

To U.S. Marshall (or any staff member of the Committee on House Oversight) to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 14 day of May 19 97

William M. Thomas
Chairman.

Attest:

Robin H. Carle
Clerk.

Subpena for.....

Doris Meissner, Commissioner, INS

before the Committee on the.....

House Oversight

Served.....

.....House of Representatives

GPO: 1991 42-417 (m)

SUBPOENA 1

Attachment A

Instructions

1. The INS' response to this subpoena shall include all information within the INS' possession, custody or control including, but not limited to, information in the possession, custody or control of any of INS' current or past servants, employees, agents, attorneys, or other representatives. In complying with this subpoena, the INS is also required to produce information that it has a legal right to obtain, to copy or have access to, and information placed in the temporary possession, custody or control of any third party.

2. If any responsive information has been destroyed or lost, set forth the content of such information, the date such information was destroyed or lost and, if destroyed, the procedures and authority under which it was destroyed, and the identity of the last known custodian of such information prior to its destruction.

3. To the extent that no single document exists or is in the possession, custody or control, of the INS that contains all or part of the information sought, the INS should provide such other documents in its possession, custody or control which are sufficient to show, compute, compile, or explain all of the information sought in the request or as much information as is available.

4. This subpoena requests that the INS use its best efforts to provide the most complete information responsive to this request. If this subpoena cannot be complied with in full, it shall be complied with to the extent possible, which shall include an explanation of why full compliance is not possible.

5. The voter registration list for Orange County, California was provided to the INS by the Office of the Secretary of State for California. As a convenience, the voter registration list has been enclosed with this subpoena. Either copy of the voter registration list may be used for matching purposes.

6. Along with the list requested, this subpoena requires the INS to produce the technical specifications used to derive the list, including, but not limited to:
    a) the storage medium (i.e. 9-track, floppy diskette);
    b) whether the file was compressed;
    c) data specification format (i.e. IBM Standard Label or other);
    d) character format (EBCDIC, ASCII or other);
    e) file type (fixed length or variable length); and
    f) blocking factor.

7. Along with the list requested, this subpoena requires the INS to produce the protocol used to derive the list, including but not limited to:
    a) record layout;
        1) beginning and ending position of each data element in the system;
        2) each data element's width; and
        3) each data element's type (i.e. character, numeric with sign embedded, or alphanumeric);

b) name and phone number of agency official (s) responsible for creating and providing the list;
c) file name (data set name);
d) total number of records in the file; and
e) control totals for important numeric fields.

8. It shall not be a basis for refusal to respond to this subpoena that any other person or entity also possesses the information requested.

9. If any information responsive to this subpoena was, but no longer is, in the possession, custody or control of the INS, identify the information and explain the circumstances by which the information ceased to be in the possession, custody, or control of the INS.

10. If the relevant INS databases described are not accurate, but the actual relevant INS databases are known or are otherwise apparent from the context of the request, production is required of all responsive information notwithstanding the error.

11. The INS is under a continuing obligation to promptly provide additional information responsive to this subpoena.

Definitions

1. "Relevant INS databases" means the electronic databases entitled or known as CIS (Central Indexing System), CLAIMS (Computer Linked Application Information Management System), DACS (Deportable Alien Control System), ENFORCE (Enforce), NACS (Naturalization Casework System), RAPS (Refugees, Asylum and Parole System), STSC (Students and Schools System), and NAILS (National Automated Immigration Lookout System).

2. "INS" means the Immigration and Naturalization Service.

3. "Electronic format" means a format which can be accessed via computer.

4. "Identifying information" means: date of birth, street address (es), gender, phone number, alien registration number, date of naturalization.

5. A "match" occurs when the surname and date of birth of a person on the INS database corresponds to the surname and date of birth of a person on the Orange County, California voter registration file. A "match" also occurs when the surname without prefixes (e.g., deletion of "van der" in "van der Meer") and date of birth of a person on the INS database corresponds to the surname without prefixes and date of birth of a person on the Orange County, California voter registration file.

6. "Full name" means first name, middle initial and surname.

7. "Information" means all documents, records, summaries, files or other materials responsive to this subpoena.

Requests

1. Produce in an electronic format a copy of each electronic record sufficient to show, for each person in the relevant INS database (a) whose surname and date-of-birth matches the surname and date-of-birth of any person on the Orange County, California voter registration list and (b) whose record does not show a naturalization date or shows a naturalization date later than the date of that person's voter registration, the following information: full name and available identifying information.

SUBPOENA 2

Subpena Duces Tecum

By Authority of the House of Representatives of the Congress of the United States of America

To Doris Meissner, Commissioner, INS

You are hereby commanded to produce the things identified on the attached schedule before the ..... Committee on House Oversight ..... of the House of Representatives of the United States, of which the Hon. Bill Thomas ..... is chairman, by producing such things in Room 1309 of the Longworth House Office Building ....., in the city of Washington, on Wednesday, May 21, 1997, at the hour of 12:00 Noon

To U.S. Marshall (or any staff member of the Committee on House Oversight) to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 14 day of May, 19 97.

William M. Thomas
Chairman.

Attest:

Robin H. Carle
Clerk.

Subpena for.....

Doris Meissner, Commissioner, INS

before the Committee on the.....

House Oversight

Served.....

.....House of Representatives

GPO: 1991 42-417 (m)

SUBPOENA 2

Attachment A

Instructions

1. The INS' response to this subpoena shall include all information within the INS' possession, custody or control including, but not limited to, information in the possession, custody or control of any of INS' current or past servants, employees, agents, attorneys, or other representatives. In complying with this subpoena, the INS is also required to produce information that it has a legal right to obtain, to copy or have access to, and information placed in the temporary possession, custody or control of any third party.

2. If any responsive information has been destroyed or lost, set forth the content of such information, the date such information was destroyed or lost and, if destroyed, the procedures and authority under which it was destroyed, and the identity of the last known custodian of such information prior to its destruction.

3. To the extent that no single document exists or is in the possession, custody or control, of the INS that contains all or part of the information sought, the INS should provide such other documents in its possession, custody or control which are sufficient to show, compute, compile, or explain all of the information sought in the request or as much information as is available.

4. This subpoena requests that the INS use its best efforts to provide the most complete information responsive to this request. If this subpoena cannot be complied with in full, it shall be complied with to the extent possible, which shall include an explanation of why full compliance is not possible.

5. This subpoena requires the INS to produce the technical specifications used to respond to this request, including, but not limited to:
   a) the storage medium (i.e. 9-track, floppy diskette);
   b) whether the file was compressed;
   c) data specification format (i.e. IBM Standard Label or other);
   d) character format (EBCDIC, ASCII or other);
   e) file type (fixed length or variable length); and
   f) blocking factor.

6. This subpoena requires the INS to produce the protocol used to respond to this request, including, but not limited to:
   a) record layout;
      1) beginning and ending position of each data element in the system;
      2) each data element's width; and
      3) each data element's type (i.e. character, numeric with sign embedded, or alphanumeric);
   b) name and phone number of agency official (s) responsible for creating and providing the list;
   c) file name (data set name);
   d) total number of records in the file; and
   e) control totals for important numeric fields.

7. It shall not be a basis for refusal to respond to this subpoena that any other person or entity also possesses the information requested.

8. If any information responsive to this subpoena was, but no longer is, in the possession, custody or control of the INS, identify the information and explain the circumstances by which the information ceased to be in the possession, custody, or control of the INS.

9. If the relevant INS databases described are not accurate, but the actual relevant INS databases are known or are otherwise apparent from the context of the request, production is required of all responsive information notwithstanding the error.

10. The INS is under a continuing obligation to promptly provide additional information responsive to this subpoena.

Definitions

1. "Relevant INS databases" means the electronic databases entitled or known as CIS (Central Indexing System), CLAIMS (Computer Linked Application Information Management System), DACS (Deportable Alien Control System), ENFORCE (Enforce), NACS (Naturalization Casework System), RAPS (Refugees, Asylum and Parole System), STSC (Students and Schools System), and NAILS (National Automated Immigration Lookout System).

2. "INS" means the Immigration and Naturalization Service.

3. "Electronic format" means a format which can be accessed via computer.

4. "Identifying information" means: date of birth, street address (es), gender, phone number, alien registration number, date of naturalization.

5. "Full name" means first name, middle initial and surname.

6. "Date of last recorded update to record" means the most recent date that the INS made updates to the file.

7. "Information" means all documents, records, summaries, files, or other materials responsive to this subpoena.

Requests

1. Produce in an electronic format a copy of each electronic record sufficient to show, for each person in the relevant INS databases, the following information: full name, available identifying information, date of last recorded update to record, and relevant INS database(s) in which the person appeared.

U.S. Department of Justice
Immigration and Naturalization Service

Office of the Commissioner

425 I Street NW.
Washington, DC 20536

RECEIVED
97 MAY 21 PM 12:03
HOUSE OVERSIGHT

The Honorable William C. Thomas
Chairman, Committee on House Oversight
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter and the tape being sent with it constitute the initial response of the Immigration and Naturalization Service (INS) to the subpoenas of the Committee on House Oversight dated May 14. As Assistant Attorney General Fois of the Department of Justice stated in his letter to you of May 14, we would welcome the opportunity to meet with you or your staff to discuss how INS can best assist the Committee with reliable and complete information on a timely basis that will be useful in its inquiry. We are complying with the Committee's subpoena, but feel compelled to reiterate that the information produced in accordance with the instructions in Subpoena 1 is overbroad and not likely to lead to reliable information in a timely fashion.

As requested in Subpoena 1, enclosed is a tape produced by INS with 504,572 names and the available "identifying information" for each person in specified INS databases whose surname and date of birth are the same as those of a person recorded in the voter registration file for Orange County, California and who either did not show a date of naturalization or showed a naturalization date after the Orange County registrant's date of voter registration. It cannot be determined by such a cross-check that a particular INS record pertains to any individual who registered to vote in Orange County. This initial response is based on a comparison of Orange County records with INS's Central Index System (CIS) and Naturalization Automated Casework System (NACS). A technical description of the tape is attached.

We emphasize to the Committee that, in light of the methodology employed -- conducting matches based only on name and date of birth -- and the organization of INS's databases, the data on these tapes do not represent the number of illegal voters or registrants in Orange County, nor should it be inferred that any particular named individual on this tape has voted or registered to vote illegally. In fact, matches may occur with individuals who reside outside the county or the state of California. Since INS data have been assembled in many places over many years in different formats, a simple electronic match will not produce completely reliable information. Accordingly, we appreciate the assurances in your February 27 letter to Assistant Attorney General Colgate about not making the names of individuals identified through this type of cross-checking process available to the public, press, or interested parties. We believe that this information should be handled with the utmost confidentiality to avoid violating the privacy and tainting the name or reputation of native-born and naturalized United States citizens who have done nothing wrong. It is vital that the

use of this information not chill the lawful exercise of treasured voting rights of any American, including newly naturalized citizens.

California's records do not enable INS to conduct its initial cross-check in the manner usually employed in our verification programs (eligibility for benefits and employment authorization pilots), which ordinarily begin with a unique identifier, the alien registration number. The California voting rolls also do not differentiate between native- and foreign-born individuals, and, in some instances, the date of birth is missing. Cross-checking against INS's automated databases based on the common identifiers provided by California -- name and date of birth -- certainly yields a substantial number of false matches, including many duplicates.

For example, as you know, native-born U.S. citizens do not appear in INS records. Any such citizens, however, who have registered to vote in Orange County may be placed on the "match" list if they share a surname and date of birth with a non-citizen whose records appear in CIS or NACS. The same is true for naturalized citizens registered to vote in Orange County. Because Subpoena 1 instructs INS to report only those records without a naturalization date or showing a naturalization date after the date of registration, INS dropped from the tape being produced 146,271 matched records showing timely naturalization. This instruction reduces the opportunities to recognize false matches. Assume that 10 matches result from a single name on the Orange County voter rolls, with 5 showing naturalization before the date of voter registration and 5 showing a later date of naturalization or none at all. Pursuant to the instructions, INS would have omitted from its response to the Committee the 5 records of individuals who had in fact naturalized in time. Yet, one of these omitted records could actually correspond to the person who registered to vote in Orange County. Or, it could be that none of the 10 identified INS records corresponds to the person on the Orange County list because the Orange County voter was born in the United States. Such a "matched" individual may unfairly be placed under suspicion as an unauthorized voter, and further electronic analysis of the data set being provided to the Committee often will not allow it to identify such errors.

For the records it has identified, INS is providing the full name and the following available "identifying information": date of birth, gender, alien registration number, and date of naturalization (where such a date has been identified). CIS does not include street addresses, while NACS has addresses for some of the persons in that database. Wherever available (a small portion of the list), addresses are provided on the enclosed tape. CIS and NACS do not include telephone numbers, so they cannot be provided based upon this electronic match.

As the Committee is aware, the information that can be provided by INS may also be under-inclusive for the Committee's purposes. INS will not have a record on an alien who entered the United States without inspection and who has never had contact with INS. Nor will an electronic match appear if an individual fraudulently registers to vote in California, such as by using a false name or date of birth.

INS is able to respond to the subpoena with respect to CIS and NACS within the one-week time frame specified because of the efforts already expended in working with these databases while assessing our ability to respond to the earlier requests for similar information from the California Secretary of State and from the Committee in its April 24 letter. Searching the other INS databases covered by the subpoena will require more time and will, in some instances, affect INS's ability to perform its normal operations. We note, however, that the records contained in the Refugees, Asylum and Parole System (RAPS), the Deportable Aliens Control System (DACS), and the Computer-Linked Application Management Information System (CLAIMS) are largely duplicative of records found in CIS. INS therefore anticipates that relatively few additional people will be identified by the comparison with these additional databases. Two other databases identified in the subpoena, the Student and Schools System (STSC) and ENFORCE, are likely to be of limited utility. STSC includes the names of foreign students who have applied for admission to schools in the United States, but does not reflect whether those students ever actually entered this country or, if so, whether they remain here. ENFORCE is a small, prototype system, and it is currently deployed on a limited basis in El Paso. The National Automated Immigration Lookout System (NAILS) contains particularly sensitive law enforcement information, including, for example, information on suspected terrorists, which is closely held between INS and other federal agencies. We strongly believe providing a tape based on a match against this database would yield little useful information and would risk compromising highly sensitive information. INS would appreciate the opportunity to meet with Committee staff before proceeding with further searches of these additional databases.

In addition to complying with this subpoena and as you requested in your February 27 letter, INS has been cooperating for the last several months with California state officials who are investigating possible voting fraud. At the request of the Orange County District Attorney's office, INS's Los Angeles District office reviewed INS records to determine the immigration status of 1,160 individuals to assist the Office in identifying possibly ineligible voters. The initial response was provided in early January. There are several additional requests outstanding, and INS and other Department personnel held two meetings with state officials last week, one in Los Angeles and one in Sacramento, to discuss next steps and to identify the best methods of providing reliable information on a timely basis while taking legitimate privacy and civil rights concerns into account. This has been a highly cooperative process, and we are making progress in refining these requests to best advance their law enforcement needs.

The Department of Justice remains committed to working with the Committee in its important effort to carry out the House's constitutional responsibility to judge the elections of its Members and to fulfill its oversight responsibilities. We have suggested in earlier correspondence alternatives that would provide the Committee with useful information on a timely basis, giving due weight to the privacy interests and voting rights concerns of United States citizens. The most effective techniques involve comparison with both automated and paper files. Because the paper file review process is labor-intensive and time-consuming, it is important to narrow the search as much as possible. I am concerned that such file review not divert INS personnel any more than necessary from their core functions to enforce the nation's immigration laws.

We have concentrated our efforts to date on compliance with Subpoena 1. A Committee press release dated May 16 suggests that Subpoena 1 and Subpoena 2 are alternatives. We seek clarification of the Committee's position in light of the information now being provided.

We look forward to meeting at your earliest convenience to discuss further steps. Please feel free to contact Faith Burton at 514-1653 to make arrangements.

Sincerely,

Doris Meissner
Commissioner

cc: The Honorable Sam Gejdenson
Ranking Minority Member

Description of Matching Process

To accomplish the requested matching of Orange County California registered voters with INS data, INS reformatted the Orange County registration file to prepare the names for matching purposes. In the first processing step, INS removed special characters, titles and middle names from the provided data and separated first and last names.

INS subsequently performed a second processing step on the Orange County data. As required by the subpoena request, INS removed prefixes (hereinafter "particles") from the surnames. If a name on the Orange County California master file contained a particle that matched a particle identified in the INS standard particle table (attached), a new record was created with all particles removed from the last name; this new record was thereafter appended to the reformatted original file. This process caused the number of names used for searching to change from the original **1,275,757** to **1,307,522**, or an increase of 31,765 additional records containing names with particles removed.

On April 24, 1997, extracts of records from NACS and CIS were performed to create data sets for matching which contained all naturalization information. In this retrieval process a June 1993 Naturalization archive tape encountered a read error and 85,120 naturalizations records on that tape were not able to be "un-archived." However, 71,401 records were found on the CIS naturalization file data and recovered as naturalizations. This left 13,719 records either naturalized, closed or denied. INS is still working on trying to recover the data from that tape. The CIS master file contained 13,094 of these records with a previous status, but contained no status information regarding the remaining 625 records.

Additionally, an update extract of all persons on the CIS was run by INS on May 12, 1997. To ensure a complete universe of INS data for matching, the NACS & CIS data records were assembled into a master file containing **41,053,529** records. As detailed above, the status of **13,719** of these records is still being worked on from the damaged tape.

Both the Orange County California and CIS/NACS master files were sorted by last name and date of birth prior to the matching step.

The matching step used the Orange County California master file as the primary match input file and the CIS/NACS master file as the secondary match input file. Each matched record found on the secondary input file was written to the output file. Each record written contained an "echo back" of the Orange County California record followed by the appropriate data fields that were requested and available.

This match resulted in a file of **650,843** matched records. Again this file was reduced by removing records that were naturalized prior to their registration date, leaving those that were either naturalized after registration or never known to be naturalized. The resulting file, which is being provided to the Committee today, contains **504,572** records.

Tape for the California matches to the CIS and NACS systems by Last Name and Date of Birth

Tape Numbers : W07231

Record Count : 504,572

Tape Specs : 3490 cartridge, non-compressed, non-labeled, record length of 427, block size of 26474

Layout : Positions 1 thru 251 contain the data sent by the State of California
Positions 252 thru 355 contain the CIS/NACS corresponding data
Positions 356 thru 427 contain the address data from NACS.

California Data

Length	Element Name
2	County Code
1	Update code
8	Affidavit Number
1	Gender code
25	Last Name
25	First Name
1	Middle Initial
40	Residence Address
15	Residence City
5	Residence Zip Code
1	Party Code
8	Precinct
6	Registration Date (Year Month Day)
6	Birth Date (Year Month Day)
2	Assembly District
2	Senatorial District
2	Congressional District
58	Mailing Address
24	Mailing City and Country
2	Mailing State
5	Mailing Zip Code
1	Language Preference
11	Filler

CIS/NACS Data

Length	Element Name
9	Alien Number
6	Naturalization Date (Year Month Day)
30	Last Name
25	First Name
25	Middle Name
8	Filler
1	Gender
72	Address Data

The original names were left in tact for name checking. If a name contained a particle that was in the following Particle Table, a new record was created with all particles removed from the name.

The following is a list of Particles that were removed from the names:

A	DELAS	G	M	VANDE
ABD	DELL	H	MAC	VANDEN
ABU	DELLA	I	MC	VANDER
ABUL	DELLI	II	N	VD
AL	DELLO	III	O	VDA
ALI	DELOS	IBN	P	VDADE
B	DEN	J	Q	VER
BAR	DER	JEAN	R	VIUDA
BEN	DES	JR	S	VON
BON	DI	K	SAN	VONDE
C	DO	L	SR	VONDEN
D	DON	LA	ST	VONDER
DA	DONNA	LAS	STA	W
DAL	DOS	LE	STE	X
DAS	DU	LES	T	Y
DE	E	LI	U	Z
DEL	EL	LO	V	
DELA	F	LOS	VAN	

U.S. Department of Justice
Immigration and Naturalization Service

Office of the Commissioner

425 I Street NW.
Washington, DC 20536

MAY 21 1997

The Honorable Steny H. Hoyer
Ranking Member,
Task Force on the Contested Election in the
46th District of California
U.S. House of Representatives
Washington, D. C. 20515

Dear Congressman Hoyer:

This responds to your letter of April 30 concerning the request of Chairman Thomas for the Immigration and Naturalization Service (INS) to compare the voter registration list for Orange County, California, with certain INS databases and to provide the Committee on House Oversight with a list of persons who appear as non-citizens at the time they registered to vote. As you know, INS was also served with a subpoena from the Committee on May 14 for substantially the same information, with a return date of May 21.

With respect to your specific questions, we are pleased to provide the following information.

1. **Does the information contained in INS databases provide an accurate basis to determine whether an individual is an American citizen? How can the INS ensure that it will not identify American citizens as noncitizens?**

With only two common identifiers between the California records and INS's automated databases -- name and date of birth -- an electronic comparison alone does not provide an accurate basis to determine whether an individual who is registered to vote in Orange County is an American citizen. Using only this methodology -- which the Committee's subpoena requires -- we are certain to generate many "matches" of U.S. citizens listed on the Orange County voter rolls with non-citizens in INS databases.

For a point of comparison, in its existing verification program for benefit applicants (SAVE) and in its employment pilots, INS increases the reliability and validity of its responses in two ways: (i) a unique identifier, the alien registration number, instead of name and date of birth, is used as the basis for matching, and (ii) an INS employee performs an individualized, follow-up verification if the electronic step does not produce a sufficient match. These quality assurance features cannot be adopted in this context given the limitations of the California voter list and the sheer volume of records.

2. Are all INS records contained in electronic databases? Is there any practical way to access information that is not contained in electronic databases?

No. INS also maintains paper files and microfilm and microfiche records. These sources must be searched by hand, and such searches are labor-intensive and time-consuming.

3. Are INS records up-to-date? How long does it take the INS to transfer new information from paper records to an electronic database?

There is processing time between the date of naturalization and the time that information is reflected in INS's automated databases. This period varies for different INS offices, depending on workload, degree of automation, and data processing backlog. Information concerning an individual's naturalization may not be entered into INS database systems for as long as six months after the naturalization has occurred.

4. How far back in time do INS records reach? If an individual was naturalized earlier than INS records reach, how can the INS determine whether that individual is a citizen?

The time period covered by INS's automated databases varies for different systems. INS's main database, the Central Index System (CIS), generally has records back to 1973. INS's naturalization database, the Naturalization Automated Casework System (NACS), generally has records back to 1983. To find records for people who naturalized earlier, it is necessary to check paper, microfilm, or microfiche records. Many of these files have been archived to federal records centers and are not readily retrievable.

5. Do INS records contain information regarding individuals who were born overseas, but whose parents were American citizens? If not, how can the INS determine whether an individual who was born overseas but does not appear in INS records is a citizen?

INS will not routinely have a record on an individual born overseas to U.S. citizen parents and cannot determine, without an individualized inquiry, whether such individuals are citizens. Where INS lacks a corresponding record, an electronic comparison by name and date of birth will yield no match or a false match.

6. Are there cultural groups whose naming practices create particular inaccuracies in INS records? For example, Vietnamese-Americans may state their family names before their given names. Similarly, Hispanic-Americans may use both their father's family name and their mother's family name. How can the INS ensure that it provides accurate information in such circumstances?

INS is aware of certain cultural naming variations and attempts to record surnames, hyphenated names, and given names consistently in its records. To the extent that California state records and INS records vary in notation, an electronic comparison of the names will result in a non-match or a false match.

7. Are INS databases updated to reflect name changes? For example, if a woman is naturalized under her maiden name and changes her name upon marriage, would INS records reflect this change?

INS databases are not updated to reflect name changes after the date of naturalization.

8. Does the INS normally maintain information in the form requested by the chairman or would special efforts be required to obtain the information requested? In either event, what steps would be necessary to comply with the Chairman's request? For example, would it be necessary to write new computer programs? Could it be necessary to review files by hand?

Special efforts are required to obtain the information requested by the Committee, including new computer programs. Please refer to the methodological description attached, which describes the steps taken to provide the initial tape being submitted in response to the Committee' subpoena. The subpoena does not call for INS to review files by hand. However, because the paper file review process is labor-intensive and time-consuming, it would be important to narrow any search as much as possible before undertaking such an approach, which can improve the reliability of the resulting information.

9. How much would it cost the INS to extract the information requested by the Chairman? Please include personnel costs in your answer. Also, does the INS have funds allocated for these costs, or would the INS be forced to divert funds from other uses? Could INS employees perform the work, or would INS need to employ outside consultants?

INS has not yet developed cost estimates. INS has no funding specifically allocated for costs associated with the Committee's subpoena, and the work has been performed drawing on general funding. INS employees have performed the necessary work to date.

10. How long would it take to compare the Orange County voter registration list with INS records in a manner that ensures sufficient accuracy for the comparison to prove useful?

The Department's letter to the Chairman dated May 14, included an INS estimate that it could compare a list of voters in the 46th district of California against INS records, including paper files, and provide information on 80 percent of the records within 5 weeks of receiving a tape with the relevant information from California. Based on past experience, the remaining 20 percent could take considerably longer.

11. What steps can the INS take to protect the privacy of individuals whose names appear in INS databases? Would providing the information to the Committee be tantamount to public release of the information?

The Privacy Act permits release of information to committees of Congress acting within their jurisdiction, although different legal rules apply to other requesters. INS cannot directly protect the confidentiality of information once it has been provided to others, including the Committee. However, the Committee provided assurances in its letter of February 27 to Assistant Attorney General Colgate that it will not make the names of any individuals identified through this type of cross-checking process available to the public, press, or interested parties.

12. Is this request duplicative of other requests? In this regard, please identify all pending requests for the INS to review voter registration records and provide copies of all correspondence documenting those requests.

INS received a related request from the California Secretary of State dated March 14. INS headquarters is currently aware of four other pending requests to review voter registration records. Copies of such requests are attached. Each request will be carefully considered and information will be provided only where consistent with the Privacy Act and other applicable law. INS's Los Angeles district office has already complied with a request from the Orange County District Attorney's office to provide immigration status information on 1,160 individuals based on a check of INS records to assist in a criminal investigation.

We appreciate your interest in this matter and would be happy to answer any further questions.

Sincerely,

Doris Meissner
Commissioner

Attachments

DIVISIONS:
Archives
Corporate Filings
Elections
Information Technology
Limited Partnership
Management Services
Notary Public
Political Reform
Uniform Commercial Code

BILL JONES
Secretary of State
State of California

EXECUTIVE OFFICE
(916) 653-7244
1500 - 11th STREET
SACRAMENTO, CA 95814

March 14, 1997

Mr. Richard K. Rogers
District Director
UNITED STATES IMMIGRATION & NATURALIZATION SERVICE
300 North Los Angeles Street, Room 8113
Los Angeles, CA 90012

Dear Mr. Rogers:

My Office has been conducting an investigation in Orange County, California regarding allegations of election fraud and voter registration fraud for the past several months. Our investigation, conducted in cooperation with the Orange County District Attorney's Office, has focused primarily upon the voter registration activities of a Santa Ana-based group, Hermandad Mexicana Nacional (hereinafter "HMN").

The results of our investigation, thus far, are very disturbing. Based upon data analysis performed by INS, the Orange County District Attorney's Office, and my staff, we have been able to discern, with a significant level of accuracy, that HMN appears to have registered a very significant number of people, who, by virtue of their citizenship status, are ineligible to both register to vote and to vote. We have determined, at this point, that 721 of the 1160 persons registered to vote by HMN appear not to have been United States citizens at the time they registered to vote and, as a consequence, were ineligible to register to vote under California law. (See Elections Code § 2101) Of those 721 unlawfully registered individuals, 442 of them voted in the November 1996 general election.

The citizenship status of an additional 169 persons, who declared a foreign place of birth on their voter registration affidavits, cannot be ascertained from INS Central Index System records. Some of these persons may be U.S. citizens born abroad. My Office is currently undertaking efforts to check these 169 names against vital statistics records in order to determine which, if any, of the individuals are U.S. citizens born abroad. It is possible that a significant portion of the remainder of these 169 individuals, who registered to vote, may be foreign nationals illegally present in the United States.

Thus, the number of unlawful registrants and the number of unlawful voters may possibly increase substantially in the weeks and months ahead, as our investigation continues. The following table summarizes our findings thus far:

SUMMARY OF CITIZENSHIP STATUS OF 1160 HMN REGISTRANTS

	Voted	Not Voted	Total
Total Lawful Registrations	212	58	270
Total Unlawful Registrations	442	279	721
Total Unverified Registrations	105	64	169
Total HMN Registrations	759	401	1160

As California's chief elections officer, the integrity of the elections process is my highest priority. In view of our findings thus far, I am gravely concerned that the integrity of the Orange County voter registration file has been seriously compromised by the significant number of unlawful registrants, whose names were added to the Orange County voter file in the months prior to the last general election. As matters stand, it appears that a substantial number of persons, not qualified to vote under California law, are currently registered voters in Orange County. The integrity of the Orange County voter file must be immediately examined and corrective action taken before the next major election.

Moreover, I have concluded that it is essential, at this point, to determine whether any other individuals or organizations were engaged in an organized effort in Orange County to unlawfully register unqualified persons to vote prior to the 1996 general election. Conspiracy to unlawfully register unqualified individuals to vote and solicitation of unqualified persons to vote are felonies under California law.[1] Although our current investigation clearly indicates that a substantial number of unqualified individuals registered to vote who may or may not have had an intention to defraud, it is a felony to fraudulently register to vote or to fraudulently vote in an election.[2] If there has been an effort on the part of any individual or group to compromise the integrity of the elections process in Orange County or unqualified individuals registered to vote with fraudulent intent, I have an obligation to investigate such matters and, if my investigation determines that a crime has been committed, to ensure that the wrongdoers are brought to justice.

Accordingly, for these reasons, I have concluded that substantial probable cause now exists to examine the integrity of the *entire* Orange County voter registration file in order to fully and accurately assess the extent of unlawful registrations resident in the system and to identify the sources of such unlawful registrations. One substantial

[1] Penal Code § 182; Elections Code § 18561.
[2] Elections Code § 18100(a); Elections Code § 18560

component of this examination will involve identifying the number and identity of persons, who by virtue of their citizenship status, were not eligible to register to vote.

As our experience in the HMN investigation has so clearly demonstrated, the only practical and feasible means of identifying persons currently registered to vote, who are unqualified to vote because of their citizenship status, is to make a computerized comparison between the identifying information pertaining to registered voters included in the Orange County voter registration file and the identifying information of persons whose records are included in INS's Central Index System, SDSC, RAPS, DACS and NACS databases. There is simply no other feasible means of verifying citizenship status. Without such a verification, criminal investigation of voter registration fraud and election fraud felony cases would be virtually impossible. Moreover, there is no other means of assessing the degree to which the registration of unqualified, non-citizens has corrupted the Orange County voter file. Obviously, this is an issue which needs to be immediately addressed and, certainly, resolved before the June 1998 primary election.

As Secretary of State, I am charged with the responsibility of insuring the integrity of all aspects of the elections process in California, including the investigation of crimes relating to the elections process.[1] Therefore, pursuant to the authority vested in me by California Government Code Section 12172.5 and California Elections Code Section 10, I hereby request, in accordance with Section 552a, subsections (b)(7) and (b)(3) of Title 5 of the United States Code, that the United States Immigration and Naturalization Service compare the identifying information pertaining to *every person* registered to vote in the County of Orange with the identifying information contained in the Central Index System and provide us with a list of persons, whose names appear on INS's Central Index System and its subsystems as non-citizens.

In making this request, I would like to recognize and express my deep gratitude for the exceptional cooperation INS has provided to assist our efforts in this important voter fraud investigation. To date, the INS has rendered invaluable assistance by providing a carefully-researched, official list of presumed non-citizens, who are believed to be among the 1160 persons registered to vote by HMN prior to the 1996 election. Additionally, the Information Technology Division of my office appreciates your efforts to assist in a feasibility assessment of automating database comparisons for our new project to create a centralized voter registration database (CALVOTER). Our efforts to date have demonstrated the technical feasibility of performing automated data comparisons to detect non-eligible voters. The similarity of our automation systems (i.e., IBM mainframe, database format, database dictionary, etc.) demonstrates that there is a straightforward technically feasible approach for these projects. We eagerly look forward to further cooperation with your office in these endeavors.

---

[1] Elections Code § 10; Government Code § 12172.5.

It is our intention to commence examining the entirety of the Orange County voter file within the next thirty (30) days. Hence, your attention to this matter is urgently requested. Please feel free to contact me or Undersecretary Rob Lapsley if you require additional information. Any legal inquiries or matters should be directed to my Chief Counsel, James Sweeney.

Very truly yours,

BILL JONES
Secretary of State
State of California

cc: Hon. Michael Capizzi, District Attorney, County of Orange
Rosalyn Lever, Registrar of Voters, County of Orange
Hon. William M. Thomas, Chairman, House Oversight Committee
Hon. Vic Fazio, Ranking Member, House Oversight Committee
Hon. Dan Burton, Chairman, Government Reform & Oversight Committee
Hon. Henry Waxman, Ranking Member, Government Reform & Oversight Committee
Hon. Henry Hyde, Chairman, House Judiciary Committee
Hon. John Conyers, Ranking Member, House Judiciary Committee
Hon. Lamar Smith, Chair, Immigration Subcommittee
Hon. Melvin Watt, Ranking Member, Immigration Subcommittee
Hon. J. Dennis Hastert, Chairman, Subcommittee on National Security, International Affairs and Criminal Justice
Hon. Thomas M. Barrett, Ranking Member, Subcommittee on National Security, International Affairs and Criminal Justice
All Members of the California Congressional Delegation

BJ:jfs

DIVISIONS:
Archives
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Elections
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Uniform Commercial Code

BILL JONES
Secretary of State
State of California

ELECTIONS DIVISION
(916) 657-2166
1500 - 11th STREET
SACRAMENTO, CA 95814
Voter Registration Hotline
1-800-345-VOTE
For Hearing and Speech Impaired Only
1-800-833-8683
e-mail: [illegible]

April 10, 1997
SOS Cases: 96-191

Mr. Frank E. Johnston
Supervisory Special Agent
United States Department of Justice
Immigration & Naturalization Service
Criminal Investigation Division
300 North Los Angeles Street
Los Angeles, California 90012

Dear Mr. Johnston:

As you are aware of we are presently conducting a criminal voter registration fraud investigation in Orange County which it is alleged that individuals who were not U.S. citizens registered to vote and may have voted.

The enclosed disk is a list of approximately 400 registered voters who were summoned for jury duty. These individuals declined jury duty by indicating on the notice that they were not citizens of the United States.

We would like to know the immigration status of the subjects identified on the disk. This information is extremely important and needs to be expedited as soon as possible as we have a hearing date on April 19, 1997.

I certify that the information and documentation I have requested is required for the performance of this agency's official duties. Thank you for your assistance in this matter.

Sincerely,

JAMES F. SWEENEY
Chief Counsel
Secretary of State
Legal Affairs/Election Fraud Unit

DIVISIONS:
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BILL JONES
Secretary of State
State of California

EXECUTIVE OFFICE
(916) 653-7244
1500 - 11th STREET
SACRAMENTO, CA 95814
e-mail: [redacted]

April 11, 1997

Mr. Frank E. Johnston
Supervisory Special Agent
United States Department of Justice
Immigration & Naturalization Service
Criminal Investigation Division
300 North Los Angeles Street
Los Angeles, CA 90012

Dear Mr. Johnston:

In addition to the records on the diskette sent to you yesterday by Federal Express, the Secretary of State's office urgently requests the immigration status and naturalization dates, if any, for the persons whose records are enclosed with this letter.

This information is necessary for us to respond to allegations that non-citizens may have registered and voted, and is required for the performance of this agency's official duties. Thank you for your assistance in this matter.

Sincerely,

JAMES F. SWEENEY
Chief Counsel

JS:hd

DIVISIONS:
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EXECUTIVE OFFICE
(916) 653-7244
1500 - 11th STREET
SACRAMENTO, CA 95814
e-mail: [illegible]

BILL JONES
Secretary of State
State of California

April 16, 1997

Mr. Frank E. Johnston
Supervisory Special Agent
United States Department of Justice
Immigration & Naturalization Service
Criminal Investigation Division
300 North Los Angeles Street
Los Angeles, CA 90012

Dear Mr. Johnston:

The Secretary of State's office urgently requests the immigration status and naturalization dates, if any, for the persons whose records are enclosed with this letter.

This information is necessary for us to respond to allegations that non-citizens may have registered and voted, and is required for the performance of this agency's official duties. Thank you for your assistance in this matter.

Sincerely,

JAMES F. SWEENEY
Chief Counsel

JS:hd

County of San Diego

Board of Supervisors

Bill Horn, Chairman

April 8, 1997

97 APR 14 PM 5:07
OFFICE OF THE CHAIRMAN
97 APR 24 PM 4:42

Doris Meissner, Commissioner
Department of Immigration & Naturalization Service
10th & Constitution Avenue N.W.
Washington, D.C. 20536

Dear Commissioner Meissner:

On behalf of the San Diego County Board of Supervisors, I am requesting the assistance of your agency in protecting the integrity of the voting process by ensuring that those registered to vote in our County are United States citizens.

Allegations of voter registration and voter fraud have, unfortunately, grown increasingly prevalent throughout the nation. As you know, in neighboring Orange County, California's Secretary of State, in conjunction with the Orange County District Attorney, is currently investigating allegations that a naturalization-assistance organization intentionally registered to vote individuals who had yet to achieve United States citizenship, despite specific laws against voter registration by non-citizens.

It is our understanding that the INS has assisted the State in its investigation and, because of the evidence uncovered to date in this case, has further agreed to the State's request to compare INS data against the entire Orange County voter file to identify possible non-citizens who may be registered.

We strongly support this effort and ask that it be expanded to San Diego County. Such a comparison between INS and voter registration files may be the most feasible means to determine the extent of this problem. We are most interested in *preventing* a situation similar to that which has occurred in Orange County. To that end, we are requesting your assistance.

Voting is among the most precious rights granted to American citizens, and the integrity of the voting process is fundamental to preserving and protecting that right. Your agency has the unique ability to assist our efforts in this regard. We appreciate your consideration.

Sincerely,

BILL HORN
Chairman
Board of Supervisors

cc: Members, San Diego Delegation
Members, Board of Supervisors
Regional Director, Immigration and Naturalization Service

1600 PACIFIC HIGHWAY, ROOM 335, SAN DIEGO, CALIFORNIA 92101-2470

U.S. Department of Justice
Immigration and Naturalization Service

Office of the Commissioner

425 I Street NW.
Washington, DC 20536

CO 703.1631

MAY 21 1997

The Honorable Howard L. Berman
U. S. House of Representatives
Washington, D. C. 20515

Dear Congressman Berman:

This responds to your letter of March 19, concerning the request of Bill Jones, California Secretary of State, asking the Immigration and Naturalization Service (INS) to compare information on registered voters in Orange County, California, with information in INS' databases. We appreciated the opportunity to meet with your staff on April 30, and this letter will bring you up-to-date on developments since then. You are no doubt aware that the Committee on House Oversight served a subpoena on the INS on May 14, asking for information substantially similar to Secretary Jones' request, by May 21. The Committee's subpoena presents different legal issues than the California request, and this letter addresses the latter.

We have not yet provided a substantive response to the Secretary, although we have been examining legal, technical, and other issues relevant to this request. This assessment is being conducted jointly with other components of the Justice Department, including the Office of Information Privacy, in light of the many important interests at stake. While the Department of Justice is committed to cooperating with states in their law enforcement efforts and shares the Secretary's interest that only those entitled to vote do so, we believe that any information provided must be handled with the utmost confidentiality to avoid violating the privacy and tainting the name or reputation of native-born and naturalized United States citizens who have done nothing wrong. It is vital that the use of this information not chill the lawful exercise of treasured voting rights of any American, including newly naturalized citizens.

Department of Justice and INS representatives met with the Secretary of State's office on May 16, to discuss issues relevant to the request. While we are still developing our response to the Secretary in light of that meeting, I can address some of your specific concerns and questions now.

First, INS will not give Mr. Jones' staff access to INS' databases. The INS will examine INS' databases and other records, as appropriate, and provide limited status information to the Secretary – e.g., status as a non-citizen or evidence of naturalization after the date of voter registration. While INS' records may contain some information on aliens' military or employment history, we do not intend to provide such data in response to this request.

With respect to your other questions, I can provide the following information at this time.

1. What assurances did California investigators provide to the INS concerning how the list of 1,160 names reviewed in December would be used, and how it would be protected from public disclosure?

2. What steps did INS officials take to be assured that the confidentiality of these records would be protected?

The INS officials in Los Angeles received and relied upon oral assurances from the California investigators that the information provided by INS would be kept confidential. The INS understood that, in light of the ongoing criminal investigation, the Orange County District Attorney's office had an interest in protecting the confidentiality of this information.

3. Has the INS or the Justice Department begun a probe to determine how these records, apparently subject to court seal, came into the hands of the press and Mr. Dornan?

No. INS understands that the release of the documents resulted from an error by a court clerk in unsealing the records and that records were resealed after the mistake was discovered.

4. Did the Justice Department review the original request before providing information from INS files on 1,160 registered voters, many of whom turned out to be legal citizens and legal voters?

The original request was handled by INS' Los Angeles District office, upon advice of counsel. The INS only provided status information on the subset of the 1,160 registered voters for whom it identified matching records in its files.

5. What applicable laws are relevant to the new request of the California Secretary of State?

The Secretary has cited several provisions of California law in his request: Elections Code § 10, 18100(a), 18560, 18561, and 2101; Penal Code § 182; and Government Code § 12172.5. Relevant provisions of federal law include the Privacy Act, 5 U.S.C. § 552a, especially the "law enforcement" exception, Section 552a(b)(7), and the "routine use" exception, Section 552a(b)(3); and Section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. § 1373.

6. What potential liability for the U.S. Government exists as a result of the request of the California Secretary of State?

There are penalties under the Privacy Act for wrongful disclosure of information concerning U.S. citizens and lawful permanent residents. We anticipate no liability because we are working carefully with California officials to make sure that any sharing of information is consistent with our obligations under the Privacy Act. If a court concluded that a Privacy Act violation was "intentional or willful," the United States could be liable for "actual damages" sustained by the individual and "in no case shall a person entitled to recovery receive less than the sum of $1,000." 5 U.S.C. § 552a(g)(4)(A).

7. What is your estimate of the cost to the Government to comply with the Secretary's request, and an estimate of the cost should he go forward with a proposal to process the entire voter file for California?

The INS has not yet completed an estimate of the cost to comply with the Secretary's outstanding request. We will provide this information to you when it is available. The principal elements of the estimate will be computer programming and possibly personnel costs if it is determined that the INS staff should conduct file reviews. We have not been asked, and do not intend, to process the entire voter file for California.

8. What information, other than citizenship status, is contained in the INS data banks? Is it the intent of the INS to supply any information to the California Secretary of State other than citizenship status?

Various INS databases contain a wide variety of information on individuals, including information such as age and sex; country of birth; family members; type of admission, etc. The only information INS contemplates providing in response to the Secretary's request, however, is status as a non-citizen or evidence of naturalization after the date of voter registration.

9. How do you intend to deal with the problem raised by multiple identical names and by sloppy and incorrect data entry?

The INS databases are not organized for the purpose now being requested, and there are inherent limitations on their use to match against a list of registered voters. As you note, there is a potential for false "matches" and duplicate matches for a single registered voter with a comparison based on only two common identifiers -- name and date of birth. For a point of comparison, in its existing verification program for benefit applicants (SAVE) and in its employment pilots, INS increases the reliability and validity of its responses in two ways: (i) a unique identifier, the alien registration number, is used as the basis for matching, and (ii) an INS

employee performs an individualized, follow-up verification if the electronic step docs not produce a match. Since these quality assurance features cannot be adopted in this context given the limitations of the California voter list and the sheer volume of records, INS is still considering how it can best maximize the reliability of any data it provides to Secretary Jones.

We will keep you appraised of developments with respect to the Secretary's request.

Sincerely,

Doris Meissner

Doris Meissner
Commissioner

WILLIAM M. THOMAS, CALIFORNIA
CHAIRMAN

SAM GEJDENSON, CONNECTICUT,
RANKING MINORITY MEMBER

Congress of the United States

House of Representatives

COMMITTEE ON HOUSE OVERSIGHT
1309 LONGWORTH HOUSE OFFICE BUILDING
(202) 225-8281
Washington, DC 20515-6157

June 2, 1997

Ms. Doris Meissner
Commissioner
Immigration and Naturalization Service
U.S. Department of Justice
425 I Street, N.W.
Washington, D.C. 20536

Dear Madame Commissioner:

The Committee is in receipt of the INS' letter (undated, but received on May 21, 1997) and tape which are INS' "initial response" to our May 14 subpoenas. In your letter, you indicate that you would like to meet with me or my staff to discuss how INS can best assist in providing "reliable and complete information on a timely basis that will be useful in (our) inquiry."

The Committee staff director spoke with Department of Justice staff today to arrange a meeting. As a courtesy, let me inform you of the purpose and agenda of the meeting:

1) The initial response to subpoena 1 yielded a match of 504,572 names. This was based on matching date of birth and surnames. At this time, we request that the INS conduct a further match for surname, first name and date of birth and provide that data to us in the same format as the tape received last week. This new information should be provided to the Committee no later than noon on Wednesday, June 4, 1997.

2) INS should prepare to conduct a thorough and timely check of its paper files to provide to this Committee, no later than noon on June 18, 1997, an electronic or paper list, based on its records, as to the number of persons who registered to vote in Orange County, California that were not U.S. citizens at the time of registration. If INS is unable, for verifiable reasons, to comply within this time frame, then we will consider agreeing to accepting a list of those individuals within California's 46th Congressional District by June 18, with a list for the rest of Orange County by June 27, 1997.

Within these parameters, I expect that staff can conduct a productive meeting and emerge with an agreement, such that further Committee action to compel the INS to cooperate is not required.

Best regards,

Bill Thomas

Bill Thomas
Chairman

cc: Members, Committee on House Oversight

U.S. Department of Justice
Immigration and Naturalization Service

Office of the Commissioner

425 I Street NW.
Washington, DC 20536

CO 703.1056

JUN - 4 1997

The Honorable William C. Thomas
Chairman, Committee on House Oversight
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

We appreciated the opportunity to meet with Committee staff yesterday to discuss your letter of June 2 and issues related to the Committee's May 14 subpoena. I hope that there will be further discussions so that the Immigration and Naturalization Service (INS) can continue to assist the Committee in its work, taking into account the inherent limitations of matching data between the California State voter registration rolls and INS' records, as well as INS' other important responsibilities to enforce the Nation's immigration laws.

Enclosed are two tapes that respond to paragraph one of your June 2 letter which contain a total of 19,023 names and the available "identifying information" for each record. These tapes are based on a comparison of surname, first name, and date of birth for each person recorded in the voter registration file for Orange County, California, against two INS databases, the Central Index System (CIS) and the Naturalization Automated Casework System (NACS). One tape (17,942 records) indicates matches for which INS databases do not show a date of naturalization, and the other tape (1,081) indicates matches for which INS databases show a naturalization date after the Orange County registrant's date of voter registration. A technical description of the tapes is enclosed.

As discussed at yesterday's meeting, INS will require more time to provide the Committee with additional information in response to paragraph one of your June 2 letter, in keeping with the instructions in the Committee's subpoena that INS also search for "matches" by comparing surnames without prefixes. The INS will provide that additional information on or before June 9.

As the Committee is aware from our May 21 response to the subpoena, in light of the methodology employed--conducting matches based only on name and date of birth--and the organization of INS' databases, the data on the tapes being provided do not represent the number of illegal voters or registrants in Orange County, nor should it be inferred that any particular named individual on this tape has voted or registered to vote illegally. We continue to appreciate the Committee's commitment to safeguarding this sensitive information in order to avoid invading individuals' privacy or chilling voting rights.

The INS also described other limitations with respect to the data produced through this matching methodology in its May 21 response to the Committee's subpoena, such as the potential for false matches, and will not repeat them here. Please note, however, that the other limitations identified in that earlier correspondence apply equally to these new tapes.

For the records it has identified, INS is providing the full name and the following available "identifying information": date of birth, gender, alien registration number, and date of naturalization (where such a date has been identified). The CIS does not include street addresses, while NACS has addresses for some of the persons in that database. Wherever available (a small portion of the list), addresses are provided on the enclosed tape. The CIS and NACS do not include telephone numbers, so they cannot be provided based upon this electronic match. As INS noted at yesterday's meeting, we can also make available a tape of "matches" where our records contained evidence of naturalization before the date of registration, if the Committee chooses to request such information to help narrow the scope of its further investigations.

As we also discussed at yesterday's meeting, the request contained in paragraph 2 of your June 2 letter for INS to review its paper files is more problematic for INS to accomplish within the time frames specified. Pursuant to your request that INS provide verifiable reasons with respect to its ability to comply with paragraph 2, we will be providing to the Committee details outlining the specific steps we have taken and will take, and the resources necessary to accomplish the task. In addition, we would like to discuss with you further the criteria to be used during the paper file review to increase the reliability and usefulness of the resulting information.

The Department of Justice remains committed to working with the Committee to provide useful information on a timely basis, giving due weight to the privacy interests and voting rights concerns of United States citizens. To that end, we would welcome further discussions with Committee staff.

Sincerely,

Doris Meissner
Commissioner

Enclosures

cc: The Honorable Sam Gejdenson
Ranking Minority Member

U.S. Department of Justice
Immigration and Naturalization Service

97 JUN -9 PM 5:33

Office of the Commissioner

425 I Street, NW.
Washington, DC 20536

CO 703.1056

JUN 9 1997

The Honorable William M. Thomas
Chairman, Committee on House Oversight
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed are five additional tapes responsive to your June 2 letter and the Committee's May 14 subpoena. In accordance with our conversation with Committee staff, two of the tapes containing a total of 19,554 names are based on a comparison of surname without prefixes, first name, and date of birth for each person recorded in the voter registration file for Orange County, California, against two Immigration and Naturalization Service (INS) databases, the Central Index System (CIS) and the Naturalization Automated Casework System (NACS). One tape indicates matches for which INS databases do not show a date of naturalization, and the other indicates matches for which INS databases show a naturalization date after the Orange County registrant's date of voter registration. The distinction between these tapes and those provided on June 4 is that any surname prefixes contained in the Orange County records were omitted, in accordance with your instructions, before the electronic comparison was made. Two other tapes being provided today contain only the *difference* between the June 4 comparison, using exact surnames, and the new comparison, using surnames without prefixes. Each tape includes available "identifying information" for each record. A technical description of the tapes is enclosed.

The fifth tape being produced today contains 23 names and available "identifying information" based on a comparison of surname, first name, and date of birth which appeared on the tapes produced on June 4 but do not appear on the tapes being produced today. The INS believes that these changes may result from the normal process of updating the information contained in CIS and NACS. For example, in one instance, the month and date of birth have been reversed in INS' records, resulting in a non-match in the later comparison. In addition, in responding to the Committee's subpoena on May 21, the INS noted in its technical description that it had encountered an error which prevented it from reading certain data from an archive tape. The INS has been able to recover some of these data, and the change between the June 4 tapes and the tapes being produced today may reflect that new information. A technical description of this tape also is enclosed.

As you have requested, today's production follows the same format as previous productions: for the records it has identified, INS is providing the full name and available "identifying information," including date of birth, gender, alien registration number, and date of naturalization (where such a date has been identified). Street addresses are provided wherever available, but telephone numbers are not available electronically.

As the Committee is aware from our May 21 and June 4 responses, in light of the methodology employed--conducting matches based only on name and date of birth--and the organization of INS' databases, the data on the tapes being provided do not represent the number of illegal voters or registrants in Orange County, nor should it be inferred that any particular named individual on these tapes has voted or registered to vote illegally. The INS also described other limitations with respect to the data produced through this matching methodology in its May 21 response to the Committee's subpoena, which apply equally to these new tapes.

We appreciated the opportunity to meet with Committee staff last week to discuss INS' response to the Committee's requests. Those meetings and the follow-up conversations were productive in establishing the parameters for the next step, review of certain paper files by INS. In light of the Committee's further guidance concerning this process, INS will provide to the Committee later this week information on verifiable reasons with respect to its ability to comply by June 18 with paragraph 2 of your June 2 letter. That letter will detail the specific steps INS has already taken, outline the work still to be performed, identify the resources necessary to accomplish the task, and include time estimates for each phase of the project.

The Department of Justice remains committed to working with the Committee to provide useful information on a timely basis, giving due weight to the privacy interests and voting rights concerns of United States citizens. We continue to appreciate the Committee's commitment to safeguarding the sensitive information being provided. We would welcome further discussions with Committee staff as this effort progresses.

Sincerely,

Doris Meissner
Commissioner

Enclosures

cc: The Honorable Sam Gejdenson
Ranking Minority Member

Tape for the California matches to the CIS and NACS systems by Full Name and Date of Birth

Not Naturalized Records

Tape Numbers : W07134

Record Count : 18,405

Tape Specs : 3490 cartridge, non-compressed, standard label, record length of 281, block size of 28100

Layout : Positions 1 thru 251 contain the data sent by the State of California
Positions 252 thru 281 contain the CIS/NACS corresponding data

California Data

Length	Element Name
2	County Code
1	Update code
8	Affidavit Number
1	Gender code
25	Last Name
25	First Name
1	Middle Initial
40	Residence Address
15	Residence City
5	Residence Zip Code
1	Party Code
8	Precinct
6	Registration Date (Year Month Day)
6	Birth Date (Year Month Day)
2	Assembly District
2	Senatorial District
2	Congressional District
58	Mailing Address
24	Mailing City and Country
2	Mailing State
5	Mailing Zip Code
1	Language Preference
11	Filler

CIS/NACS Data

Length	Element Name
9	Alien Number
6	Filler
6	Date of Birth(Year, Month,Day)
8	Filler
1	Gender

Not Naturalized Records Difference File

The difference between the match done with the original Voter Registration file and the Voter Registration file with the name particles removed.

Tape Numbers : W07138

Record Count : 464

Tape Specs : 3490 cartridge, non-compressed, standard label, record length of 281, block size of 28100

Layout : Positions 1 thru 251 contain the data sent by the State of California
Positions 252 thru 281 contain the CIS/NACS corresponding data

California Data

Length	Element Name
2	County Code
1	Update code
8	Affidavit Number
1	Gender code
25	Last Name
25	First Name
1	Middle Initial
40	Residence Address
15	Residence City
5	Residence Zip Code
1	Party Code
8	Precinct
6	Registration Date (Year Month Day)
6	Birth Date (Year Month Day)
2	Assembly District
2	Senatorial District
2	Congressional District
58	Mailing Address
24	Mailing City and Country
2	Mailing State
5	Mailing Zip Code
1	Language Preference
11	Filler

CIS/NACS Data

Length	Element Name
9	Alien Number
6	Filler
6	Date of Birth(Year, Month,Day)
8	Filler
1	Gender

Naturalized After Voter Registration

Tape Numbers : W07150

Record Count : 1,149

Tape Specs : 3490 cartridge, non-compressed, standard label, record length of 281, block size of 28,100

Layout : Positions 1 thru 251 contain the data sent by the State of California
Positions 252 thru 281 contain the CIS/NACS corresponding data

California Data

Length	Element Name
2	County Code
1	Update code
8	Affidavit Number
1	Gender code
25	Last Name
25	First Name
1	Middle Initial
40	Residence Address
15	Residence City
5	Residence Zip Code
1	Party Code
8	Precinct
6	Registration Date (Year Month Day)
6	Birth Date (Year Month Day)
2	Assembly District
2	Senatorial District
2	Congressional District
58	Mailing Address
24	Mailing City and Country
2	Mailing State
5	Mailing Zip Code
1	Language Preference
11	Filler

CIS/NACS Data

Length	Element Name
9	Alien Number
6	Date of Naturalization (Year, Month,Day)
6	Date of Birth(Year, Month,Day)
8	Filler
1	Gender

Naturalized After Voter Registration - On new file only

Tape Numbers : W07095

Record Count : 91

Tape Specs : 3490 cartridge, non-compressed, standard label, record length of 281, block size of 28,100

Layout : Positions 1 thru 251 contain the data sent by the State of California
Positions 252 thru 281 contain the CIS/NACS corresponding data

California Data

Length	Element Name
2	County Code
1	Update code
8	Affidavit Number
1	Gender code
25	Last Name
25	First Name
1	Middle Initial
40	Residence Address
15	Residence City
5	Residence Zip Code
1	Party Code
8	Precinct
6	Registration Date (Year Month Day)
6	Birth Date (Year Month Day)
2	Assembly District
2	Senatorial District
2	Congressional District
58	Mailing Address
24	Mailing City and Country
2	Mailing State
5	Mailing Zip Code
1	Language Preference
11	Filler

CIS/NACS Data

Length	Element Name
9	Alien Number
6	Date of Naturalization (Year, Month,Day)
6	Date of Birth(Year, Month,Day)
8	Filler
1	Gender

Naturalized After Voter Registration - (on original file but not on new file)

Tape Numbers : W07139

Record Count : 23

Tape Specs : 3490 cartridge, non-compressed, standard label, record length of 281, block size of 28,100

Layout : Positions 1 thru 251 contain the data sent by the State of California
Positions 252 thru 281 contain the CIS/NACS corresponding data

California Data

Length	Element Name
2	County Code
1	Update code
8	Affidavit Number
1	Gender code
25	Last Name
25	First Name
1	Middle Initial
40	Residence Address
15	Residence City
5	Residence Zip Code
1	Party Code
8	Precinct
6	Registration Date (Year Month Day)
6	Birth Date (Year Month Day)
2	Assembly District
2	Senatorial District
2	Congressional District
58	Mailing Address
24	Mailing City and Country
2	Mailing State
5	Mailing Zip Code
1	Language Preference
11	Filler

CIS/NACS Data

Length	Element Name
9	Alien Number
6	Date of Naturalization (Year, Month,Day)
6	Date of Birth(Year, Month,Day)
8	Filler
1	Gender

U.S. Department of Justice
Immigration and Naturalization Service

Office of the Commissioner

425 I Street NW
Washington, DC 20536

RECEIVED
97 JUN 13 PM 3:52
HOUSE OVERSIGHT

JUN 13 1997

The Honorable William M. Thomas
Chairman, Committee on House Oversight
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter is in further response to your letter of June 2 and your request that the Immigration and Naturalization Service (INS) conduct a thorough and timely check of its paper files to assist the Committee in its work. As you know, the INS previously responded to your letter and earlier requests by producing several tapes based on electronic comparisons between data from the Orange County, California, voter registrations rolls and INS records on May 21, June 4, and June 9.

The INS has also taken steps to initiate the paper file review in response to your request, as detailed below. However, in light of the diffuse distribution of INS records and the labor-intensive nature of paper file review, INS will not be able to complete the requested task by June 18 or June 27. Within that latter period of time, the INS will begin producing the results of its efforts to the Committee on a rolling basis before the entire review is completed in order to facilitate the Committee's ongoing efforts.

The INS emphasizes that, while paper file review will increase the reliability and usefulness of the immigration and citizenship status information being provided to the Committee, limitations on the relevance of the INS data to the Committee's work will remain. For example, a native-born United States citizen who lives in Orange County, CA, may share a name and date of birth with a legal resident alien. The INS may accurately report, after completing its file review, that the alien was not naturalized on the date the native-born U.S. citizen registered to vote. However, only further field investigation would reveal that California's records and the INS' records pertain to two different individuals.

Steps Taken to Date

As you know, California State officials provided INS with a tape containing information on all registered voters in Orange County, California. Using those data, the INS identified the subset of registered voters in California's 46th Congressional District. The INS then compared these 46th District registered voters against two of its databases, the Central Index System (CIS) and the Naturalization Automated Casework System (NACS). The comparison was based on surname, first name, and date of birth, and identified matches for which INS databases do not show a date of naturalization or which show a naturalization date after the date of registration in

the Orange County voter rolls. This comparison resulted in the identification of 4,023 names. As the Committee is aware from the INS' past responses concerning similar matching exercises, in light of the methodology employed--conducting matches based only on name and date of birth--these 4,023 names do not represent the number of illegal voters or registrants in the 46th District, nor should it be inferred that any particular named individual within this group has voted or registered to vote illegally.

INS Headquarters forwarded the list of 4,023 names and corresponding Alien Registration Numbers ("A-numbers") to its Los Angeles District Office on May 21 and instructed them to begin gathering the physical alien files ("A-files") associated with each A-number.

The Los Angeles office first took steps to identify the exact location of each file by working with a Headquarters computer specialist who wrote a unique program to interface the CIS/NACS matched data with the local automated Receipt and Alien File Accountability and Control System (RAFACS). The RAFACS is a field office locator system which allows each office to identify the physical location of files within that office. Ordinarily, RAFACS searches are conducted through individual queries by A-number. By using the computer program first, which sorted the RAFACS results by file locations within the District Office, the Los Angeles District was able to conduct a more organized search and find files more quickly.

INS records are assigned to a File Control Office (FCO), and the special computer run also allowed Los Angeles staff to identify the FCO for each matched record. Approximately 47 percent of the files were assigned to the Los Angeles District, 14 percent to INS' Western Service Center (located in Laguna Niguel, CA), 36 percent to other FCOs, and for 3 percent of the files no paper records exist. The files with FCOs other than Los Angeles represent a wide geographic distribution, involving 64 different INS field offices including 4 of INS' foreign offices as well as other District Offices, Suboffices, Service Centers, Asylum Offices, and Headquarters.

For the files showing the Los Angeles District Office as the FCO, the Los Angeles office next took steps to identify the precise physical location of the files. Within the Los Angeles District, files may be located in 23 different locations, including the Federal Records Center (FRC) in Laguna Niguel, CA. The INS Los Angeles District Office alone contains 1.1 million active records, with another 2.8 million inactive records that have been retired to the FRC. Even within the downtown Los Angeles INS office, files can be located in a wide variety of locations. While many files are stored in a central records office, others are in use in various program offices and need to be retrieved from individual officers' desks. For example, if an alien is involved in deportation proceedings, his A-file may be located in the Detention and Deportation program office. Los Angeles office management sent instructions to all departments identified through RAFACS to locate relevant A-files and send them to a central location to facilitate review. Simply finding and collecting these files represents a substantial investment of personnel resources by INS, including dozens of employees in Los Angeles alone. In addition,

on May 30, the District Office requested that certain identified files be returned from archives at the FRC. The Laguna Niguel FRC has agreed to handle this request on an expedited basis, and the Los Angeles office expects to receive the majority of the requested files on or before Monday, June 16.

For the files showing FCOs other than Los Angeles, INS Headquarters staff organized the A-numbers by FCO and faxed out the lists on June 6, along with instructions directing them to collect relevant A-files and await further instructions concerning review procedures. (A small portion of the instructions were not successfully transmitted until June 9.) Headquarters staff continue to coordinate with all of these offices to identify points of contact for the project and to answer questions. As with Los Angeles, the files assigned to a given FCO may be physically located in a variety of places, including Federal Record Center archives, suboffices, and multiple locations within the INS District Office. While some offices can use RAFACS to identify the precise location of files within an FCO, other offices control their files manually and must conduct searches for files without the benefit of an automated locator system.

After meeting with Committee staff on June 3, INS also began to develop a protocol for the file review process to ensure uniform file review procedures among different offices and to maximize the usefulness of the resulting information to the Committee. After a second meeting on June 5, the Committee agreed that the INS reviewers should focus on three factors in their review: whether a file contains evidence of naturalization (and the date, if any); whether the middle name in the INS file matches the middle initial in the California record; and whether the most recent address in the INS file matches an address in the California record. If the address does not match, INS will also provide the Committee with the most recent address in the INS file. The INS believes that consideration of whether middle initials and addresses match will assist in identifying potential false matches, but it is not a substitute for further investigation concerning the actual identity of persons registered to vote. The INS subsequently validated the proposed format with field managers who will be responsible for overseeing the process and worked with its automated data processing personnel to have them generate worksheets according to the agreed-upon data elements. The programming and printing of the worksheets required several days, but the product will make later stages far more efficient because the INS staff reviewing paper files will now be able to record the needed data on unique worksheets preprinted with all the relevant data from the Orange County and INS databases. (Each worksheet relates to a single matched name from the 46th District voter rolls.)

After the 4,023 worksheets were generated electronically, INS assigned Headquarters staff to separate the sheets by FCO and then to group suboffices with their main office. The worksheets were also assigned page numbers and copied to allow Headquarters to monitor effectively field office responses. As the format of the worksheet was being finalized, INS Headquarters staff drafted instructions for the field on how to complete the worksheets to ensure uniformity. Approximately 10 INS Headquarters staff worked on these aspects of the project. The worksheets and instructions were packaged, labeled, and sent out for overnight delivery to INS field offices on June 11. Headquarters staff will remain involved to coordinate field

responses and facilitate communications between FCOs, as necessary, to locate A-files that may have been transferred from one location to another.

Next Steps

Immediately upon receipt of the worksheets and instructions on June 12, INS field offices were instructed to begin reviewing the files that have been collected to date. The INS is aware from its past experience that some portion of the A-files that have been identified will be difficult to locate. In some instances, for example, a file may have been transferred from one FCO to another, or from one location within an FCO to another, and that change has not been updated in RAFACS. Further, INS must rely upon the cooperation of the Federal Records Centers around the country, which it does not control, in order to retrieve files that have been sent to archives. As we have previously informed the Committee, INS files are routinely sent to archives upon completion of naturalization, so this element of the process may present a substantial factor in INS' ability to meet the Committee's request in a timely manner. Moreover, in some instances, the INS maintains more than one file on a single person because temporary A-files may be created when the original A-file cannot be located on a timely basis. Although many of these files pertaining to the same individual have been merged, this is not universally true. The INS will diligently pursue the retrieval of all files through the various means at its disposal in order to locate them as soon as practicable.

Immigration and Naturalization Service field personnel estimate that it will take, on average, 10 minutes to review each A-file once it has been located and to complete the information on the worksheet. A significant portion of this time will result from the Committee's request that INS provide the most recent address information available in the file, which will often require an INS employee to write an address rather than merely checking a box or writing a simple code. While many files are expected to take less than 10 minutes to review, some are likely to be more difficult and complex and, therefore, require more time to review properly.

The Los Angeles District Office is prepared to assign approximately ten Immigration Officer employees to the file review process in order to complete the review of the files it has been able to identify within 1 week. Based on past experience, the INS estimates that this will represent approximately 80 percent of the files for which Los Angeles is responsible in connection with this effort. The number of staff assigned by other FCOs will depend on the number of files in each office. All employees assigned to this project will be diverted from their normal responsibilities, and other immigration operations will be affected as a result of these reassignments. For example, Los Angeles expects to assign a combination of District Adjudications Officers and Immigration Status Verifiers, with support provided by Records clerks. These employees will be drawn from duties such as processing naturalization applications, where the Los Angeles office faces a large pending caseload and extended waiting periods before qualified applicants can complete the process. Immigration Status Verifiers will be drawn from regular duties responding to requests for status information for purposes of

eligibility to receive public benefits and for work authorization under INS' employment verification pilot program.

The INS has instructed its field offices to complete the search of available 46th District A-files by Friday, June 20. Even if review is not totally accomplished by that date, field offices are instructed to send copies of all completed worksheets to INS Headquarters for delivery on Monday, June 23. The INS Headquarters will then collate and copy the completed worksheets for delivery to the Committee on Tuesday, June 24. The INS will advise the Committee of the file retrieval and review left outstanding and proceed expeditiously to complete the review as the remaining files become available. In addition, if our time assessments change based on our experience in conducting this review, we will advise the Committee as soon as possible.

Orange County Registrants

As the Committee is aware, the INS has identified 19,023 "matches" by comparing the surname, first name, and date of birth of Orange County registrants against certain of its databases and identifying those with no date of naturalization or a date of naturalization after the date of voter registration. We have concentrated our work to date on retrieving and reviewing 46th District A-files, as detailed above. In light of the labor-intensive work involved, it is not feasible for INS to complete a hand-search of all A-files associated with the remaining Orange County records by June 27, as you have requested. We would welcome the opportunity to discuss further with Committee staff the most effective manner of dealing with this larger group of matches, including the possibility of doing a paper-file review only on a statistically valid sample of these remaining matches, in order to meet the Committee's needs while minimizing, to the extent possible, the diversion of INS resources from our core responsibilities for enforcing the Nation's immigration laws.

Sincerely,

Doris Meissner
Commissioner

cc: The Honorable Sam Gejdenson
Ranking Minority Member

Congress of the United States
House of Representatives
COMMITTEE ON HOUSE OVERSIGHT
1309 L[illegible] H[illegible] O[illegible] B[illegible]
202-225-[illegible]
Washington, DC 20515-6157

June 23, 1997

Ms. Doris Meissner
Commissioner
Immigration & Naturalization Service
425 Eye St., NW
Washington, D.C. 20536

Dear Commissioner Meissner:

Thank you for your letter of June 13 detailing the efforts being undertaken by the Immigration & Naturalization Service with regard to the contested election in the 46th Congressional District of California.

I am encouraged by the cooperation of the INS with our investigation. However, I continue to expect the INS to meet the Committee's deadlines. Our letter of June 2 indicated that, if the INS were unable, for verifiable reasons, to examine the Orange County paper files by June 18 then the Committee would consider accepting a check of files related to the 46th Congressional District on June 18 and a check of files related to all of Orange County on June 27.

Your letter dated June 13 indicates that you may check close to 80% of the files related to the 46th Congressional District by June 24. While I must note this does not meet our deadline, the quantity and quality of information received by the Committee on June 24 will indicate whether the INS is continuing to make a good-faith effort to cooperate with this investigation.

Further, the Committee's ongoing investigation requires an additional request. Enclosed is a list of 1,349 residents of the 46th Congressional district who were not identified by computerized matches of first names, last names, and dates-of-birth. The last names and dates-of-birth of the individuals on the attached list are exact matches and the first names are so similar that it is quite probable that these represent matches between the INS records and the Orange County voter registration list. These individuals have not been identified because of possible data entry errors or because of common name variations in INS and Orange County databases. This enclosed list contains the voter registration number and the alien numbers related to each individual. The Committee requests that these records be included in the A-file checks currently underway. This request should not delay the presentation of the information collected by the INS as of June 24. Of course, the Committee expects that the INS will protect the privacy of this information.

Finally, the Committee requests that the INS keep the A-files related to this investigation readily available so that they can be referred to expeditiously should additional information be required.

If you have any questions please contact Stacy Carlson, Staff Director of the Committee on House Oversight, at (202) 225-8281.

Best regards,

Bill Thomas
Chairman

Enclosure: (1)

Cc without enclosure: Members, Committee on House Oversight

U.S. Department of Justice
Immigration and Naturalization Service

Office of the Commissioner

425 I Street NW.
Washington, DC 20536

CO 703.1497

JUN 24 1997

The Honorable William M. Thomas
Chairman, Committee on House Oversight
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Pursuant to your letter of June 2, the Immigration and Naturalization Service (INS) is enclosing the initial results of its review of paper file records which appear to correspond to individuals identified through an electronic match of INS databases against registered voters in California's 46th Congressional District. As agreed with Committee staff, this comparison was based on surname, first name, and date of birth, and identified matches for which INS databases do not show a date of naturalization or which show a date of naturalization after the date of registration in the Orange County voter rolls.

As we indicated in our June 13 letter, INS identified 4,023 names through its initial electronic match. As of Friday, June 20, we had completed the manual review of 3,257 of those files and have enclosed worksheets for each file reviewed. Subject to the limitations set forth below, our search of those records is now complete. The enclosed worksheets represent 81 percent of the files identified for the 46th District, and 89 percent of the files held by INS' Los Angeles District Office, which has performed the largest portion of the matching efforts thus far. File review continues as additional files become available from Federal Record Centers or our other file locations. We will continue to provide worksheets to the committee on a rolling basis as our officers complete their reviews.

Each worksheet provides information derived from the manual review of one INS paper file, known as the A-file. As agreed with Committee staff, the file review has addressed two main points: first, the worksheet shows whether the paper file contains information regarding naturalization data that was lacking from the automated databases. For example, the paper file could contain a copy of a certificate of naturalization that was not reflected in the electronic record for that person. If so, the officer completing the worksheet has recorded the date of naturalization in the appropriate spot. Second, the worksheet contains information from the paper file that the committee can use in judging whether the person named in the file is likely to be the same person identified in the Orange County voter rolls. The key data elements are whether the middle initial matches that available from the Orange County records, and whether the latest address from the file matches the residence or mailing address on the Orange County list.

As the foregoing results indicate, INS has committed considerable resources to the task of responding to the Committee's June 2 request. To date, INS estimates that is has expended in excess of 4,000 hours and $150,000.00 dollars in attempting to provide the Committee with the information it has requested. Because the file review continues, we of course are still devoting numerous personnel and resources to the task.

As we have proceeded with our file search and manual review, we have encountered some further difficulties, including those that were indicated in our June 13 letter. Our efforts to overcome those difficulties are detailed below, and we are pursuing those steps as expeditiously as possible. Nevertheless, it can be expected that the process will slow down from this point, as we complete the easily located files and move on to those that, for a variety of reasons, are harder to assemble. The principal current difficulties are two-fold: 1) problems with file locations that do not correspond to the File Control Office (FCO) specified in INS' electronic systems; and 2) indications that some persons reported here, after initial manual file review, as "not naturalized" may in fact have been naturalized on the basis of a temporary file located elsewhere.

First, we have encountered a relatively large number of situations in which INS personnel located within various FCOs have been unable to locate paper A-files which should reside in those offices, according to the database. In the vast majority of such cases, we have determined that the mismatches are the result of electronic file location records that have not been recently updated. In such instances, INS Headquarters personnel have assumed responsibility for locating the missing files, and have rerouted the relevant matching sheets to the appropriate INS offices for processing. Once located by INS personnel, such files will be subjected to the search protocol agreed to by INS and the Committee, and thereafter provided. The additional steps associated with rerouting such requests to other FCOs significantly increase the amount of time associated with locating a given file.

The second issue relates to INS' use of temporary file records. In order to process some benefit applications, offices within INS sometimes create temporary A-file records, which contain information derived from INS' Central Index System (CIS) and Naturalization Automated Casework System (NACS) databases. INS offices typically use these temporary A-files to overcome delays associated with receiving paper A-files from distant FCOs or when A-files cannot be located. Once INS has adjudicated a person's eligibility for benefits through the use of such a temporary A-file, however, INS field offices are required to ship the temporary record to the FCO which contains the original A-file for actual file consolidation and the subsequent updating of INS' CIS and NACS databases.

Experienced officers reviewing A-files, particularly in the Western Service Center in Laguna Niguel, believe that perhaps 300-500 checked A-file records may contain data that is incomplete in this crucial regard. They base this judgment, for example, on the presence of a

naturalization application (the N-400) in the reviewed A-file, without any indication of further action on the application in that file, though a considerable period has passed. This gap may well indicate that the case was ultimately processed using a T-file (temporary file).

INS has devised and begun to implement alternative procedures to resolve this particular anomaly through the use of T-files, using the Receipt and Alien File Accountability and Control System (RAFACS) employed in certain of INS' larger field offices. To address the anomaly, INS has directed its Field Operations personnel to establish additional criteria which will assist INS in identifying which A-files matched in connection with the Committee's request possibly contain incomplete information resulting from the use of T-files. For example, if an A-file contains an N-400 and no action regarding the pending naturalization request appears to have taken place for a predetermined period of time, INS will check the record against local RAFACS listings of temporary A-files to verify the data. A search of RAFACS systems at the four or five largest INS offices identified in connection with the Committee's request in such circumstances should help locate T-files with naturalization information otherwise not found in the A-file search.

Specifically to address the foregoing problem, INS has directed that its Office of Information Resources Management (OIRM) make available the necessary programming resources to facilitate the additional cross-matches. INS OIRM personnel have estimated that the software coding common to each of the RAFACS sites will take approximately 8 hours time, with implementation at each of the sites requiring approximately 6 hours per site. The work associated with that task has begun. Moreover, because of our shared concerns regarding the accuracy of INS-provided data, INS will alert field offices that future record searches must take into account these additional search criteria, and that some previously reviewed records should be revisited to improve data accuracy.

INS has identified several additional data matching issues, each of which it was actively in the process of addressing prior to this letter. In connection with each of these issues, we have attempted to isolate the anomaly, and thereafter direct that corrective action be taken. Moreover, to the extent that INS has been unable to identify the exact reason for a given anomaly regarding the already-matched records, the Service has opted in favor of providing the Committee with more rather than less data at this time.

Because of the issues just identified, INS must reemphasize that, while its paper file reviews have increased the reliability and usefulness of the immigration and citizenship status information being provided today, limitations on the relevance of INS data to the Committee's work remain. Even after INS completes each of the additional verification steps set forth above, further field investigation will be desirable to determine whether an apparent match between California and INS records pertains to two different individuals. Moreover, until the steps outlined above have been completed, the data that INS is providing today must of course continue to be treated with great sensitivity to privacy concerns.

The INS remains committed to providing useful information to the Committee on a timely basis, while continuing to balance the privacy and voting rights interests of United States citizens. To that end, we will continue to provide the Committee with additional information as it becomes available. To address the Committee's outstanding requests, including the request contained within its most recent letter of June 23, we request a meeting with your staff either later this week or early next week.

Sincerely,

Doris Meissner
Commissioner

Enclosures

cc: The Honorable Sam Gejdenson
Ranking Minority Member

M E M O R A N D U M
Committee on House Oversight

TO: File
FROM: Nick Parks
CC:
DATE: June 25, 1997
RE: **SUMMARY OF 6/24 LETTER FROM INS**

June 24, 1997 Letter From the INS

- INS has manually reviewed 3,257 of 4,023 paper files. That number represents 81 percent of the paper files to be reviewed by the INS. A worksheet for each completed file review is included with the letter.
- The INS will provide the Committee with worksheets of the remaining 766 files on a rolling basis as INS officers complete the reviews.
- The INS estimates that is has expended over 4,000 hours and $150,000 to comply with Committee requests.
- The process will slow down from this point on because some of the remaining files are more difficult to locate and assemble.
- Some of the remaining files have been difficult to locate. INS headquarters is attempting to rectify the problem by updating its computer databases which include file locations.
- The INS is concerned that some of the paper files may be incomplete because of temporary files that are not located together with their associated main files. The INS cautions that as many as 500 of the main files checked (out of 3,257) may have an associated temporary file at a different location that has not yet been reviewed. These temporary files may contain evidence of naturalization.
- The INS requests a meeting with Committee staff to discuss the Committee's June 23 request that the INS review an additional 1,349 files.

U.S. Department of Justice
Immigration and Naturalization Service

Office of the Commissioner

425 I Street NW.
Washington, DC 20536

JUL - 3 1997

The Honorable William M. Thomas
Chairman, Committee on House Oversight
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Pursuant to your letter of June 2, the Immigration and Naturalization Service (INS) is enclosing additional results of its review of paper file records which correspond to individuals identified through an electronic match of INS databases against registered voters in California's 46th Congressional District. Today's production includes information derived from 503 alien files (A-files). Together with the 3,257 records we provided on June 24, INS has now produced information relating to 93 percent of the 4,023 records identified by INS through the electronic match of 46th District voter registration and INS database records. As indicated in our earlier correspondence, that comparison was based on surname, first name, and date of birth, and identified matches for which INS databases do not show a date of naturalization or which show a date of naturalization after the date of registration in the Orange County voter rolls. The enclosed worksheets are identical in format to those produced on June 24.

As described in our June 24 letter, we have identified several issues requiring further attention as a result of our file review efforts to date. In reviewing A-files, we have determined that INS temporary files (T-files) relating to the same individual may possess more current information on naturalization status in some cases. INS is developing a special computer program to identify relevant T-files located in certain larger field offices so that they may be reviewed for the most up-to-date status information. We expect to begin making the additional checks required to account for such files by early next week, and we will provide the Committee with whatever additional information we identify as a result on a rolling basis.

We have also determined that, for 115 of the 4,023 records identified, INS possesses no corresponding paper files. Thus, we cannot provide any additional information for these individuals beyond the results of the electronic match. These matched records bear alien numbers (A-numbers) beginning with "80." These "80-million series" records pertain to applicants for Border Crossing Cards, and INS does not create or maintain A-files on such individuals. With the addition of these 115 records for which INS possesses no paper records, INS has provided to the Committee information on 96 percent of the 4,023 records identified for the 46th District.

As you know from our earlier correspondence, while INS' review of its paper files increases the reliability and usefulness of the immigration and citizenship status information being provided, limitations on the relevance of INS data to the Committee's work remain. Even after INS completes each of the additional verification steps set forth above, further field investigation will be desirable to determine whether an apparent match between California and INS records pertains to two different individuals.

Your letter of June 23 requested that INS review A-files for an additional 1,349 registrants of the 46th District identified by the Committee and enclosed a 29-page list of names, A-numbers, and Orange County voter registration numbers. INS will conduct the requested review expeditiously. In order to facilitate this review, however, we have contacted the Committee staff to request an electronic, rather than a paper, version of the list. Such an electronic listing will facilitate INS' ability to identify the responsible file control office and to generate promptly worksheets with all the necessary data elements, making use of the programming already done in connection with the Committee's earlier request. We would appreciate the Committee's prompt advice as to whether such an electronic listing will be made available to INS, in order to avoid the more labor-intensive and time-consuming process of working from the paper list.

The INS remains committed to providing the Committee with useful information on a timely basis, while continuing to balance the privacy and voting rights interests of United States citizens. Accordingly, we will continue to produce the results of our file review to the Committee on a rolling basis. In light of the information produced to date and the Committee's outstanding requests, we would appreciate the opportunity to meet with your staff next week to discuss our progress as well as further cooperation. The INS has committed substantial resources to respond to the Committee's requests, and we wish to ensure that the project is completed in the most efficient manner possible.

Sincerely,

Doris Meissner
Commissioner

Enclosures

cc: The Honorable Sam Gejdenson
Ranking Minority Member

BILL THOMAS, CALIFORNIA
CHAIRMAN

CHRISTOPHER SHAYS, CONNECTICUT
RANKING MEMBER

Congress of the United States

House of Representatives

COMMITTEE ON HOUSE OVERSIGHT
1309 LONGWORTH HOUSE OFFICE BUILDING
(202) 225-8281
Washington, DC 20515-0515

July 9, 1997

Ms. Doris Meissner
Commissioner
Immigration & Naturalization Service
425 Eye St., NW
Washington, D.C. 20536

Dear Commissioner Meissner:

Enclosed is a computer disk containing the data that the Committee on House Oversight provided to the INS, in paper format, on June 23, 1997.

The Committee requests that the INS complete its review of these files by July 18, 1997.

If you have any questions please contact Roman Buhler, Counsel, or John Kelliher, Assistant Counsel, at (202) 225-8281.

Best regards,

Bill Thomas
Chairman

Enclosure: (1)

Cc: Members, Committee on House Oversight
(without enclosure)

U.S. Department of Justice
Immigration and Naturalization Service

Office of the Commissioner

425 I Street NW
Washington, DC 20536

CO 703.1056

JUL 18 1997

The Honorable William M. Thomas
Chairman, Committee on House Oversight
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter is in further response to your letters of June 2 and June 23.

Pursuant to your letter of June 2, the Immigration and Naturalization Service (INS) is enclosing additional results of its review of paper file records which correspond to individuals identified through an electronic match of INS databases against registered voters in California's 46th Congressional District. Today's production includes information derived from 260 alien files (A-files). Together with the 3,875 records we have provided previously, INS has now produced 4,135 worksheets to the Committee. The number of worksheets produced exceeds the number of 4,023 records identified by INS through the electronic match of 46th District voter registration and INS database records because, in some instances, we have produced duplicate worksheets for a single A-number when they were transferred from one INS field office to another and both offices returned worksheets to INS Headquarters. (The duplicates can be readily identified using the page numbers stamped on each worksheet.) As indicated in our earlier correspondence, the comparison which generated the list of 4,023 names was based on surname, first name, and date of birth, and identified matches for which INS databases do not show a date of naturalization or which show a date of naturalization after the date of registration in the Orange County voter rolls. The enclosed worksheets are identical in format to those produced to the Committee on June 24 and July 3.

As described in our earlier letters, we have identified several issues requiring further attention as a result of our file review efforts to date. Many of the records being produced today and those still outstanding reflect cases where the worksheets had to be redirected from one INS File Control Office (FCO) to another which has possession of the corresponding file. These worksheets have been annotated to reflect which FCO actually performed the file review. Where one A-file has been consolidated into another, reviews of the consolidated files have been completed at the new location.

In addition, INS is taking additional steps to identify certain temporary files (T-files) relating to individuals whose A-file may not contain the most current information on naturalization status. We will provide the results of this special effort to the Committee on a rolling basis as they become available.

Yesterday we also provided to the Committee the worksheets corresponding to the 115 "80-million series" records identified in our July 3 letter for which INS possesses no corresponding paper files. These records pertain to applicants for Border Crossing Cards, and INS does not create or maintain A-files on such individuals.

As requested in your June 23 letter, INS has begun the process to review A-files for an additional 1,349 registrants of the 46th District identified by the Committee. We appreciate the Committee's cooperation in providing us with a computer disk including these names and identifying information. The INS used this disk to generate the necessary worksheets, which have been separated by FCO and sent to the appropriate field offices. In addition to the Los Angeles District Office and the Western Service Center, 54 other FCOs are involved in this aspect of the project. We regret that, since receiving the disk on July 9, it has not been possible for INS to complete its review of these additional files. As you are aware, with the first batch of 4,023 names, INS field offices had been instructed to gather the physical alien files corresponding to certain A-numbers even before the Chairman's June 2 letter was received, so they were ready for review by field personnel as soon as the worksheets were received from INS Headquarters. In contrast, for this additional group of names, the Chairman's request triggered the effort to locate the relevant files, not simply to review them pursuant to agreed upon criteria, and the speed of INS' response is affected accordingly. As we have indicated in our earlier correspondence, many of these records have been retired to Federal Records Centers, which are not under the INS' control, and our ability to retrieve these files depends on their cooperation. We expect to provide the Committee with the initial results of this additional review by July 29, with further production on a rolling basis as the remaining files are located and reviewed.

As you know from our earlier correspondence, while INS' review of its paper files increases the reliability and usefulness of the immigration and citizenship status information being provided, limitations on the relevance of INS data to the Committee's work remain. Even after INS completes its review of all available paper records, further field investigation will be necessary in some cases to determine whether an apparent match between California and INS records do indeed relate to the same individual.

The INS remains committed to providing the Committee with useful information on a timely basis, while continuing to balance the privacy and voting rights interests of United States citizens. We reiterate our desire for an opportunity to meet with your staff next week to discuss our progress to date as well as further cooperation with respect to the Committee's outstanding requests.

Sincerely,

Doris Meissner
Commissioner

Enclosures

cc: The Honorable Sam Gejdenson
Ranking Minority Member

U.S. Department of Justice

Immigration and Naturalization Service

425 Eye Street N.W.
Washington, D.C. 20536

AUG 20 1997

Mr. John Kelliher
Assistant Counsel
Committee on House Oversight
1309 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Kelliher:

I appreciated the opportunity to meet with you and other Committee staff on August 11 to discuss the on-going efforts of the Immigration and Naturalization Service (INS) to respond to the Committee's requests for information related to its inquiry into the contested election in the 46th Congressional District in California. As I stated at the meeting, I believe that over the last several months we have developed a process that is working to meet the Committee's needs, given the inherent limitations of data matching between the California state voter rolls and INS records.

The INS looks forward to the efficient completion of this project, and we compiled the attached list of tasks to summarize our efforts to date and the Committee's outstanding requests. As we discussed, the INS understands that this list represents the Committee's priorities, and we are focusing our resources on responding to these requests. Accordingly, we are not currently pursuing any remaining searches that were called for in the Committee's May 14 subpoenas. Should you wish us to pursue additional searches that are not included on this list, we understand that the Committee will continue its current practice of making such requests by letter to the Commissioner.

At the appropriate time, we would appreciate a formal acknowledgement from the Committee that the INS has fully met its obligations under the May 14 subpoenas.

Please feel free to contact me directly, as well as the other INS staff assigned to this project, with any questions or concerns.

Sincerely,

David A. Martin
General Counsel

Enclosure

cc: Mr. James Portnoy

House Oversight Committee/Orange Co. Projects August 11, 1997

Electronic

1. Electronic match of CIS/NACS - last name and DOB
   -- no naturalization or naturalization after date of registration
   -- 500,000 matches produced (5/21)

2. Electronic match of CIS/NACS - last name, first name, and DOB
   -- no naturalization or naturalization after date of registration
   -- 19,000 and 19,500 matches produced (6/4 and 6/9)

3. Electronic match of RAPS, DACS, and STSC - last name, first name, and DOB
   -- 691 matches produced, regardless of naturalization status (7/30)

4. Electronic match of RAPS and DACS - last name, first name, and DOB
   -- including naturalization status (8/8)

5 Electronic match of RAPS, DACS, and STSC - last name and DOB
   -- work underway

6. Electronic match of CIS/NACS - last name and DOB
   -- naturalization before date of registration
   -- work underway

7. Electronic match of CIS/NACS - last name, first name, and DOB
   -- naturalization before date of registration
   -- work underway

Paper

8. Paper file review of 46th District - 4,119 records
   -- worksheets produced
   -- T-file & duplicate A-file review continuing

9. Paper file review - 1,349
   -- worksheets produced and continuing

10 Paper file review - 211
   -- work underway

11. Paper file review - 153
   -- 8/8 request received

12. Copy of Hermandad Mexicana Nacional list

U.S. Department of Justice
Immigration and Naturalization Service

Office of the Commissioner

425 I Street NW.
Washington, DC 20536

CO 703.1056

JUL 23 1997

The Honorable William M. Thomas
Chairman, Committee on House Oversight
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Pursuant to your letter of June 2, enclosed are an additional 85 worksheets based upon the Immigration and Naturalization Service's (INS) review of its paper files which correspond to individuals identified through an electronic match of INS databases against registered voters in California's 46th Congressional District. As you know, this comparison was based on surname, first name, and date of birth, and identified matches for which INS databases do not show a date of naturalization or which show a date of naturalization after the date of registration in the Orange County voter rolls. The enclosed worksheets are identical in format to those produced to the Committee on June 24, July 3, and July 18.

We would like to take this opportunity to clarify the work that remains outstanding with respect to INS's paper file review of the 46th District matches in response to your letter of June 2. The INS has instructed its field offices to review paper files pertaining to 4,119 alien numbers (A-numbers), rather than the 4,023 matches previously described to the Committee. As we indicated in our June 13 letter to you, the INS initially generated 4,023 matches for the 46th District and sent a list of those A-numbers to the Los Angeles District Office on May 21. However, when INS subsequently generated the worksheets on June 9 to facilitate uniform paper file review, it was necessary to create a new extract of data from our Central Index System (CIS). Because the information in CIS is constantly in use and is updated daily, the new extract varied slightly from the earlier extract. These variations caused the number of matches for the 46th District to increase from 4,023 to 4,119.

Of these 4,119 matches, information is still outstanding on 98 records. In addition, as described in our earlier letters, we are continuing our efforts to locate duplicate alien files and temporary files relating to individuals on whom we have already produced worksheets to the Committee, and we will provide any updated status information resulting from these efforts to the Committee as it becomes available.

As you know from our earlier correspondence, while INS' review of its paper files increases the reliability and usefulness of the immigration and citizenship status information being provided, limitations on the relevance of INS data to the Committee's work remain. Even after INS completes its review of all available paper records, further field investigation will be desirable to determine whether an apparent match between California and INS records pertains to two different individuals.

The INS will continue its efforts to respond to the Committee's outstanding requests on a timely basis, consistent with the privacy and voting rights interests of United States citizens. As we have indicated previously, we would appreciate the opportunity to meet with your staff to discuss our progress to date as well as further cooperation with respect to the Committee's outstanding requests.

I look forward to hearing from your staff to arrange a mutual time to meet. Please contact Roxie Lopez of my staff at 514-5231 to arrange the meeting.

Sincerely,

Allen Erenbaum
Acting Director
Congressional Relations

Enclosures

cc: The Honorable Sam Gejdenson

U.S. Department of Justice
Immigration and Naturalization Service

Office of the Commissioner

425 I Street NW.
Washington, DC 20536

CO 703.1056

JUL 29 1997

The Honorable William M. Thomas
Chairman, Committee on House Oversight
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Pursuant to your letter of June 23, 1997, and the disk provided to us by the Committee on July 9, enclosed are the initial results of the Immigration and Naturalization Service's (INS) paper file review of the additional 1,349 records identified by the Committee. Today we are producing 314 worksheets in response to this request, identical in format to those previously produced. These include 20 worksheets for records in the "80-million series" which, as we explained in our July 3, 1997, letter, pertain to applicants for Border Crossing Cards and for which INS has no corresponding paper records. INS field personnel are continuing to work on the outstanding portion of this request, and additional worksheets will be produced to the Committee on a rolling basis as further file review is completed.

As you know from our earlier correspondence, while INS' review of its paper files increases the reliability and usefulness of the immigration and citizenship status information being provided, limitations on the relevance of INS data to the Committee's work remain. Even after INS completes its review of all available paper records, further field investigation will be necessary in some cases to determine whether an apparent match between California and INS records do indeed relate to the same individual.

The INS will continue its efforts to respond to the Committee's outstanding requests on a timely basis, consistent with the privacy and voting rights interests of United States citizens. We believe that our ability to provide useful information to the Committee on a timely basis, including

responding to the two most recent requests of July 18, 1997, would be substantially enhanced by a meeting between INS representatives and Committee staff. We have sought to schedule such a meeting since June 13, 1997, without success. We would appreciate hearing from your staff to arrange a mutually convenient time to meet. Please contact Roxie Lopez of my staff at 514-5231 to arrange the meeting.

Sincerely,

FOR THE COMMISSIONER

Allen Erenbaum
Acting Director
Congressional Relations

Enclosures

cc: The Honorable Sam Gejdenson
Ranking Minority Member

WILLIAM M. THOMAS, CALIFORNIA,
CHAIRMAN

ROBERT W. NEY, OHIO
JOHN A. BOEHNER, OHIO
VERNON J. EHLERS, MICHIGAN
KAY GRANGER, TEXAS

SAM GEJDENSON, CONNECTICUT,
RANKING MINORITY MEMBER

STENY H. HOYER, MARYLAND
CAROLYN CHEEKS KILPATRICK, MICHIGAN

STACY CARLSON,
STAFF DIRECTOR
ROBERT J. RABIDN,
MINORITY STAFF DIRECTOR

Congress of the United States
House of Representatives
COMMITTEE ON HOUSE OVERSIGHT
1309 LONGWORTH HOUSE OFFICE BUILDING
(202) 225-8281
Washington, DC 20515-6230

July 29, 1997

Commissioner Doris M. Meissner
Immigration and Naturalization Service
Chester Arthur Building, Room 7100
425 "I" Street, N.W.
Washington, DC 20536

Dear Commissioner Meissner:

As you know, on June 2, 1997, Chairman Thomas of the Committee on House Oversight (Committee) asked the Immigration and Naturalization Service (INS) to compare INS records with the voter registration list for Orange County, California. Chairman Thomas supplemented his request on June 23, and twice more on July 18. In all four instances, the INS agreed to Chairman Thomas' request.

As the Ranking Members of the Committee and the Committee Task Force on the Contested Election in the 46th District of California, we appreciate the assistance INS has provided the Committee. We are concerned, however, the information you have provided thus far is incomplete, and may subject American citizens to unfair suspicions and accusations. We, therefore, require the INS' assistance to obtain complete information, as follows.

First, many worksheets provided to the Committee contain handwritten notations indicating that the files reviewed contained incomplete information because the person whose file was reviewed has additional "A files" or "T files". We understand that time deadlines imposed by Mr. Thomas precluded the INS from reviewing these additional files before providing the worksheets to us. Nevertheless, we are concerned that the INS still has not reviewed these supplemental files, and provided us with updated information. To ensure accuracy, the INS must review all supplemental files. You should begin with those individuals whose worksheets indicate the existence of supplemental files. However, the supplemental files for all individuals must be reviewed, irrespective of whether their existence is noted on the face of the worksheet.

Second, Chairman Thomas asked the INS to identify individuals who share identifying characteristics with Orange County registrants, and who – based on INS electronic records – could not be demonstrated to have been citizens at the time the Orange County registrant registered to vote. During discussions between your staff and Committee staff, the Majority refused to expand the search to include individuals in INS files who were citizens at the time the Orange County registrant registered to vote. This exclusion creates the likelihood that your comparison will identify the wrong person as a possible "match" for an Orange County registrant. Therefore, for each of the comparisons requested by Mr. Thomas – including those submitted on June 23 and July 2 -- please produce a list of individuals in INS records who share the same identifying characteristics as Orange County registrants, including individuals who were citizens at the time the corresponding registrant registered to vote.

Third, please provide us with the list of individuals registered to vote by Hermandad Mexicana Nacional, annotated to include citizenship and naturalization information.

The information requested above should be provided no later than August 12. Please provide the information on discs that can be read by personal computers, and in a format compatible with Microsoft Access (version 7), a standard database program.

Thank you for you assistance with this matter. If you have any questions, please con ct James Portnoy, General Counsel to the Minority of the Committee on House Oversight at (202) 225-2061.

With kindest regards, we are,

Sincerely Yours,

Sam Gejdenson
Ranking Member,
Committee on House Oversight

Steny H. Hoyer
Ranking Member,
Task Force on the Contested
Election in the 46th District of
California

DIVISIONS:
Archives
Corporate Filings
Elections
Information Technology
Limited Partnership
Management Services
Notary Public
Political Reform
Uniform Commercial Code

BILL JONES
Secretary of State
State of California

EXECUTIVE OFFICE
(916) 653-7244
1500 - 11th STREET
SACRAMENTO, CA 95814

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97 AUG 19 AM 10:46
COMMITTEE ON
HOUSE OVERSIGHT

August 12, 1997

VIA Facsimile Transmission

The Honorable William M. Thomas ✓
Chairman
HOUSE OVERSIGHT COMMITTEE
2208 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Sam Gejdenson
Ranking Member
HOUSE OVERSIGHT COMMITTEE
2416 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Vernon Ehlers
Chairman
Task Force on the Contested Election in California's 46th Congressional District
HOUSE OVERSIGHT COMMITTEE
1717 Longworth House Office Building
Washington, D.C. 20515

The Honorable Steny H. Hoyer
Ranking Member
Task Force on the Contested Election in California's 46th Congressional District
1705 Longworth House Office Building
Washington, D.C. 20515

Re: Request by Task Force on the Contested Election of the 46th District of the United States Immigration and Naturalization Service for Identification Information Pertaining to Persons Registered to Vote in Orange County by Hermandad Mexicana Nacional

Gentlemen:

I am writing you to express my concern regarding the recent request by Congressman Gejdenson and Congressman Hoyer to the United States Immigration and Naturalization Service for all information pertaining to the 1160 persons registered to vote in Orange County prior to the 1996 general election by Hermandad Mexicana Nacional. As the Committee is aware, this agency, along with the Orange County District Attorney's Office, is currently engaged in a criminal investigation pertaining to allegations of registration fraud, believed to have occurred prior to the 1996 general election.

This investigation is currently at a critical stage. I am deeply concerned that an ensuing criminal prosecution, should the evidence warrant it, or the identification of targets of such a criminal investigation might well be compromised should the information received from the United States Immigration and Naturalization Service pertaining to the Hermandad registrants be disseminated for purposes other than law enforcement use at this critical juncture. We have undertaken great effort to preserve the confidentiality of this information.

Accordingly, I would urge the members of your Committee to carefully reconsider your requests to the United States Immigration and Naturalization Service in this regard. While such a request may be appropriate after final disposition has been reached regarding the possibility of criminal charges, I believe that such a request at this point in time might well compromise our ability to complete our criminal investigation and, in the case of any ensuing criminal prosecutions, the Orange County District Attorney to fully and fairly prosecute criminal charges.

It is my understanding that the United States Immigration and Naturalization Service has until today to respond to your request, hence your urgent reconsideration of this matter would be greatly appreciated.

Sincerely,

Bill Jones
Secretary of State

BJ/jfs/da

cc: Michael Capizzi, District Attorney, County of Orange

The Honorable Loretta Sanchez, Member of Congress
46th Congressional District

Mr. Robert K. Dornan

U.S. Department of Justice
Immigration and Naturalization Service

Office of the Commissioner

425 I Street NW.
Washington, DC 20536

CO 703.1056

JUL 30 1997

The Honorable William M. Thomas
Chairman, Committee on House Oversight
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This responds to your two letters of July 18, asking that the Immigration and Naturalization Service (INS) conduct additional electronic and paper file reviews to assist the Committee in its work.

One of your letters requested that the INS perform additional electronic searches of 3 INS databases pursuant to the Committee's subpoena of May 14, specifically, comparing data from the 1.3 million-person Orange County voter registration list with the Refugee, Asylum, and Parole System (RAPS), the Deportable Alien Control System (DACS), and the Students and Schools System (STSC). I am enclosing three tapes--one for each database--with the initial results of our matching effort, which has been conducted according to the parameters established under the subpoena unless a deviation has been necessary as specifically described below. The INS has identified a total of 691 matches, 4 for RAPS, 55 for DACS, and 632 for STSC.

Each of the tapes is based on a comparison of first name, last name, and date of birth and contains available "identifying information" for each person in the specified INS database whose information matches a record in the Orange County voter file. It cannot be determined by such a cross-check that a particular INS record pertains to any individual who registered to vote in Orange County. Moreover, because RAPS, DACS, and STSC do not contain naturalization status information, INS is producing to the Committee all matches, not only those for which the INS database shows no date of naturalization or shows a date of naturalization later than the date of voter registration in the Orange County records. A technical description of each tape is attached.

The INS is proceeding to conduct a further electronic cross-check of the records identified by alien number (A-number) in RAPS and DACS against data contained in the Central Index System and Naturalization Automated Casework System in order to provide the Committee with naturalization status information, if any, for each record. We expect to produce the results of this effort to the Committee on or before August 8. Because the records of foreign students contained in STSC do not include A-numbers, such a further cross-check of these records is not possible.

The Committee has also requested that INS conduct an identical electronic search of RAPS, DACS, and STSC using only last names and dates of birth. This comparison requires additional programming and computer time to complete. We expect to produce the results of this effort to the Committee on or before August 29.

We emphasize, as the Committee is aware from our earlier correspondence, that, in light of the methodology employed--conducting matches based only on name and date of birth--and the organization of INS' databases, the data on these tapes do not represent the number of illegal voters or registrants in Orange County, nor should it be inferred that any particular named individual on this tape has voted or registered to vote illegally. In fact, matches may occur with individuals who reside outside the county, the State of California, or the United States.

In particular, matches against STSC are of questionable validity. The STSC includes approximately 3.2 million records of foreign students who have applied for admission to schools in the United States, but it does not reflect whether those students ever actually entered this country or, if so, whether they remain here. Thus, some of the individuals whose names are being produced today may never have entered the United States. Because there are no A-numbers for these foreign students, INS cannot readily cross-check its other electronic or paper files to increase the reliability of these raw matches. We note that of the 632 matches being produced, 44 are duplicate matches for a single name contained in the Orange County records.

The RAPS, which contains approximately 970,000 records on individuals who have filed for asylum, produced 4 matches, none of which are duplicates of A-numbers that have been produced previously to the Committee. DACS contains approximately 1.7 million records and produced 55 matches, 8 of which are duplicates of A-numbers previously provided to the Committee.

It is important to note that the inclusion of an individual's name in RAPS or DACS does not preclude the possibility that the person is a naturalized United States citizen. If an alien in deportation proceedings successfully raised a claim for suspension of deportation and subsequently adjusted to status as a lawful permanent resident, he or she would be eligible to file for naturalization. Similarly, an alien who applied for and was granted asylum is potentially eligible to apply for naturalization after sufficient time has elapsed.

The Committee's second letter of July 18, requests that the INS perform a manual check of 211 alien files, in addition to the manual reviews for two sets of files already underway, one comprising 4,119 files and the other 1,349 files. The INS has generated worksheets comparable to those agreed upon previously to conduct this additional file review and distributed them to the appropriate 21 INS field offices for processing. Given the additional time required to generate and distribute the worksheets and to gather and review the files, we have not been able to complete this task by today as the Committee requested. We expect to produce the initial results of this effort to the Committee on or before August 12. We note, however, that the Committee has cited no basis for this additional request other than the caption on its letter, "Re: Dornan v. Sanchez." In light of the INS' obligations under law to safeguard personal information in its records, as well as the substantial and continuing burden of responding to the Committee's requests, we would appreciate further information with respect to these records before providing responsive information to the Committee.

Finally, in your June 23 letter you requested that the INS keep the A-files related to this investigation readily available so that they can be referred to expeditiously should additional information be required. While we have fully complied with this request to date, the INS must maintain its ability to provide services to qualified applicants. Accordingly, we will begin to release certain

A-files on a case-by-case basis where they are needed in order to accomplish agency business. We will instruct field personnel to carefully update our records to indicate the new location of such files so that they may be readily retrieved if they are needed again in connection with the Committee's work.

The INS has devoted substantial resources to responding promptly to the Committee's requests over the last several months, at considerable cost to our normal operations. We are committed to completing the outstanding requests with a similar degree of cooperation. To that end, we would appreciate hearing from your staff in response to our requests for a mutually convenient time to meet to discuss efficient completion of this process.

Sincerely,

Doris Meissner
Commissioner

Enclosures

cc: The Honorable Sam Gejdenson
Ranking Minority Member

WILLIAM M. THOMAS, CALIFORNIA,
CHAIRMAN

ROBERT W. NEY, OHIO
JOHN A. BOEHNER, OHIO
VERNON J. EHLERS, MICHIGAN
KAY GRANGER, TEXAS
JOHN L. MICA, FLORIDA

SAM GEJDENSON, CONNECTICUT,
RANKING MINORITY MEMBER

STENY H. HOYER, MARYLAND
CAROLYN CHEEKS KILPATRICK, MICHIGAN

STACY CARLSON,
STAFF DIRECTOR
ROBERT J. BASKIN,
MINORITY STAFF DIRECTOR

Congress of the United States
House of Representatives
COMMITTEE ON HOUSE OVERSIGHT
1309 LONGWORTH HOUSE OFFICE BUILDING
(202) 225-8281
Washington, DC 20515-6157

August 8, 1997

Ms. Doris Meissner
Commissioner
Immigration & Naturalization Service
425 Eye St., NW
Washington, D.C. 20536

Dear Commissioner Meissner:

I am writing in response to the INS request for additional information regarding files that the House Oversight Committee asked the INS to review on July 18. These files relate to possible exact matches between INS files and Orange County voter registration files identified by the INS on May 21 that were not included in the possible exact matches identified by the INS on June 13.

In addition, the House Oversight Committee requests that the INS review 153 alien files that relate to matches between INS files and Orange County voter registration files that are sufficiently close as to merit further examination. A computer disk containing these files is enclosed.

The Committee requests that the INS complete its review of these files by August 22, 1997.

If you have any questions please contact Roman Buhler, Counsel, or John Kelliher, Assistant Counsel, at (202) 225-8281.

Best regards,

Bill Thomas
Chairman

Enclosure: (1)

cc: Members, Committee on House Oversight
(without enclosure)

U.S. Department of Justice
Immigration and Naturalization Service

Office of the Commissioner

425 I Street NW.
Washington, DC 20536

CO 703.1056

AUG 8 1997

The Honorable William M. Thomas
Chairman, Committee on House Oversight
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in further response to your letter of July 18, 1997 and earlier correspondence asking that the Immigration and Naturalization Service (INS) conduct additional electronic and paper file reviews to assist the Committee in its work. The following tapes and worksheets are enclosed.

(1) On July 30, 1997, we produced information to the Committee on matches resulting from a comparison of the Orange County voter registration list with 3 INS databases--the Refugee, Asylum, and Parole System (RAPS), the Deportable Alien Control System (DACS), and the Students and Schools System (STSC). As we stated in our July 30 letter, we have now conducted a further cross-check of the matches from RAPS and DACS against the Central Index System (CIS) and the Naturalization Automated Casework System (NACS) to identify naturalization status. Of the 4 records identified in RAPS, none appears as having naturalized in CIS/NACS. Of the 55 records identified in DACS, 8 appear as having naturalized in CIS/NACS, and all of those show a date of naturalization before the date of voter registration in the Orange County records. Two tapes are enclosed containing the DACS information, as well as a technical description of each.

As the Committee is aware from our earlier correspondence, in light of the methodology employed--conducting matches based only on name and date of birth--and the organization of INS' databases, the data on these tapes do not represent the number of illegal voters or registrants in Orange County, nor should it be inferred that any particular named individual on this tape has voted or registered to vote illegally.

(2) We are also enclosing additional results of the INS' paper file review in response to the Committee's earlier requests. The 253 worksheets are identical in format to those previously produced. Today's production includes 72 worksheets in response the your June 2 letter which involves 4,119 files and 181 worksheets in response to your June 23 letter involving 1,349 files. INS field personnel are continuing to work on the outstanding portions of these requests as well as your July 18 request involving 211 files, and additional worksheets will be produced to the Committee on a rolling basis as further file review is completed.

While the INS' review of its paper files increases the reliability and usefulness of the immigration and citizenship status information being provided, paper file review alone cannot establish whether an apparent match between California and INS records does indeed relate to the same individual.

We look forward to meeting with your staff on Monday to discuss the information INS has produced to date and the efficient completion of this process.

Sincerely,

FOR THE COMMISSIONER

Allen Erenbaum
Acting Director
Congressional Relations

Enclosures

cc: The Honorable Sam Gejdenson
Ranking Minority Member

BILL THOMAS, CALIFORNIA
CHAIRMAN

WILLIAM M. THOMAS, CALIFORNIA
RANKING MINORITY MEMBER

Congress of the United States
House of Representatives
COMMITTEE ON HOUSE OVERSIGHT
1309 LONGWORTH HOUSE OFFICE BUILDING
(202) 225-8281
Washington, DC 20515-0515

August 19, 1997

Commissioner Doris Meissner
Immigration and Naturalization Service
425 I St. NW
Washington, DC 20536

Dear Commissioner Meissner:

I am writing to request that the INS conduct an analysis of the enclosed electronic files.

Specifically, the Committee requests that the INS conduct a first name/last name/date-of-birth comparison between the INS files related to the alien numbers identified by the Committee on the enclosed disk and the Orange County voter registration list. This comparison should be conducted under the criteria established by the Committee's May 14, 1997 subpoena. From this comparison, we request that the INS produce the matches and the additional identifying information related to these matches in electronic format as specified by the May 14, 1997 subpoena.

In addition, we request that the INS provide the name and date-of-birth from the INS files for the alien numbers identified by the Committee that do not constitute matches. Finally, we request the number of alien files that the INS was unable to include in the electronic comparison and the reason why these files could not be electronically compared to the Orange County voter registration list.

Please produce this information by August 28, 1997.

If you have any question please contact John Kelliher, Assistant Counsel to the Committee on House Oversight, at (202) 225-8281.

Best regards,

Bill Thomas
Chairman

Enclosure: 1

cc: Members, House Oversight Committee
(without enclosure)

U.S. Department of Justice
Immigration and Naturalization Service

Office of the Commissioner

425 I Street NW.
Washington, DC 20536

CO 703.1056

AUG 19 1997

The Honorable Wifliam M. Thomas
Chairman, Committee on House Oversight
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in further response to your letters of July 18 and earlier correspondence asking that the Immigration and Naturalization Service (INS) conduct additional electronic and paper file reviews to assist the Committee in its work. The following tapes and worksheets are enclosed.

(1) On July 30 and August 8, we produced information to the Committee on matches resulting from certain comparisons of the Orange County voter registration list with 3 INS databases--the Refugee, Asylum, and Parole System (RAPS), the Deportable Alien Control System (DACS), and the Students and Schools System (STSC). We have now conducted an additional comparison against those 3 databases based on last name and date of birth only. (The earlier searches included a check for first names, as well.) For RAPS and DACS, we conducted a further cross-check against the Central Index System (CIS) and the Naturalization Automated Casework System (NACS) to identify naturalization status. Of the records identified in RAPS, 15,579 show no date of naturalization and 7 show a date of naturalization after the date of voter registration in the Orange County records. Of the records identified in DACS, 12,200 show no date of naturalization and 90 show a date of naturalization after the date of voter registration in the Orange County records. The cross-check of STSC produced 19,250 matches; because the records of foreign students contained in STSC do not include alien numbers, however, a further cross-check against CIS/NACS for naturalization status is not possible. The five tapes are enclosed, along with a technical description of each.

As the Committee is aware from our earlier correspondence, in light of the methodology employed--conducting matches based only on name and date of birth--and the organization of INS' databases, the data on these tapes do not represent the number of illegal voters or registrants in Orange County, nor should it be inferred that any particular named individual on these tapes has voted or registered to vote illegally.

(2) We are also enclosing additional results of the INS' paper file review in response to the Committee's earlier requests. The 608 worksheets are identical in format to those previously produced. Today's production includes 14 additional worksheets in response to your June 2 letter involving 4,119 files, 558 additional worksheets in response to your June 23 letter involving 1,349 files, and 36 worksheets in response to your July 18 letter involving 211 files. INS field personnel are continuing to work on the outstanding portions of these requests, as well as checking duplicate alien files and temporary files--efforts which are reflected in some of the

worksheets produced today--and additional worksheets will be produced to the Committee on a rolling basis as further file review is completed. The INS has also begun work on the Committee's latest request for the review of an additional 153 A-files, but we will not be able to complete that work by August 22, in light of the other tasks underway.

While the INS' review of its paper files increases the reliability and usefulness of the immigration and citizenship status information being provided, paper file review alone cannot establish whether an apparent match between California and INS records does indeed relate to the same individual.

We appreciated the opportunity to meet with your staff last week to discuss the information INS has produced to date and the prospects for efficient completion of this process.

Sincerely,

FOR THE COMMISSIONER

Allen Erenbaum
Acting Director
Congressional Relations

cc: The Honorable Sam Gejdenson
Ranking Minority Member

U.S. Department of Justice

Immigration and Naturalization Service

425 Eye Street N.W.
Washington, D.C. 20536

AUG 20 1997

Mr. John Kelliher
Assistant Counsel
Committee on House Oversight
1309 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Kelliher:

I appreciated the opportunity to meet with you and other Committee staff on August 11 to discuss the on-going efforts of the Immigration and Naturalization Service (INS) to respond to the Committee's requests for information related to its inquiry into the contested election in the 46th Congressional District in California. As I stated at the meeting, I believe that over the last several months we have developed a process that is working to meet the Committee's needs, given the inherent limitations of data matching between the California state voter rolls and INS records.

The INS looks forward to the efficient completion of this project, and we compiled the attached list of tasks to summarize our efforts to date and the Committee's outstanding requests. As we discussed, the INS understands that this list represents the Committee's priorities, and we are focusing our resources on responding to these requests. Accordingly, we are not currently pursuing any remaining searches that were called for in the Committee's May 14 subpoenas. Should you wish us to pursue additional searches that are not included on this list, we understand that the Committee will continue its current practice of making such requests by letter to the Commissioner.

At the appropriate time, we would appreciate a formal acknowledgement from the Committee that the INS has fully met its obligations under the May 14 subpoenas.

Please feel free to contact me directly, as well as the other INS staff assigned to this project, with any questions or concerns.

Sincerely,

David A. Martin
General Counsel

Enclosure

cc: Mr. James Portnoy

House Oversight Committee/Orange Co. Projects August 11, 1997

Electronic

1. Electronic match of CIS/NACS - last name and DOB
   -- no naturalization or naturalization after date of registration
   -- 500,000 matches produced (5/21)

2. Electronic match of CIS/NACS - last name, first name, and DOB
   -- no naturalization or naturalization after date of registration
   -- 19,000 and 19,500 matches produced (6/4 and 6/9)

3. Electronic match of RAPS, DACS, and STSC - last name, first name, and DOB
   -- 691 matches produced, regardless of naturalization status (7/30)

4. Electronic match of RAPS and DACS - last name, first name, and DOB
   -- including naturalization status (8/8)

5 Electronic match of RAPS, DACS, and STSC - last name and DOB
   -- work underway

6. Electronic match of CIS/NACS - last name and DOB
   -- naturalization before date of registration
   -- work underway

7. Electronic match of CIS/NACS - last name, first name, and DOB
   -- naturalization before date of registration
   -- work underway

Paper

8. Paper file review of 46th District - 4,119 records
   -- worksheets produced
   -- T-file & duplicate A-file review continuing

9. Paper file review - 1,349
   -- worksheets produced and continuing

10 Paper file review - 211
   -- work underway

11. Paper file review - 153
   -- 8/8 request received

12. Copy of Hermandad Mexicana Nacional list

WILLIAM M. THOMAS, CALIFORNIA,
CHAIRMAN

ROBERT W. NEY, OHIO
JOHN A. BOEHNER, OHIO
VERNON J. EHLERS, MICHIGAN
KAY GRANGER, TEXAS

SAM GEJDENSON, CONNECTICUT,
RANKING MINORITY MEMBER

STENY H. HOYER, MARYLAND
CAROLYN CHEEKS KILPATRICK, MICHIGAN

STACY CARLSON,
STAFF DIRECTOR
ROBERT J. BASKIN,
MINORITY STAFF DIRECTOR

Congress of the United States

House of Representatives

97 AUG 25 PM 12:15

COMMITTEE ON HOUSE OVERSIGHT
1309 LONGWORTH HOUSE OFFICE BUILDING
(202) 225-6281
Washington, DC 20515-0250

August 25, 1997

The Honorable William M. Thomas
Chairman
Committee on House Oversight
1309 Longworth House Office Building
Washington, DC 20515

Re: Request for Assistance in Obtaining INS Data

Dear Mr. Chairman:

As you know, on July 29, 1997, Congressman Hoyer and I wrote to INS Commissioner Doris Meissner to request information relevant to the election contest in the 46th district of California. In pertinent part, we requested:

1. a list of individuals in INS records who share the same identifying characteristics as Orange County registrants identified in response to the Majority's requests, including individuals who were citizens at the time the corresponding registrant registered to vote; and

2. the list of individuals registered to vote by Hermandad Mexicana Nacional, annotated to include citizenship and naturalization information.

As we explained to the INS, the information that the INS has provided to the Committee thus far is incomplete and ill-suited to determining the citizenship of registered voters. The information we requested will help the Committee assess the information that the INS has provided, and to identify its limitations. This, in turn, will help the Committee protect American citizens from unfair suspicions and false accusations.

When we made our request, the INS assured us that it would provide the information shortly. The INS repeated this assurance on August 11th, at a meeting attended by Majority and Minority staff. Thereafter, however, the INS reversed itself and

advised Minority staff that it could not provide the information in response to our request. The INS explained that the information we seek is covered by the Privacy Act, 5 U.S.C. §552a. Although the Privacy Act permits disclosure to a committee or a subcommittee of Congress, 5 U.S.C. §552a(b)(9), the Department of Justice interprets this provision as requiring a request from a chairman, not a ranking member.

In order to address the Department of Justice's concerns, and to ensure that the Committee has the most complete possible information available to it, I request your assistance in obtaining the foregoing information from the INS. In particular, I request that you adopt our July 29th request as a Committee request, and advise the INS accordingly.

Please let me know if you have any questions or require any further information. Thank you for your assistance with this matter.

Sincerely Yours,

Sam Gejdenson
Ranking Member,
Committee on House Oversight

cc: Members, Committee on House Oversight

BILL THOMAS, CALIFORNIA
CHAIRMAN

JAMES C. GREENWOOD, PENNSYLVANIA
VICE CHAIRMAN

Congress of the United States

House of Representatives

COMMITTEE ON HOUSE OVERSIGHT
1309 LONGWORTH HOUSE OFFICE BUILDING
(202) 225-8281
Washington, DC 20515-0157

August 25, 1997

Ms. Doris Meissner
Commissioner
Immigration & Naturalization Service
425 Eye St., NW
Washington, D.C. 20536

Re: Dornan v. Sanchez

Dear Commissioner Meissner:

I am writing to request that the INS perform an analysis of the enclosed electronic files.

Specifically, the Committee on House Oversight requests that the INS perform a first name/last name/date-of-birth match between INS databases, including files containing a date of naturalization, and the enclosed database. From this comparison we request that the INS return, in an electronic format, a list of the files, provided by the Committee, that do not constitute a match with INS files.

Please produce this material by September 2, 1997.

If you have any questions please contact John Kelliher, Assistant Counsel to the Committee on House Oversight, at (202) 225-8281.

Best regards,

Bill Thomas
Chairman

enclosure: 1

cc: Members, Committee on House Oversight
(without enclosure)

WILLIAM M. THOMAS, CALIFORNIA
CHAIRMAN

Congress of the United States

House of Representatives

COMMITTEE ON HOUSE OVERSIGHT
1309 [illegible]
202 225-5741
Washington, DC 20515-6157

August 25, 1997

Ms. Doris Meissner
Commissioner
Immigration & Naturalization Service
425 Eye St., NW
Washington, D.C. 20536

Re: Dornan v. Sanchez

Dear Commissioner Meissner:

I am writing to request that the INS review the paper files related to the alien numbers identified on the enclosed computer disk and provide the committee with worksheets summarizing these files.

Please produce this material by September 2, 1997.

If you have any questions please contact John Kelliher, Assistant Counsel to the Committee on House Oversight, at (202) 225-8281.

Best regards,

Bill Thomas
Chairman

enclosure: 1

cc: Members, Committee on House Oversight
(without enclosure)

U.S. Department of Justice
Immigration and Naturalization Service

Office of the Commissioner

425 I Street NW.
Washington, DC 20536

CO 703.1056

AUG 29 1997

The Honorable William M. Thomas
Chairman, Committee on House Oversight
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter is in further response to your letter of August 19 and earlier correspondence asking that the Immigration and Naturalization Service (INS) conduct additional electronic and paper file reviews to assist the Committee in its work. The responsive tapes and worksheets, described below, are enclosed.

As requested in your August 19 letter, we have conducted a comparison between certain INS databases and alien numbers (A-numbers) provided to us on diskette by the Committee. The original diskette provided with your letter contained 16,383 A-numbers, some of which appeared to contain errors such as extra digits or letters rather than numbers. Committee staff provided us with a replacement diskette containing 19,285 A-numbers on August 25, and we have used this replacement diskette to conduct the comparison requested in your letter. Again, this new diskette contained errors in some "A-numbers," such as blanks, extra digits, and letters, and we removed these erroneous data, as well as duplicates, before making a comparison with INS' Central Index System and Naturalization Automated Casework System to identify the first name, last name, and date of birth corresponding with each A-number. We then compared these records against the Orange County voter registration rolls to identify both matching and non-matching records, which resulted in 1,019 matches and 16,987 non-matches. The tapes containing this information as well as "error" records are enclosed, along with a technical description of each.

We are also enclosing a replacement for the tape containing information from the Students and Schools System which we produced to the Committee on August 19. This tape has been corrected to include first names.

As the Committee is aware from our earlier correspondence, in light of the methodology employed--conducting matches based only on name and date of birth--and the organization of INS' databases, the data on these tapes do not represent the number of illegal voters or registrants in Orange County, nor should it be inferred that any particular named individual on these tapes has voted or registered to vote illegally.

We are also enclosing additional results of the INS' paper file review in response to the Committee's earlier requests. The 263 worksheets are identical in format to those previously produced. Today's production includes 8 additional worksheets in response to your June 2 letter, 135 additional worksheets in response to your June 23 letter, 22 additional worksheets in response to your July 18 letter, and 21 worksheets in response to your August 8 letter. In addition, we are producing 77 revised worksheets as a result of our ongoing effort to reconcile duplicate alien files and temporary files where such records exist. INS field personnel are continuing to work on the outstanding portions of these requests, and additional worksheets will be produced to the Committee on a rolling basis as further file review is completed.

While the INS' review of its paper files increases the reliability and usefulness of the immigration and citizenship status information being provided, paper file review alone cannot establish whether an apparent match between California and INS records does indeed relate to the same individual.

We look forward to the efficient completion of this process. If you or your staff have any questions concerning this effort, please do not hesitate to contact me.

Sincerely,

FOR THE COMMISSIONER

Allen Erenbaum
Acting Director
Congressional Relations

Enclosures

cc: The Honorable Sam Gejdenson
Ranking Minority Member

August 27, 1997

Tape for the California matches to the Students and Schools System (STSC) by Last Name and Date of Birth

Tape Number	:	W07209 - Majority Committee
Record Count	:	19,250
Tape Specs	:	3490 cartridge, non-compressed, standard label, record length of 358, block size of 28725
Layout	:	Positions 1 thru 251 contain the data sent by the State of California Positions 252 thru 358 contain the STSC corresponding data

California Data

Length	Element Name
2	County Code
1	Update code
8	Affidavit Number
1	Gender code
25	Last Name
25	First Name
1	Middle Initial
40	Residence Address
15	Residence City
5	Residence Zip Code
1	Party Code
8	Precinct
6	Registration Date (Year Month Day)
6	Birth Date (Year Month Day)
2	Assembly District
2	Senatorial District
2	Congressional District
58	Mailing Address
24	Mailing City and Country
2	Mailing State
5	Mailing Zip Code
1	Language Preference
11	Filler

STSC Data

Length	Element Name
11	Student Admission Number
25	Last Name
20	First Name
6	Date of Birth(Year, Month,Day)
1	Gender
22	Street Address
20	City Address
2	State Address

August 28, 1997

Processing for 19,285 A-Numbers received from Committee

The a-numbers sent by the Committee had to be reformatted into a 9-digit a-number for matching against the CIS data. The Committee prefixed each a-number with an "A". This character was ignored during the reformat processing. While reformatting these a-numbers, 122 records were determined to be in error. The following is the layout for the error file and a description of the possible error messages:

Length	Element Name
5	Input record number
2	Filler
15	Committee's A-Number
3	Filler
54	Error Message

The four possible error messages are as follows:

1. A-NUMBER HAS ALPHABETIC CHARACTERS IMBEDDED	- 36 errors
2. A-NUMBER IS BLANK	- 40 errors
3. A-NUMBER IS ZEROES	- 1 error
4. A-NUMBER MORE THAN 9 DIGITS	- 45 errors

The remaining 19,163 records were sorted by a-number and the duplicates were removed. There were 870 duplicate records removed.

The remaining 18,293 records were then matched against the CIS data by a-number. 287 a-numbers did not match to any records currently on CIS. The following is the layout for the file of unmatched records:

Length	Element Name
15	Committee's A-Number
9	Reformatted A-Number
56	Filler

The remaining 18,006 records were then sorted by Last Name, First Name, and Date-of-Birth. After the sort, the records were matched against the California Voter Data by exact Last Name, exact First Name, and exact Date-of-Birth.

There were 16,987 records that did not match to the California Voter Data. The following is a record layout for the unmatched records:

Length	Element Name
9	Alien Number
6	Naturalization Date (Year Month Day)
30	Last Name
25	First Name
25	Middle Name
8	Filler
1	Gender

There were 1,019 records that did match to the California Voter Data. The following is a record layout for the matched records:

California Data

Length	Element Name
2	County Code
1	Update code
8	Affidavit Number
1	Gender code
25	Last Name
25	First Name
1	Middle Initial
40	Residence Address
15	Residence City
5	Residence Zip Code
1	Party Code
8	Precinct
6	Registration Date (Year Month Day)
6	Birth Date (Year Month Day)
2	Assembly District
2	Senatorial District
2	Congressional District
58	Mailing Address
24	Mailing City and Country
2	Mailing State
5	Mailing Zip Code
1	Language Preference
11	Filler

CIS/NACS Data

Length	Element Name
9	Alien Number
6	Naturalization Date (Year Month Day)
6	Birth Date (Year Month Day)
8	Filler
1	Gender

August 28, 1997

Tapes for the Processing for 19,285 A-Numbers received from Committee

Error Records

Tape Numbers : W07214 (Majority Committee)

Record Count : 122

Tape Specs : 3490 cartridge, non-compressed, non-labeled, record length of 80, block size of 24,000

Records not Matched to CIS

Tape Numbers : W07187 (Majority Committee)

Record Count : 287

Tape Specs : 3490 cartridge, non-compressed, non-labeled, record length of 80, block size of 24,000

Records not Matched to California Voter Data

Tape Numbers : W07171 (Majority Committee)

Record Count : 16,987

Tape Specs : 3490 cartridge, non-compressed, non-labeled, record length of 110, block size of 31,900

Records Matched to California Voter Data

Tape Numbers : W07184 (Majority Committee)

Record Count : 1,019

Tape Specs : 3490 cartridge, non-compressed, non-labeled, record length of 281, block size of 28,100

WILLIAM M. THOMAS, CALIFORNIA,
CHAIRMAN

ROBERT W. NEY, OHIO
JOHN A. BOEHNER, OHIO
VERNON J. EHLERS, MICHIGAN
KAY GRANGER, TEXAS
JOHN L. MICA, FLORIDA

SAM GEJDENSON, CONNECTICUT,
RANKING MINORITY MEMBER

STENY H. HOYER, MARYLAND
CAROLYN CHEEKS KILPATRICK, MICHIGAN

STACY CARLSON,
STAFF DIRECTOR
ROBERT J. BASKIN,
MINORITY STAFF DIRECTOR

Congress of the United States
House of Representatives
COMMITTEE ON HOUSE OVERSIGHT
1309 LONGWORTH HOUSE OFFICE BUILDING
(202) 225-8281
Washington, DC 20515-6157

September 3, 1997

Ms. Doris Meissner
Commissioner
Immigration & Naturalization Service
425 Eye St., NW
Washington, D.C. 20536

Re: Dornan v Sanchez

Dear Commissioner Meissner:

I am writing to requests that the INS (1) determine if the individuals identified by the Committee on the enclosed disc have INS records and (2) review these files and generate worksheets summarizing these files. In addition, return a list of those persons who do not have an INS record.

The Committee requests that the INS produce this information by September 9, 1997.

If you have any questions please contact John Kelliher, Assistant Counsel, at (202) 225-8281.

Best regards,

Bill Thomas
Chairman

enclosure: 1

cc: Members, Committee on House Oversight
(without enclosure)

U.S. Department of Justice
Immigration and Naturalization Service

Office of the Commissioner

425 I Street NW.
Washington, DC 20536

CO 703.1056

SEP 5 1997

The Honorable William M. Thomas
Chairman, Committee on House Oversight
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter is in response to your letter of August 25, 1997 and three letters of September 3 asking that the Immigration and Naturalization Service (INS) conduct additional electronic and paper file reviews to assist the Committee in its work.

As requested in your August 25 letter, we have conducted a comparison between information contained on a diskette provided by the Committee and the INS' Central Index System based on first name, last name, and date of birth. In accordance with your directions, we are returning a tape listing 14,015 non-matching records, along with a technical description.

As the Committee is aware from our earlier correspondence, in light of the methodology employed--conducting matches based only on name and date of birth--and the organization of INS' databases, non-matches may occur for a variety of reasons, and the inferences that may be drawn from such non-matches should reflect such data limitations.

In your September 3 letters, you request that INS conduct a further paper file review of certain records identified by the Committee on diskette and provide the results to the Committee by September 9, 1997. We have begun this process, but in light of the multiple steps required to conduct such file review, as outlined in our June 13 letter to the Committee, it is not feasible for INS to complete the work in less than five working days. First, INS Headquarters must generate the worksheets by computer, separate them by INS File Control Office (FCO), and send them to the appropriate FCO. Then, each FCO must retrieve the corresponding files from multiple locations, sometimes ordering them from a Federal Records Center over which INS does not exercise supervisory control. INS field personnel must then

review each file, complete the worksheet, and return it to Headquarters for collating, copying, and transmittal to the Committee. We will provide the results of this additional file review to the Committee as soon as possible.

We are also continuing to work on the Committee's other outstanding requests, and we will continue to provide worksheets to the Committee on a rolling basis as they become available. If you or your staff have any questions concerning this effort, please do not hesitate to contact me.

Sincerely,

FOR THE COMMISSIONER

Allen Erenbaum
Acting Director
Congressional Relations

cc: The Honorable Sam Gejdenson
Ranking Minority Member

WILLIAM M. THOMAS, CALIFORNIA
CHAIRMAN

ROBERT W. NEY, OHIO
JOHN A. BOEHNER, OHIO
VERNON J. EHLERS, MICHIGAN
KAY GRANGER, TEXAS
JOHN L. MICA, FLORIDA

SAM GEJDENSON, CONNECTICUT
RANKING MINORITY MEMBER

STENY H. HOYER, MARYLAND
CAROLYN CHEEKS KILPATRICK, MICHIGAN

STACY CARLSON
STAFF DIRECTOR
ROBERT J. BASKIN
MINORITY STAFF DIRECTOR

Congress of the United States
House of Representatives
COMMITTEE ON HOUSE OVERSIGHT
1309 LONGWORTH HOUSE OFFICE BUILDING
(202) 225-8281
Washington, DC 20515-0157

September 5, 1997

Ms. Doris Meissner
Commissioner
Immigration & Naturalization Service
425 Eye St., NW
Washington, D.C. 20536

Re: Dornan v Sanchez

Dear Commissioner Meissner:

I am writing to requests that the INS review the alien files identified on the enclosed computer disk and generate worksheets summarizing these files.

The Committee requests that the INS complete its review of these files by September 12, 1997.

If you have any questions please contact John Kelliher, Assistant Counsel, at (202) 225-8281.

Best regards,

Bill Thomas

Bill Thomas
Chairman

enclosure: 1

cc: Members, Committee on House Oversight
(without enclosure)

WILLIAM M. THOMAS, CALIFORNIA,
CHAIRMAN

ROBERT W. NEY, OHIO
JOHN A. BOEHNER, OHIO
VERNON J. EHLERS, MICHIGAN
KAY GRANGER, TEXAS
JOHN L. MICA, FLORIDA

SAM GEJDENSON, CONNECTICUT,
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MINORITY STAFF DIRECTOR

Congress of the United States
House of Representatives
COMMITTEE ON HOUSE OVERSIGHT
1309 LONGWORTH HOUSE OFFICE BUILDING
(202) 225-8281
Washington, DC 20515-6157

September 8, 1997

Ms. Doris Meissner
Commissioner
Immigration & Naturalization Service
425 Eye St., NW
Washington, D.C. 20536

Re: Doman v Sanchez

Dear Commissioner Meissner:

In the material produced by the INS on August 28, 1997 there were records that could not be processed because of an error within the alien number provided by the Committee and records that did not match any records currently on CIS. Enclosed is a disk with additional information related to these two categories of records. The Committee requests that the INS: (1) locate the files related to this information and; (2) review these files and generate worksheets summarizing these files. In addition, return a list of those records that still cannot be located.

The Committee requests that the INS produce this information by September 15, 1997.

If you have any questions please contact John Kelliher, Assistant Counsel, at (202) 225-8281.

Best regards,

Bill Thomas
Chairman

enclosure: 1

cc: Members, Committee on House Oversight
(without enclosure)

WILLIAM M. THOMAS, CALIFORNIA,
CHAIRMAN

ROBERT W. NEY, OHIO
JOHN A. BOEHNER, OHIO
VERNON J. EHLERS, MICHIGAN
KAY GRANGER, TEXAS
JOHN L. MICA, FLORIDA

SAM GEJDENSON, CONNECTICUT
RANKING MINORITY MEMBER

STACY CARLSON
STAFF DIRECTOR
ROBERT J. BASKIN
MINORITY STAFF DIRECTOR

Congress of the United States
House of Representatives
COMMITTEE ON HOUSE OVERSIGHT
1309 LONGWORTH HOUSE OFFICE BUILDING
(202) 225-8281
Washington, DC 20515-0157

September 8, 1997

Ms. Doris Meissner
Commissioner
Immigration & Naturalization Service
425 Eye St., NW
Washington, D.C. 20536

Re: Dornan v Sanchez

Dear Commissioner Meissner:

I am writing to requests that the INS: (1) determine if the individuals identified by the Committee on the enclosed disc have INS records and; (2) review these files and generate worksheets summarizing these files. In addition, return a list of those persons who do not have an INS record.

The Committee requests that the INS produce this information by September 15, 1997.

If you have any questions please contact John Kelliher, Assistant Counsel, at (202) 225-8281.

Best regards,

Bill Thomas
Chairman

enclosure: 1

cc: Members, Committee on House Oversight
(without enclosure)

WILLIAM M. THOMAS, CALIFORNIA,
CHAIRMAN

ROBERT W. NEY, OHIO
JOHN A. BOEHNER, OHIO
VERNON J. EHLERS, MICHIGAN
KAY GRANGER, TEXAS
JOHN L. MICA, FLORIDA

SAM GEJDENSON, CONNECTICUT,
RANKING MINORITY MEMBER

STENY H. HOYER, MARYLAND
CAROLYN CHEEKS KILPATRICK, MICHIGAN

STACY CARLSON,
STAFF DIRECTOR
ROBERT J. BASKIN,
MINORITY STAFF DIRECTOR

Congress of the United States
House of Representatives
COMMITTEE ON HOUSE OVERSIGHT
1309 LONGWORTH HOUSE OFFICE BUILDING
(202) 225-8281
Washington, DC 20515-6157

September 9, 1997

Ms. Doris Meissner
Commissioner
Immigration & Naturalization Service
425 Eye St., NW
Washington, D.C. 20536

Re: Dornan v Sanchez

Dear Commissioner Meissner:

I am writing, as Chairman of the House Oversight Committee, on behalf of the Minority members of the Committee to forward their request of July 29, 1997. (letter enclosed)

In that letter the House Oversight Committee Minority members requested:

1. a list of individuals in INS records who share the same identifying characteristics as Orange County registrants identified in response to the Majority's requests, including individuals who were citizens at the time the corresponding registrants registered to vote; and
2. the list of individuals registered to vote by Hermandad Mexicana Nacional, annotated to include citizenship and naturalization information.

Best regards,

Bill Thomas

Bill Thomas
Chairman

enclosure: 1

cc: Members, Committee on House Oversight

U.S. Department of Justice
Immigration and Naturalization Service

Office of the Commissioner

425 I Street NW.
Washington, DC 20536

CO 703.1056

SEP 12 1997

The Honorable William M. Thomas
Chairman, Committee on House Oversight
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter is in response to your letter of September 8, 1997, and earlier correspondence asking that the Immigration and Naturalization Service (INS) conduct additional electronic and paper file reviews to assist the Committee in its work. The responsive tape and worksheets, described below, are enclosed.

As requested in your September 8, 1997 letter, we conducted a comparison between INS' Central Index System (CIS) and information provided to us on diskette by the Committee. The comparison was based on first name, last name, and date of birth. The diskette enclosed contains information on 207 individuals identified by the Committee for whom a matching record was not found in CIS. For those records which did match, INS is generating worksheets and will conduct a paper file review. However, in light of the multiple steps required to conduct such file review, it is not feasible for INS to complete the work by September 15, 1997.

Similarly, in response to one of your September 3 letters, we conducted a comparison between CIS and information provided to us on diskette by the Committee based on first name, last name, and date of birth. The tape enclosed contains information on 225 individuals identified by the Committee for whom a matching record was not found in CIS. For those records which did match, INS is generating worksheets and will conduct a paper file review. Again, however, it is not feasible for INS to complete the work by September 9, 1997.

As the Committee is aware from our earlier correspondence, in light of the methodology employed--conducting matches based only on name and date of birth--and the organization of INS' databases, non-matches may occur for a variety of reasons, and the inferences that may be drawn from such non-matches should reflect such data limitations.

We are also enclosing additional results of the INS' paper file review in response to the Committee's requests. The 332 worksheets are identical in format to those previously produced. Today's production includes 4 additional worksheets in response to your June 2, 1997 letter, 84 additional worksheets in response to your June 23, 1997 letter, 118 additional worksheets in response to your July 18, 1997 letter, 29 additional worksheets in response to your August 8, 1997 letter, and 10 worksheets in response to your August 25, 1997 letter. We are also producing 86 revised worksheets as a result of our ongoing effort to reconcile duplicate alien files and temporary files where such records exist. INS field personnel are continuing to work on the outstanding portions of these requests, your request of September 5, 1997 and additional worksheets will be produced to the Committee on a rolling basis as further file review is completed.

In addition, in response to one of your letters dated September 3, 1997, as discussed with your staff we are producing 192 unannotated worksheets corresponding to records drawn from the Students and Schools database. As we have explained previously, INS does not maintain alien files or other paper records on individuals contained in this database. Thus, there is no further source for INS to consult with respect to these worksheets.

While the INS' review of its paper files increases the reliability and usefulness of the immigration and citizenship status information being provided, paper file review alone cannot establish whether an apparent match between California and INS records does indeed relate to the same individual.

If you or your staff have any questions concerning this effort, please do not hesitate to contact me.

Sincerely,

FOR THE COMMISSIONER

Allen Erenbaum
Acting Director
Congressional Relations

Enclosures

cc: The Honorable Sam Gejdenson
Ranking Minority Member

U.S. Department of Justice
Immigration and Naturalization Service

Office of the Commissioner

425 I Street NW.
Washington, DC 20536

CO 703.1056

SEP 12 1997

The Honorable William M. Thomas
Chairman, Committee on House Oversight
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This responds to your letter of September 9, 1997, forwarding Representatives Gejdenson and Hoyer's letter of July 29, 1997 asking that the Immigration and Naturalization Service (INS) provide several additional pieces of information related to the Committee's inquiry into the contested election in the 46th Congressional District of California.

First, we are enclosing two tapes pursuant to the request that the INS produce a list of individuals in INS records who share the same identifying characteristics as Orange County registrants and who were United States citizens at the time of voter registration indicated in the Orange County voter rolls. One tape, based on a comparison of last name and date of birth, contains 146,271 records. It complements the information produced to the Committee by INS on May 21, which, pursuant to the Committee's instructions, included only records for which INS did not show a date of naturalization or showed a date of naturalization after the date of voter registration. The second tape, based on a comparison of last name, first name, and date of birth, contains 52,458 records. It complements the information produced to the Committee by INS on June 9, which, again in compliance with the Committee's instructions, was limited to records for which INS did not show a date of naturalization before the date of voter registration. A technical description of each tape is enclosed.

In addition, we are enclosing a list of names that was provided to the INS by the Office of the District Attorney for Orange County, which we understand is comprised solely of individuals who registered to vote using affidavits that had been provided by the State to Hermandad Mexicana Nacional. This list has been annotated by INS to reflect citizenship and immigration status as follows: "Y" for naturalized citizens; "N" for aliens for whom a matching INS record exists, but where there is no

evidence of naturalization; and "U" for unknown status, where no corresponding INS record has been identified. In light of the sensitivity of this personal information, the privacy interests of U.S. citizens and lawful permanent residents, and the on-going state criminal investigation, we urge that this information be considered highly confidential and be handled with appropriate care to avoid disclosure to unauthorized individuals.

Finally, with respect to the continuing paper file review process, we wish to assure you and other Members of the Committee that the INS is taking all appropriate steps to review supplemental files, including both temporary files and duplicate alien files, in order to provide to the Committee the most complete and up-to-date information possible. Many such files have already been reviewed by INS field personnel, and the results have been forwarded to the Committee. We are continuing to work systematically to identify, locate, and review any remaining supplemental files that may contain relevant information. As you are aware, however, while the INS's review of its paper files increases the reliability and usefulness of the immigration and citizenship status information being provided, paper file review alone cannot establish whether an apparent match between California and INS records does indeed relate to the same individual.

We are also continuing to work on the Committee's other outstanding requests, and we will continue to provide worksheets on a rolling basis as they become available. If you or your staff have any questions concerning this effort, please do not hesitate to contact me.

Sincerely,

FOR THE COMMISSIONER

Allen Erenbaum
Acting Director
Congressional Relations

Enclosures

cc: The Honorable Sam Gejdenson (with enclosures)
The Honorable Steny H. Hoyer

MEMORANDUM

RECEIVED
97 SEP 12 PM 4:41
HOUSE OVERSIGHT
22361

September 12, 1997

To: Cathy Abernathy
Staff Director
Committee on House Oversight

From: Bob Baskin
Democratic Staff Director
Committee on House Oversight

Re: INS Documents Provided in Response to Request by Minority

Please find enclosed two letters from INS Commissioner Doris Meissner to Chairman Thomas that were delivered to our office today. One of the letters responds to Mr. Thomas' letter dated September 8, 1997. The second letter responds to Mr. Thomas' letter dated September 9, 1997, in which he forwarded to the INS an information request from Mr. Gejdenson and Mr. Hoyer.

Although I assume that the INS delivered these letters directly to your office, Mr. Thomas asked for notification when the INS complied with the request he forwarded on behalf of Mr. Gejdenson and Mr. Hoyer. The INS has now done so.

Please convey Mr. Gejdenson's thanks to Mr. Thomas for his courtesy and assistance with this matter.

U.S. Department of Justice
Immigration and Naturalization Service

Office of the Commissioner

425 I Street NW
Washington, DC 20536

CO 703.1056

SEP 12 1997

The Honorable William M. Thomas
Chairman, Committee on House Oversight
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter is in response to your letter of September 8, 1997, and earlier correspondence asking that the Immigration and Naturalization Service (INS) conduct additional electronic and paper file reviews to assist the Committee in its work. The responsive tape and worksheets, described below, are enclosed.

As requested in your September 8, 1997 letter, we conducted a comparison between INS' Central Index System (CIS) and information provided to us on diskette by the Committee. The comparison was based on first name, last name, and date of birth. The diskette enclosed contains information on 207 individuals identified by the Committee for whom a matching record was not found in CIS. For those records which did match, INS is generating worksheets and will conduct a paper file review. However, in light of the multiple steps required to conduct such file review, it is not feasible for INS to complete the work by September 15, 1997.

Similarly, in response to one of your September 3 letters, we conducted a comparison between CIS and information provided to us on diskette by the Committee based on first name, last name, and date of birth. The tape enclosed contains information on 225 individuals identified by the Committee for whom a matching record was not found in CIS. For those records which did match, INS is generating worksheets and will conduct a paper file review. Again, however, it is not feasible for INS to complete the work by September 9, 1997.

As the Committee is aware from our earlier correspondence, in light of the methodology employed--conducting matches based only on name and date of birth--and the organization of INS' databases, non-matches may occur for a variety of reasons, and the inferences that may be drawn from such non-matches should reflect such data limitations.

We are also enclosing additional results of the INS' paper file review in response to the Committee's requests. The 332 worksheets are identical in format to those previously produced. Today's production includes 4 additional worksheets in response to your June 2, 1997 letter, 84 additional worksheets in response to your June 23, 1997 letter, 118 additional worksheets in response to your July 18, 1997 letter, 29 additional worksheets in response to your August 8, 1997 letter, and 10 worksheets in response to your August 25, 1997 letter. We are also producing 86 revised worksheets as a result of our ongoing effort to reconcile duplicate alien files and temporary files where such records exist. INS field personnel are continuing to work on the outstanding portions of these requests, your request of September 5, 1997 and additional worksheets will be produced to the Committee on a rolling basis as further file review is completed.

In addition, in response to one of your letters dated September 3, 1997, as discussed with your staff we are producing 192 unannotated worksheets corresponding to records drawn from the Students and Schools database. As we have explained previously, INS does not maintain alien files or other paper records on individuals contained in this database. Thus, there is no further source for INS to consult with respect to these worksheets.

While the INS' review of its paper files increases the reliability and usefulness of the immigration and citizenship status information being provided, paper file review alone cannot establish whether an apparent match between California and INS records does indeed relate to the same individual.

If you or your staff have any questions concerning this effort, please do not hesitate to contact me.

Sincerely,

FOR THE COMMISSIONER

Allen Erenbaum
Acting Director
Congressional Relations

Enclosures

cc: The Honorable Sam Gejdenson
Ranking Minority Member

U.S. Department of Justice
Immigration and Naturalization Service

Office of the Commissioner

425 I Street NW.
Washington, DC 20536

CO 703.1056

SEP 12 1997

The Honorable William M. Thomas
Chairman, Committee on House Oversight
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This responds to your letter of September 9, 1997, forwarding Representatives Gejdenson and Hoyer's letter of July 29, 1997 asking that the Immigration and Naturalization Service (INS) provide several additional pieces of information related to the Committee's inquiry into the contested election in the 46th Congressional District of California.

First, we are enclosing two tapes pursuant to the request that the INS produce a list of individuals in INS records who share the same identifying characteristics as Orange County registrants and who were United States citizens at the time of voter registration indicated in the Orange County voter rolls. One tape, based on a comparison of last name and date of birth, contains 146,271 records. It complements the information produced to the Committee by INS on May 21, which, pursuant to the Committee's instructions, included only records for which INS did not show a date of naturalization or showed a date of naturalization after the date of voter registration. The second tape, based on a comparison of last name, first name, and date of birth, contains 52,458 records. It complements the information produced to the Committee by INS on June 9, which, again in compliance with the Committee's instructions, was limited to records for which INS did not show a date of naturalization before the date of voter registration. A technical description of each tape is enclosed.

In addition, we are enclosing a list of names that was provided to the INS by the Office of the District Attorney for Orange County, which we understand is comprised solely of individuals who registered to vote using affidavits that had been provided by the State to Hermandad Mexicana Nacional. This list has been annotated by INS to reflect citizenship and immigration status as follows: "Y" for naturalized citizens; "N" for aliens for whom a matching INS record exists, but where there is no

evidence of naturalization; and "U" for unknown status, where no corresponding INS record has been identified. In light of the sensitivity of this personal information, the privacy interests of U.S. citizens and lawful permanent residents, and the on-going state criminal investigation, we urge that this information be considered highly confidential and be handled with appropriate care to avoid disclosure to unauthorized individuals.

Finally, with respect to the continuing paper file review process, we wish to assure you and other Members of the Committee that the INS is taking all appropriate steps to review supplemental files, including both temporary files and duplicate alien files, in order to provide to the Committee the most complete and up-to-date information possible. Many such files have already been reviewed by INS field personnel, and the results have been forwarded to the Committee. We are continuing to work systematically to identify, locate, and review any remaining supplemental files that may contain relevant information. As you are aware, however, while the INS's review of its paper files increases the reliability and usefulness of the immigration and citizenship status information being provided, paper file review alone cannot establish whether an apparent match between California and INS records does indeed relate to the same individual.

We are also continuing to work on the Committee's other outstanding requests, and we will continue to provide worksheets on a rolling basis as they become available. If you or your staff have any questions concerning this effort, please do not hesitate to contact me.

Sincerely,

FOR THE COMMISSIONER

Allen Erenbaum
Acting Director
Congressional Relations

Enclosures

cc: The Honorable Sam Gejdenson (with enclosures)
The Honorable Steny H. Hoyer

U.S. Department of Justice
Immigration and Naturalization Service

Office of the Commissioner

425 I Street NW.
Washington, DC 20536

CO 703.1056

SEP 22 [illegible]

The Honorable William M. Thomas
Chairman, Committee on House Oversight
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter is in further response to correspondence asking that the Immigration and Naturalization Service (INS) conduct additional paper file reviews to assist the Committee in its work. The responsive worksheets, described below, are enclosed.

We are enclosing 187 worksheets, identical in format to those previously produced. Today's production includes 22 additional worksheets in response to your June 23 letter, 4 additional worksheets in response to your July 18 letter, 47 additional worksheets in response to your August 8 letter, 11 additional worksheets in response to your August 25 letter, 40 worksheets in response to two of your September 3 letters, and 13 worksheets in response to your September 8 letter. We are also producing 50 revised worksheets as a result of our ongoing effort to reconcile duplicate alien files and temporary files where such records exist. The INS field personnel are continuing to work on the outstanding portions of these requests and your request of September 5, and additional worksheets will be produced to the Committee on a rolling basis as further file review is completed.

While the INS' review of its paper files increases the reliability and usefulness of the immigration and citizenship status information being provided, paper file review alone cannot establish whether an apparent match between California and INS' records does indeed relate to the same individual.

If you or your staff have any questions concerning this effort, please do not hesitate to contact me.

Sincerely,

FOR THE COMMISSIONER

Allen Erenbaum
Acting Director
Congressional Relations

Enclosures

cc: The Honorable Sam Gejdenson
Ranking Minority Member

WILLIAM M. THOMAS, CALIFORNIA
CHAIRMAN

ROBERT W. NEY, OHIO
JOHN A. BOEHNER, OHIO
VERNON J. EHLERS, MICHIGAN
[illegible]Y GRANGER, TEXAS
[illegible]L MICA, FLORIDA

SAM GEJDENSON, CONNECTICUT,
RANKING MINORITY MEMBER

[illegible]TENY H. HOYER, MARYLAND
CAROLYN [illegible]HEENS-KILPATRICK, MICHIGAN

STACY CARLSON
STAFF DIRECTOR
ROBERT J. BASKIN
MINORITY STAFF DIRECTOR

Congress of the United States

House of Representatives

COMMITTEE ON HOUSE OVERSIGHT
1309 LONGWORTH HOUSE OFFICE BUILDING
(202) 225-8281
Washington, DC 20515-6157

September 23, 1997

Ms. Doris Meissner
Commissioner
Immigration & Naturalization Service
425 Eye St., NW
Washington, D.C. 20536

Re: Dornan v Sanchez

Dear Commissioner Meissner:

I am writing to requests that the INS review the alien files identified on the enclosed computer disk and generate worksheets summarizing these files.

The Committee requests that the INS complete its review of these files by September 26, 1997.

If you have any questions please contact John Kelliher, Assistant Counsel, at (202) 225-8281.

Best regards,

Bill Thomas
Chairman

enclosure: 1

cc: Members, Committee on House Oversight
(without enclosure)

U.S. Department of Justice
Immigration and Naturalization Service

Office of the Commissioner

425 I Street NW.
Washington, DC 20536

CO 703.1056

SEP 26 1997

The Honorable William M. Thomas
Chairman, Committee on House Oversight
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter is in response to your letter of September 23, 1997, and earlier correspondence asking that the Immigration and Naturalization Service (INS) conduct additional paper file reviews to assist the Committee in its work.

Your September 23, 1997 letter asks that INS review files identified on an enclosed diskette and complete this work by September 26. The diskette contained 618 records. We have begun this process, but in light of the multiple steps required to conduct such file review, as outlined in our June 13 letter to the Committee, it is not feasible for INS to complete the work in less than 4 working days. First, INS Headquarters must generate the worksheets by computer, separate them by INS File Control Office (FCO), and send them to the appropriate FCO. Then, each FCO must retrieve the corresponding files from multiple locations, sometimes ordering them from a Federal Records Center over which INS does not exercise supervisory control. The INS field personnel must then review each file, complete the worksheet, and return it to Headquarters for collating, copying, and transmittal to the Committee. We will provide the results of this additional file review to the Committee as soon as possible.

We are enclosing today 31 worksheets, identical in format to those previously produced. Today's production includes one additional worksheet in response to your June 2, 1997 letter, three additional worksheets in response to your June 23, 1997 letter, two additional worksheets in response to your July 18 letter, 10 additional worksheets in response to your August 8, 1997 letter, five additional worksheets in response to your August 25, 1997 letter, one additional worksheet in response to one of your September 3, 1997 letters, and three worksheets in response to your September 5, 1997 letter. We are also producing six revised worksheets as a result of our ongoing effort to reconcile duplicate alien files and temporary files where such records exist. The INS field personnel are continuing to work on

the outstanding portions of your requests, and additional worksheets will be produced to the Committee on or before October 2, 1997.

While the INS' review of its paper files increases the reliability and usefulness of the immigration and citizenship status information being provided, paper file review alone cannot establish whether an apparent match between California and INS records does indeed relate to the same individual. In light of the sensitivity of this personal information and the privacy interests of U.S. citizens and lawful permanent residents, we continue to urge that this information, like other information provided to the Committee, be considered highly confidential and be handled with appropriate care to avoid disclosure to unauthorized individuals.

If you or your staff have any questions concerning this effort, please do not hesitate to contact me.

Sincerely,

FOR THE COMMISSIONER

Allen Erenbaum
Acting Director
Congressional Relations

cc: The Honorable Sam Gejdenson
Ranking Minority Member

U.S. Department of Justice
Immigration and Naturalization Service

Office of the Commissioner

425 I Street NW.
Washington, DC 20536

CO 703.1056

97 OCT -2 PM 5:35

OCT 2 1997

The Honorable William M. Thomas
Chairman, Committee on House Oversight
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter is in further response to correspondence asking that the Immigration and Naturalization Service (INS) conduct additional paper file reviews to assist the Committee in its work.

We are enclosing today 323 new worksheets, identical in format to those previously produced. Today's production includes 3 additional worksheets in response to your June 23, 1997 letter, 1 additional worksheet in response to your July 18, 1997 letter, 2 additional worksheets in response to your August 8, 1997 letter, 305 additional worksheets in response to one of your September 3,1997 letters, and 12 worksheets in response to your September 23, 1997 letter (which, as indicated, are duplicates of worksheets being produced in response to your September 3, 1997 letter). We are also producing 1 revised worksheet as a result of our ongoing effort to reconcile duplicate alien files and temporary files where such records exist. The INS field personnel are continuing to work on the outstanding portions of your requests, and additional worksheets will be produced to the Committee on a rolling basis as further file review is completed.

While the INS' review of its paper files increases the reliability and usefulness of the immigration and citizenship status information being provided, paper file review alone cannot establish whether an apparent match between California and INS records does indeed relate to the same individual. In light of the sensitivity of this personal information and the privacy interests of U.S. citizens and lawful permanent residents, we continue to urge that this information, like other information provided to the Committee, be considered highly confidential and be handled with appropriate care to avoid disclosure to unauthorized individuals.

If you or your staff have any questions concerning this effort, please do not hesitate to contact me.

Sincerely,

FOR THE COMMISSIONER

Allen Erenbaum
Acting Director
Congressional Relations

cc: The Honorable Sam Gejdenson
Ranking Minority Member

U.S. Department of Justice
Immigration and Naturalization Service

Office of the Commissioner

425 I Street NW.
Washington, DC 20536

CO 703.1056

OCT 10 1997

The Honorable William M. Thomas
Chairman, Committee on House Oversight
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter is in further response to correspondence asking that the Immigration and Naturalization Service (INS) conduct additional paper file reviews to assist the Committee in its work.

We are enclosing today 214 new worksheets, identical in format to those previously produced. Today's production includes 2 additional worksheets in response to your June 2, 1997 letter, 12 additional worksheets in response to your June 23, 1997 letter, 22 additional worksheets in response to your July 18, 1997 letter, 20 additional worksheets in response to your August 8, 1997 letter, 6 additional worksheets in response to your August 25, 1997 letter, 144 additional worksheets in response to two of your September 3, 1997 letters, and 8 worksheets in response to your September 23, 1997 letter. The INS field personnel are continuing to work on the outstanding portions of your requests, and additional worksheets will be produced to the Committee on a rolling basis as further file review is completed.

We are also enclosing for your information a list of INS File Control Office three-digit codes to assist you in interpreting the information being provided on the worksheets.

While the INS' review of its paper files increases the reliability and usefulness of the immigration and citizenship status information being provided, paper file review alone cannot establish whether an apparent match between California and INS records does indeed relate to the same individual. In light of the sensitivity of this personal information and the privacy interests of U.S. citizens and lawful permanent residents, we continue to urge that this information, like other information provided to the Committee, be considered highly confidential and be handled with appropriate care to avoid disclosure to unauthorized individuals.

If you or your staff have any questions concerning this effort, please do not hesitate to contact me.

Sincerely,

FOR THE COMMISSIONER

Allen Erenbaum
Acting Director
Congressional Relations

cc: The Honorable Sam Gejdenson
Ranking Minority Member

U.S. Department of Justice
Immigration and Naturalization Service

Office of the Commissioner

425 I Street NW.
Washington, DC 20536

CO 703.1056

I 7 '97

The Honorable William M. Thomas
Chairman, Committee on House Oversight
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter is in further response to correspondence asking that the Immigration and Naturalization Service (INS) conduct additional paper file reviews to assist the Committee in its work.

We are enclosing today 203 new worksheets, identical in format to those previously produced. Today's production includes 14 additional worksheets in response to your June 23, 1997 letter, one additional worksheet in response to your August 8, 1997 letter, one additional worksheet in response to one of your September 3, 1997 letters, 99 worksheets in response to your September 8, 1997 letter, and 88 worksheets in response to your September 23, 1997 letter. (Some of these 88, as indicated, are duplicates of worksheets being produced in response to earlier requests.) The INS field personnel are continuing to work on the outstanding portions of your requests, and additional worksheets will be produced to the Committee on a rolling basis as further file review is completed.

While the INS' review of its paper files increases the reliability and usefulness of the immigration and citizenship status information being provided, paper file review alone cannot establish whether an apparent match between California and INS records does indeed relate to the same individual. In light of the sensitivity of this personal information and the privacy interests of U.S. citizens and lawful permanent residents, we continue to urge that this information, like other information provided to the Committee, be considered highly confidential and be handled with appropriate care to avoid disclosure to unauthorized individuals.

If you or your staff have any questions concerning this effort, please do not hesitate to contact me.

Sincerely,

FOR THE COMMISSIONER

Allen Erenbaum
Acting Director
Congressional Relations

cc: The Honorable Sam Gejdenson
Ranking Minority Member

WILLIAM M. THOMAS, CALIFORNIA
CHAIRMAN

SAM GEJDENSON, CONNECTICUT
RANKING MINORITY MEMBER

Congress of the United States

House of Representatives

COMMITTEE ON HOUSE OVERSIGHT

1309 LONGWORTH HOUSE OFFICE BUILDING
(202) 225-8281

Washington, DC 20515-6157

October 20, 1997

Ms. Doris Meissner
Commissioner
Immigration & Naturalization Service
425 Eye St., NW
Washington, D.C. 20536

Re: Dornan v Sanchez

Dear Commissioner Meissner:

I am writing to requests that the INS produce worksheets summarizing the alien files related to the persons identified on the attached disc.

Please produce this material by October 30, 1997.

If you have any questions please contact John Kelliher, Assistant Counsel, at (202) 225-8281.

Best regards,

Bill Thomas
Chairman

enclosure: (1)

cc: Members, Committee on House Oversight
(without enclosures)

U.S. Department of Justice
Immigration and Naturalization Service

Office of the Commissioner

425 I Street NW.
Washington, DC 20536

CO 703.1056

OCT 22 1997

The Honorable William M. Thomas
Chairman, Committee on House Oversight
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter is in further response to correspondence asking that the Immigration and Naturalization Service (INS) conduct additional paper file reviews to assist the Committee in its work.

We are enclosing today 230 new worksheets, identical in format to those previously produced. Today's production includes 3 additional worksheets in response to your June 23, 1997 letter, 4 additional worksheets in response to your August 8, 1997 letter, 2 additional worksheets in response to your August 25, 1997 letter, and 221 worksheets in response to your September 23, 1997 letter. INS field personnel are continuing to work on the outstanding portions of your requests, and additional worksheets will be produced to the Committee on a rolling basis as further file review is completed.

While the INS' review of its paper files increases the reliability and usefulness of the immigration and citizenship status information being provided, paper file review alone cannot establish whether an apparent match between California and INS records does indeed relate to the same individual. In light of the sensitivity of this personal information and the privacy interests of U.S. citizens and lawful permanent residents, we continue to urge that this information, like other information provided to the Committee, be considered highly confidential and be handled with appropriate care to avoid disclosure to unauthorized individuals.

If you or your staff have any questions concerning this effort, please do not hesitate to contact me.

Sincerely,

FOR THE COMMISSIONER

Allen Erenbaum
Acting Director
Congressional Relations

cc: The Honorable Sam Gejdenson
Ranking Minority Member

U.S. Department of Justice
Immigration and Naturalization Service

Office of the Commissioner

425 I Street NW.
Washington, DC 20536

CO 703.1056

OCT 30 1997

The Honorable William M. Thomas
Chairman, Committee on House Oversight
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter is in further response to correspondence asking that the Immigration and Naturalization Service (INS) conduct additional paper file reviews to assist the Committee in its work.

We are enclosing today 148 new worksheets, identical in format to those previously produced. Today's production includes 1 additional worksheet in response to your June 2, 1997 letter, 1 additional worksheet in response to your June 23, 1997 letter, 1 additional worksheet in response to your July 18, 1997 letter, 1 additional worksheet in response to your August 25, 1997 letter, 14 additional worksheets in response to your September 3, 1997 letter, 33 additional worksheets in response to your September 5, 1997 letter, and 97 worksheets in response to your September 23, 1997 letter.

Your October 20, 1997 letter asks that INS review files identified on an enclosed diskette and complete this work by October 30, 1997. The diskette contained 373 records, but there were no alien numbers (A-numbers) associated with these names. We understand from your staff that these records relate to individuals who were identified by California state officials as part of their investigation of Hermandad Mexicana Nacional (HMN). Accordingly, in order to generate the worksheets necessary for manual file review, we compared the names on the diskette with the HMN list to identify the A-numbers previously associated with these records by the Los Angeles District Office. For 194 of the 373 records on the diskette, the District Office did not find an INS record corresponding to the HMN list, and thus there are no A-numbers for these records. We are providing the Committee today with 194 unannotated worksheets for these records. For the remaining 179 records, we have generated worksheets using the A-numbers from the HMN list, and we will manually review these files. In light of this extra step and the process required to conduct such file review, as outlined in our June 13, 1997 letter to the Committee, it is not feasible for INS to complete the work on your new request by today. The INS field personnel are

continuing to work on this request and on the outstanding portions of your earlier requests, and additional worksheets will be produced to the Committee on a rolling basis as further file review is completed.

While the INS' review of its paper files increases the reliability and usefulness of the immigration and citizenship status information being provided, paper file review alone cannot establish whether an apparent match between California and INS records does indeed relate to the same individual. In light of the sensitivity of this personal information and the privacy interests of U.S. citizens and lawful permanent residents, we continue to urge that this information, like other information provided to the Committee, be considered highly confidential and be handled with appropriate care to avoid disclosure to unauthorized individuals.

If you or your staff have any questions concerning this effort, please do not hesitate to contact me.

Sincerely,

FOR THE COMMISSIONER

Allen Erenbaum
Acting Director
Congressional Relations

Enclosures

cc: The Honorable Sam Gejdenson
Ranking Minority Member

WILLIAM M. THOMAS, CALIFORNIA,
CHAIRMAN

ROBERT W. NEY, OHIO
JOHN A. BOEHNER, OHIO
VERNON J. EHLERS, MICHIGAN
KAY GRANGER, TEXAS
JOHN L. MICA, FLORIDA

SAM GEJDENSON, CONNECTICUT,
RANKING MINORITY MEMBER

STEVEN HOYER, MARYLAND
[illegible], MICHIGAN

STACY CARLSON
STAFF DIRECTOR
ROBERT J. BASKIN
MINORITY STAFF DIRECTOR

Congress of the United States
House of Representatives
COMMITTEE ON HOUSE OVERSIGHT
1309 LONGWORTH HOUSE OFFICE BUILDING
(202) 225-8281
Washington, DC 20515-0157

November 3, 1997

Ms. Doris Meissner
Commissioner
Immigration & Naturalization Service
425 Eye St., NW
Washington, D.C. 20536

Re: Dornan v Sanchez

Dear Commissioner Meissner:

I am writing to requests that the INS produce information related to the persons identified on the enclosed disk.

Specifically, the following:

(1) photocopies of their signatures and;
(2) information specifically identifying their birthplaces.

Please produce this material by November 28, 1997.

If you have any questions please contact John Kelliher, Assistant Counsel, at (202) 225-8281.

Best regards,

Bill Thomas

Bill Thomas
Chairman

enclosure: (1)

cc: Members, Committee on House Oversight

U.S. Department of Justice
Immigration and Naturalization Service

Office of the Commissioner

425 I Street NW.
Washington, DC 20536

CO 703.1056

NOV 14 1997

The Honorable William M. Thomas
Chairman, Committee on House Oversight
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter is in further response to correspondence asking that the Immigration and Naturalization Service (INS) conduct additional paper file reviews to assist the Committee in its work.

We are enclosing today 121 new worksheets, identical in format to those previously produced. Today's production includes 8 additional worksheets in response to your June 23, 1997 letter, 2 additional worksheets in response to your July 18, 1997 letter, 10 additional worksheets in response to your August 8, 1997 letter, 4 additional worksheets in response to your August 25, 1997 letter, 1 additional worksheet in response to one of your September 3, 1997 letters, 11 additional worksheets in response to your September 5, 1997 letter, 35 additional worksheets in response to your September 8, 1997 letter, and 50 additional worksheets in response to your September 23, 1997 letter. The INS field personnel are continuing to work on the outstanding portions of your requests, and additional worksheets will be produced to the Committee on a rolling basis as further file review is completed.

While the INS' review of its paper files increases the reliability and usefulness of the immigration and citizenship status information being provided, paper file review alone cannot establish whether an apparent match between California and INS records does indeed relate to the same individual. In light of the sensitivity of this personal information and the privacy interests of U.S. citizens and lawful permanent residents, we continue to urge that this information, like other information provided to the Committee, be considered highly confidential and be handled with appropriate care to avoid disclosure to unauthorized individuals.

If you or your staff have any questions concerning this effort, please do not hesitate to contact me.

Sincerely,

FOR THE COMMISSIONER

Allen Erenbaum
Acting Director
Congressional Relations

cc: The Honorable Sam Gejdenson
Ranking Minority Member

U.S. Department of Justice
Immigration and Naturalization Service

Office of the Commissioner

425 I Street NW.
Washington, DC 20536

CO 703.1056

NOV 21 1997

The Honorable William M. Thomas
Chairman, Committee on House Oversight
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter is in further response to correspondence asking that the Immigration and Naturalization Service (INS) conduct additional paper file reviews to assist the Committee in its work.

We are enclosing today 124 new worksheets, identical in format to those previously produced. Today's production includes 4 additional worksheets in response to your June 23, 1997 letter, 1 additional worksheet in response to your July 18, 1997 letter, 2 additional worksheets in response to your August 8, 1997 letter, 98 additional worksheets in response to two of your September 3, 1997 letters, 3 additional worksheets in response to your September 5, 1997 letter, 7 additional worksheets in response to your September 8, 1997 letter, and 9 additional worksheets in response to your September 23, 1997 letter. The INS field personnel are continuing to work on the outstanding portions of your requests, and additional worksheets will be produced to the Committee on a rolling basis as further file review is completed.

While the INS' review of its paper files increases the reliability and usefulness of the immigration and citizenship status information being provided, paper file review alone cannot establish whether an apparent match between California and INS records does indeed relate to the same individual. In light of the sensitivity of this personal information and the privacy interests of U.S. citizens and lawful permanent residents, we continue to urge that this information, like other information provided to the Committee, be considered highly confidential and be handled with appropriate care to avoid disclosure to unauthorized individuals.

If you or your staff have any questions concerning this effort, please do not hesitate to contact me.

Sincerely,

FOR THE COMMISSIONER

Allen Erenbaum
Acting Director
Congressional Relations

cc: The Honorable Sam Gejdenson
Ranking Minority Member

U.S. Department of Justice
Immigration and Naturalization Service

Office of the Commissioner

425 I Street NW.
Washington, DC 20536

CO 703.1056

NOV 26 1997

The Honorable William M. Thomas
Chairman, Committee on House Oversight
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank your for your letter of November 3, 1997, asking that the Immigration and Naturalization Service (INS) produce additional information related to 3,749 persons identified on a disk enclosed by the Committee. I would also like to address your October 28, 1997, letter to Richard Rogers, Director of the INS District Office in Los Angeles.

The INS has already hand-reviewed over 8,000 alien files (A-files) in order to assist the Committee in its work. We have done so pursuant to an agreement with the Committee on the scope of that review and the specific format in which the information should be reported back to the Committee. In particular, we shared with Committee staff a draft of the worksheet that would be used to capture information developed through laborious manual review of the A-files the Committee asked us to check, in order to be sure that we would collect all desired information without having to go back through the files multiple times. We modified the worksheet in line with the Committee's suggestions, and we obtained the Committee's agreement before distributing these worksheets and instructions to our field offices.

Now, many months after this process began, the Committee's latest request will require that the INS duplicate its efforts and conduct a second review of the same paper files in order to obtain photocopies of signatures. Our initial review of the disk you have provided indicates that the overwhelming majority of the files that are the subject of your new request--if not all--have already been reviewed pursuant to our previous agreement and corresponding worksheets have been provided to the Committee. While we will conduct the additional review that you have requested in order to provide copies of signatures, it is not feasible to complete this work by November 28, 1997. We will produce the results of this effort to the Committee on a rolling basis as they become available. As discussed with Committee staff on November 25, 1997, INS staff will copy the alien's signature found on the uppermost document in each A-file, which is ordinarily the most recent signature in the INS' possession.

For the individuals you have identified, your letter also requests that the INS provide information "specifically identifying their birthplaces." Information on aliens' country of birth can be retrieved electronically from the INS' Central Index System (CIS), although it does not contain more detailed information such as an alien's city, state, or province of birth. We appreciate the Committee's agreement, through conversation with Committee staff on November 25, 1997, that the electronic identification of individuals' country of birth is sufficient for purposes of the November 3, 1997, request.

We request that the Committee consider, at this time, whether there is any additional information it wishes to obtain from the INS based on a manual review of A-files. If so, please convey any such requests to us immediately so that we can perform this work at the same time as the signature-copying effort.

Finally, I was puzzled by certain features of your October 28, 1997, letter to Mr. Rogers and the information that I understand was enclosed, seeking information on citizenship status and naturalization dates for several thousand individuals. This request failed to reflect the months of work already invested and thousands of A-files already reviewed at the Committee's request, both in the Los Angeles office and dozens of other INS offices, in order to provide the Committee with this same information. To the extent that the Committee wishes to identify any of the individuals on the October 28, 1997, list that are not duplicative of those for whom the INS has already conducted an A-file review, we are willing to review the corresponding paper files. It would be most efficient for any such additional review to be coordinated by INS Headquarters, as we have done in the past, since multiple INS File Control Offices may be involved. We are concerned, however, about any INS office expending government resources re-reviewing files in order to duplicate information that has already been provided to the Committee.

If you or your staff have any questions concerning our ongoing efforts to respond to the Committee's requests, please do not hesitate to contact me.

Sincerely,

Doris Meissner

Doris Meissner
Commissioner

cc: The Honorable Sam Gejdenson
Ranking Minority Member

Memorandum

To: WMT
From: John Kelliher
Date: 11/31/97
Re: INS Letter and response

On Wednesday November 26th I had a conversation with Barbara Strack, the INS Legislative liaison who has handled our document requests. I was very critical of the slowness of their response on the request for signatures and even more critical of the fact that they have not even completed all the Alien File summaries that we have requested. I would describe the conversation as contentious. I told her that they were unacceptably late and that I needed any information from her as soon as it arrived in Washington.

The INS has now sent us a somewhat confrontational letter.

I want to respond with a letter so that the INS cannot use their representation of a telephone conversation as justification for delay and shoddy work.

Her letter makes several points:

1. The INS registers a complaint about having to go back into the their files for additional information. In our June 23rd letter to the INS we specifically requested that the INS be prepared to gather additional information from these files. This needs to be noted in writing.

2. The INS is going to copy the signature from the most recent document in the Alien file. This is the document at the front of the file. That is no problem. It is best to get the most recent signature. But the signature must also be clear and legible. That additional point needs to be noted in writing.

3. The INS can immediately access the country of birth of persons through their electronic files. This is fine because the vast majority of voter registration cards only contain country of birth. This is actually the area that provoked my temper. The INS was sitting on this electronic data for a month when we could have been working on it. I told her to send that information immediately. However, there could be some persons where getting even more detailed information on their birthplace could be helpful – this should be noted in writing.

4. The INS expresses concern that we have asked INS LA to do duplicate work. And asks that all requests be processed through Washington DC. I am not sure if we want to engage the INS in a debate about the propriety of their conduct throughout this investigation in this letter. I have included a paragraph in my draft letter that specifically questions whether the INS has fulfilled its duties. We may want to save these arguments for a different forum, such as our final report on this investigation, rather than allowing the INS to begin rebutting them in an exchange of letters.

U.S. Department of Justice
Immigration and Naturalization Service

RECEIVED
97 NOV 21 PM 2:58
HOUSE OVERSIGHT

Office of the Commissioner
425 I Street NW.
Washington, DC 20536

CO 703.1056

NOV 26 1997

The Honorable William M. Thomas
Chairman, Committee on House Oversight
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank your for your letter of November 3, 1997, asking that the Immigration and Naturalization Service (INS) produce additional information related to 3,749 persons identified on a disk enclosed by the Committee. I would also like to address your October 28, 1997, letter to Richard Rogers, Director of the INS District Office in Los Angeles.

The INS has already hand-reviewed over 8,000 alien files (A-files) in order to assist the Committee in its work. We have done so pursuant to an agreement with the Committee on the scope of that review and the specific format in which the information should be reported back to the Committee. In particular, we shared with Committee staff a draft of the worksheet that would be used to capture information developed through laborious manual review of the A-files the Committee asked us to check, in order to be sure that we would collect all desired information without having to go back through the files multiple times. We modified the worksheet in line with the Committee's suggestions, and we obtained the Committee's agreement before distributing these worksheets and instructions to our field offices.

Now, many months after this process began, the Committee's latest request will require that the INS duplicate its efforts and conduct a second review of the same paper files in order to obtain photocopies of signatures. Our initial review of the disk you have provided indicates that the overwhelming majority of the files that are the subject of your new request--if not all--have already been reviewed pursuant to our previous agreement and corresponding worksheets have been provided to the Committee. While we will conduct the additional review that you have requested in order to provide copies of signatures, it is not feasible to complete this work by November 28, 1997. We will produce the results of this effort to the Committee on a rolling basis as they become available. As discussed with Committee staff on November 25, 1997, INS staff will copy the alien's signature found on the uppermost document in each A-file, which is ordinarily the most recent signature in the INS' possession.

For the individuals you have identified, your letter also requests that the INS provide information "specifically identifying their birthplaces." Information on aliens' country of birth can be retrieved electronically from the INS' Central Index System (CIS), although it does not contain more detailed information such as an alien's city, state, or province of birth. We appreciate the Committee's agreement, through conversation with Committee staff on November 25, 1997, that the electronic identification of individuals' country of birth is sufficient for purposes of the November 3, 1997, request.

We request that the Committee consider, at this time, whether there is any additional information it wishes to obtain from the INS based on a manual review of A-files. If so, please convey any such requests to us immediately so that we can perform this work at the same time as the signature-copying effort.

Finally, I was puzzled by certain features of your October 28, 1997, letter to Mr. Rogers and the information that I understand was enclosed, seeking information on citizenship status and naturalization dates for several thousand individuals. This request failed to reflect the months of work already invested and thousands of A-files already reviewed at the Committee's request, both in the Los Angeles office and dozens of other INS offices, in order to provide the Committee with this same information. To the extent that the Committee wishes to identify any of the individuals on the October 28, 1997, list that are not duplicative of those for whom the INS has already conducted an A-file review, we are willing to review the corresponding paper files. It would be most efficient for any such additional review to be coordinated by INS Headquarters, as we have done in the past, since multiple INS File Control Offices may be involved. We are concerned, however, about any INS office expending government resources re-reviewing files in order to duplicate information that has already been provided to the Committee.

If you or your staff have any questions concerning our ongoing efforts to respond to the Committee's requests, please do not hesitate to contact me.

Sincerely,

Doris Meissner
Commissioner

cc: The Honorable Sam Gejdenson
Ranking Minority Member

U.S. Department of Justice
Immigration and Naturalization Service

Office of the Commissioner

425 I Street NW.
Washington, DC 20536

DEC 1 1997

The Honorable William M. Thomas
Chairman, Committee on House Oversight
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter is in further response to correspondence asking that the Immigration and Naturalization Service (INS) conduct additional paper file reviews to assist the Committee in its work.

We are enclosing today 97 new worksheets, identical in format to those previously produced. Today's production includes 5 additional worksheets in response to your June 23 letter, 4 additional worksheets in response to your July 18 letter, 2 additional worksheets in response to your August 8 letter, 1 additional worksheet in response to your August 25 letter, 33 additional worksheets in response to two of your September 3 letters, 5 additional worksheets in response to your September 5 letter, 21 additional worksheets in response to your September 8 letter, and 26 additional worksheets in response to your September 23 letter. INS field personnel are continuing to work on the outstanding portions of your requests, and additional worksheets will be produced to the Committee on a rolling basis as further file review is completed.

While the INS' review of its paper files increases the reliability and usefulness of the immigration and citizenship status information being provided, paper file review alone cannot establish whether an apparent match between California and INS records does indeed relate to the same individual. In light of the sensitivity of this personal information and the privacy interests of U.S. citizens and lawful permanent residents, we continue to urge that this information, like other information provided to the Committee, be considered highly confidential and be handled with appropriate care to avoid disclosure to unauthorized individuals.

If you or your staff have any questions concerning this effort, please do not hesitate to contact me.

Sincerely,

FOR THE COMMISSIONER

Allen Erenbaum
Acting Director
Congressional Relations

Enclosures

cc: The Honorable Sam Gejdenson
Ranking Minority Member

WILLIAM M. THOMAS, CALIFORNIA
CHAIRMAN

ROBERT W. NEY, OHIO
JOHN A. BOEHNER, OHIO
VERNON J. EHLERS, MICHIGAN
KAY GRANGER, TEXAS
JOHN L. MICA, FLORIDA

Congress of the United States

House of Representatives

COMMITTEE ON HOUSE OVERSIGHT
1309 LONGWORTH HOUSE OFFICE BUILDING
(202) 225-8281
Washington, DC 20515-0157

December 12, 1997

Ms. Doris Meissner
Commissioner
Immigration & Naturalization Service
425 Eye St., NW
Washington, DC 20536

Dear Ms. Meissner:

On November 3, 1997, the Committee requested that the INS produce 3748 signature photocopies by November 28, 1997. You failed to comply with our deadline. Two days before the deadline, three weeks later, you responded with a letter that made no specific commitment to provide material by a certain date.

On December 2, 1997, we responded with a letter urging a deadline of December 19, 1997, for responses to all of the Committee's outstanding document requests and requesting that available information be provided on a "rolling basis".

To date we have received exactly five signature photocopies from the INS.

Please respond to the Committee by Noon, Tuesday, December 16, 1997, with copies of whatever signatures you can provide, as well as your firm commitment to a date on which copies of all signatures we have requested will be provided. In addition, by close of business, Monday December 15, 1997, the Committee expects your explicit commitment to comply with our deadline of December 19, 1997, for all of the Committee's outstanding document requests.

Your refusal to provide timely information to the Committee has significantly impeded our ability to bring this election contest to a fair resolution. The Committee will not accept any further delays.

Best regards,

Bill Thomas
Chairman

WMT/djb

WILLIAM M. THOMAS, CALIFORNIA
CHAIRMAN

ROBERT W. NEY, OHIO
JOHN A. BOEHNER, OHIO
VERNON J. EHLERS, MICHIGAN
KAY GRANGER, TEXAS
JOHN L. MICA, FLORIDA

SAM GEJDENSON, CONNECTICUT
RANKING MINORITY MEMBER

JANICE MAYS
STAFF DIRECTOR
ROBERT J. BASS IV
MINORITY STAFF DIRECTOR

Congress of the United States
House of Representatives
COMMITTEE ON HOUSE OVERSIGHT
1309 LONGWORTH HOUSE OFFICE BUILDING
(202) 225-8281
Washington, DC 20515-0157

December 2, 1997

Ms. Doris Meissner
Commissioner
Immigration & Naturalization Service
425 Eye St., NW
Washington, D.C. 20536

Re: Dornan v Sanchez

Dear Commissioner Meissner:

I am writing in response to your November 26, 1997 letter. I am very concerned about the inability of the INS to provide necessary information in a timely fashion. It is imperative that all the outstanding document requests of the Committee be completed by December 19, 1997. Of course, the INS should produce documents on a rolling basis.

While the Committee appreciates the efforts of the INS field offices involved in this investigation, it must be noted that the Committee specifically requested, in our letter of June 23, 1997, that the INS keep the alien files related to this investigation readily available so that they could be referred to expeditiously when additional information is required.

The Committee is not interested in micro-managing from which page in an alien file a signature is copied. However, the committee is interested in the quality of the product. The signatures produced should not only be recent, but legible and clearly copied.

The INS should immediately produce the available data related to country-of-birth. This should have been provided weeks ago. At this time, this information is a sufficient response to the November 3, 1997 request of the Committee. However, it is possible that more specific information could be necessary for a limited number of individuals.

Finally, I have been forced to seek information from Richard Rogers, who at the onset of this investigation displayed a commitment to a thorough investigation, as to why the INS seems reluctant to vigorously fulfill its mission to enforce our immigration laws. For example, 8 C.F.R. § 287.2 instructs Immigration and Naturalization Service officials to investigate whether there has been a violation punishable under any criminal provisions of the laws administered or enforced by the Service (i.e. 18 U.S.C. § 1015 or 18 U.S.C. § 911). In addition, 8 U.S.C. § 1373 authorizes the INS to provide any federal, state or local government entity with information regarding the immigration status, lawful or unlawful, of any individual.

If you have any questions please contact John Kelliher, Assistant Counsel to the Committee on House Oversight, at (202) 225-8281.

Best regards,

Bill Thomas
Chairman

cc: Members, Committee on House Oversight

U.S. Department of Justice
Immigration and Naturalization Service

Office of the Commissioner

425 I Street NW.
Washington, DC 20536

DEC 2 1997

The Honorable William M. Thomas
Chairman, Committee on House Oversight
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter is in response to your letter of November 3, 1997, asking that the Immigration and Naturalization Service (INS) provide information on the places of birth for 3,748 individuals identified by the Committee on an enclosed disk.

For the individuals you have identified, we are enclosing information on country of birth that has been retrieved electronically from the INS' Central Index System (CIS). We are also enclosing a key to the country codes employed in CIS to assist the Committee in using this information. You will note that CIS does not contain information on country of birth for a small portion of the aliens that the Committee has identified. Where this information is not captured electronically, we are instructing our field staff to record country of birth manually when they review the alien file in order to obtain a copy of the alien's signature. We will produce such additional information on a rolling basis as it becomes available. Again, we appreciate the Committee's agreement that identification of individuals' country of birth is sufficient for purposes of the November 3 request.

In light of the sensitivity of this personal information and the privacy interests of U.S. citizens and lawful permanent residents, we continue to urge that this information, like other information provided to the Committee, be considered highly confidential and be handled with appropriate care to avoid disclosure to unauthorized individuals.

If you or your staff have any questions concerning this effort, please do not hesitate to contact me.

Sincerely,

FOR THE COMMISSIONER

Allen Erenbaum
Acting Director
Congressional Relations

Enclosures

cc: The Honorable Sam Gejdenson
Ranking Minority Member

WILLIAM M. THOMAS, CALIFORNIA
CHAIRMAN

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SAM GEJDENSON, CONNECTICUT
RANKING MINORITY MEMBER

Congress of the United States

House of Representatives

COMMITTEE ON HOUSE OVERSIGHT
1309 LONGWORTH HOUSE OFFICE BUILDING
(202) 225-8281
Washington, DC 20515-0157

December 12, 1997

Ms. Doris Meissner
Commissioner
Immigration & Naturalization Service
425 Eye St., NW
Washington, D.C. 20536

Re: Dornan v Sanchez

Dear Commissioner Meissner:

I am writing to requests that the INS produce: (1) photocopies of the signatures of the persons identified on the attached computer disk and; (2) information identifying the birthplace of these same persons.

Please produce this material by December 30, 1997.

If you have any questions please contact John Kelliher, Assistant Counsel, at (202) 225-8281.

Best regards,

Bill Thomas

Bill Thomas
Chairman

enclosure: (1)

cc: Members, Committee on House Oversight

U.S. Department of Justice
Immigration and Naturalization Service

Office of the Commissioner

425 I Street NW.
Washington, DC 20536

CO 703.1056

DEC 15 1997

The Honorable William M. Thomas
Chairman, Committee on House Oversight
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter is in further response to correspondence asking that the Immigration and Naturalization Service (INS) conduct additional paper file reviews to assist the Committee in its work. The Committee's request for copies of certain signatures will be addressed in a separate letter.

We are enclosing today 116 new worksheets, identical in format to those previously produced. Today's production includes 2 additional worksheets in response to two of your September 3, 1997 letters, 8 additional worksheets in response to your September 5, 1997 letter, 1 additional worksheet in response to your September 8, 1997 letter, 14 additional worksheets in response to your September 23, 1997 letter, and 91 additional worksheets in response to your October 20, 1997 letter.

With the production of these worksheets and others that will be produced on or before December 19, 1997 INS' response to the Committee's outstanding document requests will be substantially complete. Some small portion of the alien files (A-files) which the Committee has asked us to review will remain unlocatable. In the event that we are able to identify any of these remaining files, we will review them and produce the corresponding worksheets to the Committee promptly.

While the INS' review of its paper files increases the reliability and usefulness of the immigration and citizenship status information being provided, paper file review alone cannot establish whether an apparent match between California and INS records does indeed relate to the same individual. In light of the sensitivity of this personal information and the privacy interests of U.S. citizens and lawful permanent residents, we continue to urge that this information, like other information provided to the Committee, be considered highly confidential and be handled with appropriate care to avoid disclosure to unauthorized individuals.

If you or your staff have any questions concerning this effort, please do not hesitate to contact me.

Sincerely,

FOR THE COMMISSIONER

Allen Erenbaum
Acting Director
Congressional Relations

cc: The Honorable Sam Gejdenson
Ranking Minority Member

U.S. Department of Justice
Immigration and Naturalization Service

Office of the Commissioner

425 I Street NW.
Washington, DC 20536

CO 703.1056

DEC 16 1997

The Honorable William M. Thomas
Chairman, Committee on House Oversight
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter is in response to your letters of November 3, December 2, and 12, 1997 asking that the Immigration and Naturalization Service (INS) provide the Committee with copies of signatures for 3,748 individuals identified by the Committee.

We are enclosing today copies of 234 signatures that have been copied from alien files (A-files). Each signature page is accompanied by a printed cover page to assist the Committee in identifying the individual to whom it corresponds. In some instances, the cover page also includes information on country of birth, which supplements the electronic country-of-birth information that was provided to you on December 2, 1997 on 3,748 based on a search of INS's electronic records.

The INS anticipates that it will be able to provide the Committee with 80% of the signatures requested on November 3, 1997 on or before January 16, 1998, with the balance on or before January 23, 1998. The INS will provide the Committee with information on country of birth (which can be retrieved electronically) in response to the December 12, 1997 request on or before December 19, 1997.

I would also like to clarify one point raised in your recent letter. While INS has generally maintained A-files related to the Committee's requests "readily available," we advised the Committee on July 30, 1997 that we would release some files on a case-by-case basis where they were needed to accomplish agency business. We are now recalling those files as necessary in order to obtain copies of signatures.

If you or your staff have any questions concerning this effort, please do not hesitate to contact me.

Sincerely,

FOR THE COMMISSIONER

Allen Erenbaum
Acting Director
Congressional Relations

Enclosures

cc: The Honorable Sam Gejdenson
Ranking Minority Member

U.S. Department of Justice
Immigration and Naturalization Service

Office of the Commissioner

425 I Street NW.
Washington, DC 20536

97 DEC 17 PM 2:22

CO 703.1056

DEC 17 1997

The Honorable William M. Thomas
Chairman, Committee on House Oversight
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter is in response to your letter of December 12, 1997, asking that the Immigration and Naturalization Service (INS) provide information on the places of birth for 722 individuals identified by the Committee on an enclosed disk.

For the individuals you have identified, we are enclosing information on country of birth that has been retrieved electronically from the INS' Central Index System (CIS). It has been sorted alphabetically by last name. As indicated on the first page, we identified five names out of the 722 which are duplicates of the Committee's November 3, 1997 request concerning 3,748 individuals, and we have already provided the Committee with country-of-birth information on these individuals in our December 2, 1997 response. The key to the country codes employed in CIS was also provided to the Committee on December 2, 1997.

You will note that CIS does not contain information on country of birth for a small portion of the aliens that the Committee has identified. Where this information is not captured electronically, we are instructing our field staff to record country of birth manually when they review the alien file in order to obtain a copy of the alien's signature. We will produce such additional information on a rolling basis as it becomes available.

In light of the sensitivity of this personal information and the privacy interests of U.S. citizens and lawful permanent residents, we continue to urge that this information, like other information provided to the Committee, be considered highly confidential and be handled with appropriate care to avoid disclosure to unauthorized individuals.

If you or your staff have any questions concerning this effort, please do not hesitate to contact me.

Sincerely,

FOR THE COMMISSIONER

Allen Erenbaum
Acting Director
Congressional Relations

Enclosure

cc: The Honorable Sam Gejdenson
Ranking Minority Member

U.S. Department of Justice
Immigration and Naturalization Service

Office of the Commissioner

425 I Street NW.
Washington, DC 20536

CO 703.1056

DEC 19 1997

The Honorable William M. Thomas
Chairman, Committee on House Oversight
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter is in further response to correspondence asking that the Immigration and Naturalization Service (INS) conduct additional paper file reviews to assist the Committee in its work and the Committee's November 3, 1997 request for copies of signatures.

We are enclosing today 181 new worksheets, identical in format to those previously produced. Today's production includes 5 additional worksheets in response to one of your September 3, 1997 letters, 1 additional worksheet in response to your September 8, 1997 letter, 130 additional worksheets in response to your September 23, 1997 letter, and 45 additional worksheets in response to your October 20, 1997 letter.

With the production of these worksheets, we have provided responses to 7,740 of the 7,868 documents requested by the Committee. These responses represent 98 percent of the requested documents (not including the recent requests for copies of certain aliens' signatures). We expect that we will be able to locate some of the outstanding 2 percent of the files, and we will review them and produce the corresponding worksheets to the Committee promptly.

While the INS' review of its paper files increases the reliability and usefulness of the immigration and citizenship status information being provided, paper file review alone cannot establish whether an apparent match between California and INS records does indeed relate to the same individual. In light of the sensitivity of this personal information and the privacy interests of U.S. citizens and lawful permanent residents, we continue to urge that this information, like other information provided to the Committee, be considered highly confidential and be handled with appropriate care to avoid disclosure to unauthorized individuals.

We are also enclosing today copies of 285 signatures that have been copied from alien files. Each signature page is accompanied by a printed cover page to assist the Committee in identifying the individual to whom it corresponds. In some instances, the cover page also includes information on country of birth, which supplements the electronic country-of-birth information that was provided to you on December 2, 1997 based on a search of INS' electronic records.

If you or your staff have any questions concerning this effort, please do not hesitate to contact me.

Sincerely,

FOR THE COMMISSIONER

Allen Erenbaum
Acting Director
Congressional Relations

Enclosures

cc: The Honorable Sam Gejdenson
Ranking Minority Member

U.S. Department of Justice
Immigration and Naturalization Service

Office of the Commissioner

425 I Street NW.
Washington, DC 20536

CO 703.1056

DEC 29 1997

The Honorable William M. Thomas
Chairman, Committee on House Oversight
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter is in further response to the Committee's November 3, 1997, request for copies of signatures for 3,748 individuals identified by the Committee on an enclosed disk.

We are enclosing today copies of 569 signatures that have been copied from alien files (A-files). Each signature page is accompanied by a printed cover page to assist the Committee in identifying the individual to whom it corresponds. In some instances, the cover page also includes information on country-of-birth, which supplements the electronic country-of-birth information that was provided to you on December 2, 1997 based on a search of INS' electronic records.

In addition, we are enclosing 134 cover pages generated from the information you provided to us without corresponding copies of signatures. The INS is unable to provide copies of signatures for 133 of these files because INS does not maintain A-files associated with the 80-million series of alien numbers (A-numbers). In addition, INS is returning one cover page pertaining to an individual without an A-number.

If you or your staff have any questions concerning this effort, please do not hesitate to contact me.

Sincerely,

FOR THE COMMISSIONER

Allen Erenbaum
Acting Director
Congressional Relations

cc: The Honorable Sam Gejdenson
Ranking Minority Minor

U.S. Department of Justice
Immigration and Naturalization Service

Office of the Commissioner

425 I Street NW.
Washington, DC 20536

CO 703.1056

JAN 7 1998

The Honorable William M. Thomas
Chairman, Committee on House Oversight
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter is in further response to the Committee's November 3, 1997, request for copies of signatures for 3,748 individuals identified by the Committee on an enclosed disk.

We are enclosing today copies of 655 signatures that have been copied from alien files (A-files). Each signature page is accompanied by a printed cover page to assist the Committee in identifying the individual to whom it corresponds. In some instances, the cover page also includes information on country of birth, which supplements the country-of-birth information that was provided to you on December 2, 1997 based on a search of INS' electronic records.

In light of the sensitivity of this personal information and the privacy interests of U.S. citizens and lawful permanent residents, we continue to urge that this information, like other information provided to the Committee, be considered highly confidential and be handled with appropriate care to avoid disclosure to unauthorized individuals.

If you or your staff have any questions concerning this effort, please do not hesitate to contact me.

Sincerely,

FOR THE COMMISSIONER

Allen Erenbaum
Acting Director
Congressional Relations

cc: The Honorable Sam Gejdenson
Ranking Minority Member

U.S. Department of Justice
Immigration and Naturalization Service

Office of the Commissioner

425 I Street NW.
Washington, DC 20536

CO 703.1056

JAN 13 1998

The Honorable William M. Thomas
Chairman, Committee on House Oversight
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter is in further response to correspondence asking that the Immigration and Naturalization Service (INS) conduct additional paper file reviews to assist the Committee in its work and the Committee's November 3, 1997 request for copies of signatures.

We are enclosing today 121 new worksheets, identical in format to those previously produced. Today's production includes 7 additional worksheets in response to your June 23, 1997 letter, 1 additional worksheet in response to your July 18, 1997 letter, 4 additional worksheets in response to your August 8, 1997 letter, 2 additional worksheets in response to your August 25, 1997 letter, 17 additional worksheets in response to two of your September 3, 1997 letters, 5 additional worksheets in response to your September 5, 1997 letter, 3 additional worksheets in response to your September 8, 1997 letter, 39 additional worksheets in response to your September 23, 1997 letter, and 43 additional worksheets in response to your October 20, 1997 letter.

With the production of these worksheets, we have provided responses for 7,852 of the 7,868 files requested by the Committee (not including the recent requests for copies of certain aliens' signatures). We are continuing to seek information on the 16 files that remain outstanding, and we will provide any further information on these when we receive it.

While the INS' review of its paper files increases the reliability and usefulness of the immigration and citizenship status information being provided, paper file review alone cannot establish whether an apparent match between California and INS records does indeed relate to the same individual.

We are also enclosing today copies of 510 signatures that have been copied from alien files (A-files). Each signature page is accompanied by a printed cover page to assist the Committee in identifying the individual to whom it corresponds. In some instances, the cover page also includes information on country-of-birth, which supplements the country-of-birth information that was provided to you on December 2, 1997 based on a search of INS' electronic records.

In light of the sensitivity of this personal information and the privacy interests of U.S. citizens and lawful permanent residents, we continue to urge that this information, like other information provided to the Committee, be considered highly confidential and be handled with appropriate care to avoid disclosure to unauthorized individuals.

If you or your staff have any questions concerning this effort, please do not hesitate to contact me.

Sincerely,

FOR THE COMMISSIONER

Allen Erenbaum
Acting Director
Congressional Relations

cc: The Honorable Sam Gejdenson
Ranking Minority Member

U.S. Department of Justice
Immigration and Naturalization Service

Office of the Commissioner

425 I Street NW.
Washington, DC 20536

CO 703.1056

FEB - 6 1998

The Honorable William M. Thomas
Chairman, Committee on House Oversight
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter is in further response to the Committee's November 3, and December 12, 1997 requests for copies of signatures.

We are enclosing today copies of 371 signatures that have been copied from alien files (A-files), 133 in response to your November 3, 19976 request and 238 in response to your December 12, 1997 request. Each signature page is accompanied by a printed cover page to assist the Committee in identifying the individual to whom it corresponds. In some instances, the cover page also includes information on country-of-birth, which supplements the country-of-birth information that was provided to you on December 2, and December 17, 1997 based on a search of INS' electronic records.

In light of the sensitivity of this personal information and the privacy interests of U.S. citizens and lawful permanent residents, we continue to urge that this information, like other information provided to the Committee, be considered highly confidential and be handled with appropriate care to avoid disclosure to unauthorized individuals.

If you or your staff have any questions concerning this effort, please do not hesitate to contact me.

Sincerely,

FOR THE COMMISSIONER

Allen Erenbaum
Acting Director
Congressional Relations

cc: The Honorable Sam Gejdenson
Ranking Minority Member

APPENDIX J: QUASHING AND MODIFYING SUBPOENAS

ROBIN H. CARLE
CLERK

GERALDINE R. GENNET
ACTING GENERAL COUNSEL
KERRY W. KIRCHER
MICHAEL L. STERN
CAROLYN BETZ
ASSISTANT COUNSEL

U.S. HOUSE OF REPRESENTATIVES

OFFICE OF THE GENERAL COUNSEL
219 CANNON HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515-6532
(202) 225-9700
FAX: (202) 226-1360

April 16, 1997

BY HAND-DELIVERY

Honorable William M. Thomas, Chairman
Committee on House Oversight
U.S. House of Representatives
1309 Longworth House Office Bldg.
Washington, D.C. 20515

Re: Robert K. Dornan v. Loretta Sanchez

Dear Chairman Thomas:

Pursuant to 2 U.S.C. § 393(b), I hereby transmit the following pleading which was received in this office on April 15, 1997:

- Motion of the Immigration and Naturalization Service and the Custodian of Records, United States District Court for the Central District of California, To Quash Contestant's Subpoenas

If you have any questions concerning this matter, please do not hesitate to contact Geraldine R. Gennet, the Acting General Counsel, at 225-9700.

With warm regards.

Sincerely,

Robin H. Carle

Robin H. Carle, Clerk
U.S. House of Representatives

Enclosure

COMMITTEE ON HOUSE OVERSIGHT
1309 Longworth Building
Washington, D.C. 20515

IN THE MATTER OF THE CONTESTED ELECTION OF LORETTA SANCHEZ TO THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES CONGRESS,	
ROBERT K. DORNAN, Contestant, v. LORETTA SANCHEZ, Contestee.	PROCEEDING PURSUANT TO THE FEDERAL CONTESTED ELECTION ACT 2 U.S.C. § 381 et seq.

MOTION OF THE IMMIGRATION AND NATURALIZATION SERVICE AND THE CUSTODIAN OF RECORDS, UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA TO QUASH CONTESTANT'S SUBPOENAS

The Immigration and Naturalization Service and the Clerk of the Court of the United States District Court for the Central District of California hereby move this committee to quash two subpoenas served on these entities by the Contestant in the above-captioned matter, Robert K. Dornan, on the following grounds: (i) the prohibitions on releasing some of the requested information covered by the Privacy Act, the Immigration Reform and Control Act, and certain federal regulations; (ii) the unreasonably burdensome nature of the requests; (iii) the impossibility of complying with some of the information requests; (iv) the unlikelihood that some of the requested categories of information will be relevant to Contestant's challenge; and (v) the impossibility of complying with other of the information requests within the time-frames contemplated by the subpoenas.

INTRODUCTION

Former Representative Robert Dornan has filed a formal challenge to the election of Representative Loretta Sanchez from California's 46th Congressional District. This matter, brought under the Federal Contested Elections Act, 2 U.S.C. § 381 et seq. ("the Act"), is now before the House of Representatives' Committee on House Oversight ("the Committee"). Under the Elections Clause of the Constitution, the House has exclusive jurisdiction over all challenges to the election of any of its members. (Article I, Section 5, Clause 1 states that "[e]ach House shall be the Judge of the Elections, Returns and Qualifications of its own members.")

Under § 388 of the Act, Contestant Dornan caused the United States District Court for the Central District of California to issue a series of subpoenas, two of which are the subject of this request to quash and/or modify. The first subpoena was served upon the Custodian of Records for the Los Angeles office of the Immigration and Naturalization Service (INS); the other was served upon the Custodian of Records for the United States District Court, Naturalization Division (Clerk of Court), in Los Angeles. Under the Act, only the Committee may quash, modify or condition compliance with a subpoena.

DISCUSSION

Under § 388(e) of the Federal Contested Elections Act, the Committee "may (1) quash or modify the subpoena if it is unreasonable or oppressive, or (2) condition denial of the motion [to quash] upon the advancement by the party in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things." 2 U.S.C. § 388(e). Mr. Dornan is seeking a vast array of INS records, as well as information from numerous INS databases, and district court records from as early as October 1994 to the present, relating to the naturalization of citizens in and around the 46th Congressional District. The subpoenas require releases of information that are prohibited by the Privacy Act and the Immigration Reform and Control Act of 1986; are, in part, irrelevant to the contested election case (see § 386(b)); and overbroad to the point of making each subpoena "unreasonable or oppressive" (see § 388(e)).

I. OBJECTIONS BY THE IMMIGRATION AND NATURALIZATION SERVICE

The subpoena served on the INS requests both electronic data base and hard-copy records containing the names, addresses, dates of birth, place of birth, and alien number and/or social security number for all persons residing in Santa Ana, Anaheim, and/or Garden Grove, California from January 1, 1995 to the present who

have either filed one of the specified forms, been the subject of specified INS proceedings or who appear in specified INS databases. A total of 34 categories of information have been requested ("the information requests").[1]

A. The Requests for Information Seek Identifying Information That The INS Is Prohibited From Disclosing By Statute And/Or Regulation

1. The Privacy Act Prohibits INS From Responding To Most Of These Requests for Information

Under the Privacy Act of 1974, 5 U.S.C. § 552a(b), as amended, no agency shall disclose any record which is contained in a system of records by any means of communication to any person except by the prior written consent of the individual to whom the record pertains, unless one of a series of exceptions applies. Id. § 552a(b). The Act applies to records maintained in a system of records by a federal agency that are retrieved by "the name or other identifying information" of the individual. 5 U.S.C. §§ 552a(a) & 552(f). An "individual," for purposes of the Act, is defined as "a citizen of the United States or an alien lawfully admitted for permanent residence." 5 U.S.C. § 552A(a)(2). By specifically requesting "identifying information," the Contestant seeks the production of that which is specifically prohibited.

Even if the request were construed, contrary to its explicit terms,[2] to request only the production of information concerning persons who are neither citizens nor aliens lawfully admitted for permanent residence ("lawful permanent residents"), then the problem posed by the statutory prohibition is removed only to be replaced by a significant increase in the difficulty and burden associated with responding to the request. As discussed in more detail in Section C, infra, and in the accompanying Joint

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1 In describing these information requests, this motion generally omits the limitations on the geographical location and time frame of the request, which, with the exception of Request No. 34, are identical.

2 The information requests must be read consistently with their explicit language. The district court judge who issued these subpoenas has recently voided two other subpoenas issued pursuant to the Federal Contested Elections Act after being advised by Contestant's counsel that he had changed a date on the subpoena to correct a typographical error. Minute Order, p. 1 (April 1, 1997)(attached at Tab A). The court held that "counsel may not 'fill in the blanks' on election contest subpoenas." Id.

Declaration of INS Associate Commissioner for Examinations Louis D. Crocetti, Jr. and Steve Feher, Director of the INS's Benefits System Branch ("INS Decl.")(attached at Tab B), many of the INS databases from which the Contestant seeks identifying information do not contain the most current information available to the INS concerning naturalization status. Therefore, in order to restrict the production of identifying information to non-citizens or individuals who are not lawful permanent residents, it would be necessary to collect identifying information responsive to the information requests from one database and then cross-check that information against the most current information available concerning naturalization status contained in a different database. This kind of "cross-check" procedure would, at a minimum, be necessary before the INS could provide lawful responses to Request Nos. 1, 2, 4, 5, 6, 7, 14, 18, 19, 20, 22, 23, 25, 27, 29, 30 and 34. INS Decl., ¶ 5. These procedures, burdensome as they are, still would only constitute the first step in preventing disclosures prohibited by the Privacy Act. Because the most current electronic information maintained by the INS on naturalization status may be up to six months old, the INS cannot provide the results of such database cross-matches without also checking the physical case file records to determine whether an individual has become a citizen since the time that the last entry concerning his or her naturalization application was made or updated in the INS's Central Index System and Naturalization Automated Casework System databases. Id. at ¶ 9. As explained in greater detail in section B, infra, any such requirement for a file-by-file review would consume so much money and time that it quickly would become oppressively burdensome.

2. The Immigration Reform and Control Act of 1986 Limits The Disclosure Of Identifying Information Sought By The Contestant In Connection With Amnesty Applications

The Immigration Reform and Control Act of 1986 ("IRCA") authorized the granting of legal immigrant status to two categories of individuals: (i) those residing illegally in the United States before 1982; and (ii) special agricultural workers. 8 U.S.C. § 1225A; 8 U.S.C. § 1160. Both legalization provisions have identical confidentiality provisions concerning the information contained in such applications. 8 U.S.C. § 1255a(c)(4),(5); 8 U.S.C. § 1160(b)(5)(6). Under these sections, INS is prohibited both from "mak(ing) any publication whereby the information furnished by any particular individual can be identified" and from permitting anyone other than Department of Justice employees[3] to "examine individual applications." Id.

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3 Individual applications may also be examined by qualified (continued...)

Congress included these confidentiality provisions in IRCA "to assure applicants that the legalization process [was] serious, and not a ruse to invite undocumented aliens to come forward only to be snared by the INS." H. Rep. No. 682(I), 99th Cong., 2d Sess. 73, reprinted in 1986 U.S. Code Cong. & Admin. News 5649, 5677. The statutory exceptions to this prohibition on disclosure, which include disclosures for criminal law enforcement purposes against the alien, are not applicable to the Contestant's request. In addition, courts have sometimes held that these confidentiality provisions do not prohibit judicial disclosure where such disclosures are sought by counsel representing illegal aliens. Zambrano v. INS, 971 F.2d 1122, 1125 (9th Cir. 1992); In re Nelson, 873 F.2d 1396 (11th Cir. 1989). Under such circumstances, courts have concluded that such disclosures facilitate, rather than frustrate, IRCA's purpose of protecting the interests of aliens. 971 F.2d at 1225. Complying with Contestant's information requests, however, would frustrate Congressional intent by creating a reasonable apprehension in amnesty applicants that such disclosures would subject them to deportation notwithstanding a pending amnesty request. See U.S. v. Hernandez, 913 F.2d 1506, 1512 (10th Cir. 1990). These considerations prohibit the INS from responding to Request No. 1(— which seeks identifying information for persons who have filed Forms G-325A and G-325B — insofar as these forms were filed by aliens in support of an application for amnesty.[4]

The INS faces additional legal prohibitions in responding tc Contestant's Request No. 2, which seeks identifying information for persons who have filed "late" amnesty applications. The "late" amnesty applications to which the request refers are the result of several cases filed against the INS by putative classes of illegal aliens seeking to challenge certain INS regulations concerning the administration of the amnesty program. See Reno v. Catholic Social Services, Inc., 509 U.S. 43 (1993); Zambrano v. INS, 971 F.2d 1122, 1125 (9th Cir. 1992). These orders required the INS to accept thousands of applications for class membership, and as part of the class membership application, the aliens had to submit "late" amnesty applications. These court orders also extended the protections of the IRCA's confidentiality provisions to these "late" applications. Zambrano v. Thornburgh, et al, Civil No. S-88-455 EJG-EM (E.D. Cal. Aug. 15 1989); League of United Latin American Citizens, et

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3(...continued)
"designated entities" with whom applications are filed. 8 U.S.C. § 1255a(c)(4),(5); 8 U.S.C. § 1160(b)(5)(6).

4 In addition, other requests for information may seek identifying information provided by an applicant in support of ar amnesty application that is protected by IRCA's confidentiality provisions.

al. v. INS, et al., No. CV-04757 (C.D. Cal. Aug. 30, 1988); Catholic Social Services, Inc., et al. v. Meese, et al., No. Civ. S-86-1343 LKK (E.D. Cal. June 10, 1988, Aug. 30, 1988). Accordingly, the INS cannot respond to Request No. 2 without violating these court orders.

3. INS Regulations Prohibit Disclosure Of The Identifying Information In Connection With Applications For Asylum Sought By Request No.4

Request No. 4 seeks identifying information for persons who have filed a Form I-589, which is an Application for Asylum or Withholding of Deportation. INS regulations specifically prohibit the disclosure to third parties of "names and other identifying details" from such applications. 8 C.F.R. § 208.6. Although disclosure is permitted under specified circumstances, none of those exceptions is applicable here. See 208.6(c)(1)-(2). These same regulations also prohibit the disclosure of any "other records" kept by the Service "that indicate that a specific alien has applied for asylum or withholding of deportation . . . ." 8 C.F.R. §208.6(b). These "other records" will certainly include some of the records sought by the Contestant. For example, the regulation specifically references G-325A forms — which are the subject of Request No. 10 — as coming within its guarantee of confidentiality. Id. Therefore, to the extent that any of the information requests seek records which may "indicate" that an alien has made an application for asylum or withholding of deportation, these records or the identifying information contained within them cannot be produced to the Contestant. As with the INS's legal obligation not to produce identifying information in violation of the Privacy Act, these legal constraints not only limit the scope of the requested information that the INS can provide, but they multiply the practical difficulties of producing the requested information to the point of imposing wholly unreasonable burdens on the INS.

B. The Requests for Information Are Unreasonably Burdensome

1. INS does not maintain identifying information in the form sought by the information requests

Even if the INS responses to these information requests were confined to retrieving available information from INS databases, it is not possible to respond directly to the requests as they are currently framed. Specifically, the information requests seek identifying information on persons who were "residents" of either Santa Ana, Garden Grove or Anaheim, California, from January 1, 1995 to the present. INS databases are not designed to track dates of residency within municipalities. Typically,

the dates contained in INS databases will be the date that an application or petition was made, the date the form in question was filed or the date that the database entry was made. INS Decl., ¶ 7. Therefore, the date restrictions which can be utilized by the INS in responding to these requests will not have a direct relationship to those parts of the requests which seek to solicit information only on individuals who were "residents" of the specified cities since January 1, 1995. Id.

In addition, although some INS databases contain information on the subject's city of residence, the INS does not use the name of the city of residence as a search field. Id. at ¶ 8. Typically, information pertaining to particular geographic areas is retrieved through searches keyed to zip codes. Id. Because the zip code fields only accept between five to nine numerical characters, INS has relatively greater confidence in the accuracy of the information entered in this field and its utility in narrowing searches to particular geographic areas. Id. However, to the extent that the relevant zip code areas are not co-extensive with the municipal boundaries of Santa Ana, Anaheim or Garden Grove, the information that can be produced in response to these requests may be broader or narrower in geographical scope than the information requested. Id. Alternatively, where address information is available (although this information may not be a primary residence address), it is possible to write search programs that look for matching text information in the field listing the city of residence. However, such searches are less accurate. Id. In addition, some databases do not contain address information on the individual of interest, but only indicate the INS field office location where the file was last worked on or where the last database entry was entered. Id.

Contestant's requests to have the INS produce information in a manner in which it is not maintained are not only burdensome, but are unreasonable under the rules that traditionally govern the use of subpoenas in federal district court litigation. Federal Rule of Civil Procedure ("Rule") 34, regarding production of documents, requires the production of "data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form." Rule 34(a). Contestant's requests go beyond requesting information in "reasonably usable form" and seek to impose on the INS an obligation to go to great lengths to provide categories of information that the INS does not keep in the ordinary course of business.

The Rule 34 requirement that information be produced in a "reasonably usable form" was intended to prevent a party from producing information that could only be read by its own computer, or "detection device," making the information worthless to anyone who did not have access to the detection device. See In Re Puerto Rico Elec. Power Authority, 687 F.2d 501, 508 (1st

Cir. 1982). Consistent with this requirement, courts have required respondents to create computer software to make their computer extract information and print that information on computer tape instead of on paper, see Adams v. Dan River Mills, Inc., 54 F.R.D. 220, 221-22 (W.D. Va. 1972); National Union Elec. Corp. v. Matsushita Elec. Indus. Co., 494 F. Supp. 1257, 1260-61 (E.D. Pa. 1980); PHE, Inc. v. Department of Justice, 139 F.R.D. 249, 257 (D.D.C. 1991). These obligations do not extend, however, to a requirement that respondents comply with any request to manipulate computer information solely to assist the issuer of the subpoena in satisfying his evidentiary burdens.

2. The effort required to respond to the information requests would be prohibitively time-consuming and expensive

Partly because of the above-described difficulties in retrieving information responsive to the specific terms of the requests for information, the INS cannot possibly respond to these requests within the time frame contemplated by the Contestant.[5] For example, the INS maintains electronic databases that contain some of the identifying information sought by Request Nos. 1, 2, 4, 5, 6, 7, 13, 18, 19, 20, 22, 23, 25, 27, 29, 30 and 34. INS Decl., ¶ 5. However, in order to retrieve identifying information that was in any way responsive to the geographical and date limitations contained in the requests, it would be necessary to task a contractor to write a computer program for each category of information. Id. It takes approximately four weeks for a single programmer to write and execute the necessary programs for each request. Id. Such programs must first be tested on a subset of the target database(s), reviewed and approved by personnel responsible for quality assurance and then turned over to database administrators for the actual production run (which typically must take place at night or on weekends to minimize interference with the normal operation of the database). Id. In addition, this process can take significantly longer wherever it is necessary to cross-index the results from one database search against the most current information on naturalization status in order to avoid the release of identifying information regarding citizens or lawful permanent residents in violation of the Privacy Act. Id. This

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5 The return date for both subpoenas was three business days after service, March 24, 1997. Because of the breadth of the production requests and the very limited time in which to review the requests, Department of Justice counsel contacted counsel for the Contestant and asked if he would agree to continue the return date of the subpoenas. Counsel would not agree to any extension citing, inter alia, the field hearing that had been scheduled in this matter for April 19, 1997.

cross-indexing process would be required in order to produce electronic database information responsive to all of the requests listed above. Id. The writing and execution of the programs necessary to retrieve the requested information would also be very expensive. Costs would include staff time, charges for disk space, and charges for the computer use. These programming costs alone could easily exceed $25,000 for each of the 17 requests which seek identifying information contained in INS databases. Id. at ¶ 6.[6] These estimates do not include the costs involved in physically checking the files to verify naturalization status. Id. The costs of such file-by-file searches are likely to be significantly greater than the programming costs associated with such searches. Id.

Responding to Request No. 3 would impose an additional burden of a slightly different nature by requiring INS to solicit the cooperation of an independent contractor who maintains the electronic information sought by the request. Request No. 3 seeks identifying information relating to persons who hold an Alien Registration Receipt Card (I-551), also known as a "green card." INS Decl., ¶ 11(3). Information concerning whether an individual has been issued a green card is contained in INS's Central Index System, along with that individual's name and date of birth, but that system does not contain address information. Id. After INS completes its adjudication of the I-485 applications, the paper records are sent to the independent contractor that operates the Immigration Card Facility ("ICF") in Grand Prairie, Texas. The operator of that facility maintains an electronic database which includes, inter alia, information drawn from INS Form I-485, including address information. Id. Therefore, in order to produce information responsive to this request, it would first be necessary to task a contractor to write a program to query the Central Index System to produce a list of persons who received or applied for a green card and who may satisfy the date and location restrictions contained in the request. In order to secure the available matching address information for this list, it will be necessary to task the contractor who presently runs the ICF facility. Id. This task may require a modification of the existing contract between INS and the operator of the ICF facility, to which the contractor may not agree. Id.

Furthermore, the information requests seek identifying information contained both in database records and the "printed hard copy record." INS does not maintain electronic database information for many of the forms for which the Contestant seeks identifying information. To the extent that Contestant seeks to

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6 The Committee is authorized to require Contestant to bear the "reasonable cost of producing the books, papers, documents, or tangible things." 2 U.S.C. § 388(e).

require the INS to conduct a case-file-by-case-file review to determine whether a specified form appears in that case file and to then provide the identifying information associated with that case file, such a requirement would clearly impose an unreasonable burden. The Los Angeles District office alone contains 1.1 million active records and 2.8 million inactive records that have been retired to the Federal Record Center. Id. at ¶ 8. Further complicating any proposed file-by-file review is the fact that these files are stored in numerous different locations throughout Southern California. Id. In addition, at various points in the processing of an individual's case, there may exist two or more sets of files relating to that person's case at different physical locations. Id. The unreasonable burden imposed by such a file-by-file review process cannot be avoided in responding to Request Nos. 10, 11, 12, 13, 15, 16, 18, 21, and 24 — all of which seek identifying information contained on forms for which the INS does not separately maintain database records. Id. at ¶ 11(10)(11)(12)(13)(15)(16)(21) & (24). For this reason alone, these requests should be entirely quashed by the committee. In addition, request nos. 1, 2, 4, 5, 6, 7, 11, 13, 17 19, 20, 22, 23, 24, 32 and 34 impose unreasonable burdens by seeking hard copy information in addition to the information available in INS databases and should be quashed.

C. The Requests For Information Appear Unlikely To Yield Relevant Information

The Contestant seeks information from the INS to support his allegation that aliens or non-lawful permanent residents registered and voted in last fall's election in Orange County. In the aggregate, Contestant's requests sweep so broadly that the sought-after information would be of little use to Contestant in support of his electoral challenge. In addition, it is very clear that some of the Contestant's requests seek irrelevant identifying information about U.S. citizens or seek information that is so dated that it could not possibly be relevant to the Contestant's challenge.

1. The Committee should examine the ability of Contestant to utilize the requested information

In seeking identifying information about any individual who may have filed an INS form or been the subject of a particular INS proceeding since January 1, 1995, most of Contestant's requests appear to make the assumption that such individuals would necessarily have been ineligible to register or vote in 1996. However, the terms of Contestant's information requests seek information on numerous individuals who undoubtedly completed the naturalization process by late 1996. Contestant's requests for information do not even seek the dates of naturalization, without which information no meaningful

conclusions can be drawn about an individual's naturalization status as of Election Day. In addition, the Committee is entitled to question whether Contestant has the necessary access to voter registration records, or the resources, to conduct an effective name-by-name comparison of all of the identifying information he seeks from the INS with the Orange County voter lists. Moreover, many of Contestant's other requests seek information on persons who are most likely to already be citizens, as is the case with Request No. 20, which seeks identifying information on all persons who have requested a duplicate certificate of citizenship.

Contestant has compounded the difficulty of analyzing the relevance of his information requests by failing to comply with regulatory requirements for third-party subpoenas against the Department of Justice which are intended to assist DO decisionmakers in weighing the burden of a request against its purported value to the requestor. Specifically, these regulations require that the requesting party set forth, either by affidavit or statement to the responsible U.S. Attorney, a summary of the testimony and/or documents sought and its relevance to the proceeding. 28 C.F.R. §16.22(c)&(d) (1991). It is well-settled in federal district court litigation that a requestor's failure to comply with the procedural requirements of such regulations (known as Touhy regulations) justifies the quashing of a non-complying subpoena. See United States ex rel. Touhy v. Ragen, 340 U.S. 462 (1951); Davis v. Braswell Motor Freight Lines, Inc., 363 F.2d 600 (5th Cir. 1966); see also Sterling National Bank v. Camp, 307 F. Supp. 778, 780-81 (D.D.C. 1970); Denny v. Carey, 78 F.R.D. 370, 372 (E.D. Pa. 1978) ("When a party seeking discovery . . . [from an agency] has not complied with the regulations, a motion for discovery of such material must be denied."); Colonial Savings and Loan Assoc. v. St. Paul Fire and Marine Ins. Co., 89 F.R.D. 481, 484 (D. Kan. 1980) (denying motion to compel; litigant failed to follow Touhy regulation procedure); United States v. Allen, 554 F.2d 398, 406-07 (10th Cir.) (criminal case; no error in court's decision to not compel testimony where defendant did not comply with Touhy regulations), cert. denied 434 U.S. 836 (1977).

2. Some of Contestant's information requests seek categories of identifying information that appear to be irrelevant to his electoral challenge

(a) Request Nos. 6, 7, 8, 14 and 22 seek identifying information on persons or companies who have filed petitions on behalf of aliens or immigrants, rather than information about the aliens or immigrants themselves

These requests seek identifying information contained in INS files concerning individuals who have "filed" Petitions for a Non-Immigrant Worker (No. 6), Petitions for an Alien Relative (No. 7), applications for family preference visas (No. 8), Notices of Entry of Appearance as Attorney or Representative Before the Office of the Immigration Judge (No. 14), and Applications for Temporary Visas (No. 22). INS Decl., ¶ 11(6)(7)(8)(14) & (22). These forms are typically filed by either family members, lawyers or legal representatives and/or employers on behalf of aliens or immigrants. Id. Therefore, according to their terms, these requests seek identifying information about persons who, in nearly every case, will be citizens or lawful permanent residents. Id. Accordingly, whatever identifying information the INS is able to retrieve in response to these requests is unlikely to be helpful to the Contestant in his electoral challenge. Moreover, as noted above, the release of identifying information about citizens and lawful permanent residents is prohibited by the Privacy Act.[7]

(b) Request Nos. 15 and 16 seek identifying information about INS employees who have "filed" INS forms used to summon aliens to INS offices

Both of these requests seek identifying information on the persons who filed either Form N-14 (No. 15) or Form G-56 (No. 16). Both of these forms are used to summon aliens to INS offices to discuss the alien's case. Id. at ¶ 11(15) & (16).

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7 The attached INS Declaration (attached at Tab B) also describes, for each of the forms described in this paragraph, the extent to which identifying information concerning the beneficiaries of these forms can be retrieved by the INS. INS Decl, ¶ 11(6)(7)(8)(14) & (22).

INS employees, therefore, are the only persons who would have occasion to "file" either of these forms. Id.[8]

(c) Request No. 31 seeks identifying information about persons appearing in the Office of Internal Audit System

This system is utilized by INS's Office of Internal Audit in the performance of its duties, including the investigation of complaints against INS employees. Declaration of Steve Schenk, ¶ 2. (attached at Tab C). Where a complaint is brought by an alien or an alien is accused of complicity in wrongdoing by an INS employee, the OIAS does optionally support information about the complainant, including the name, alien number, address information and immigration status. Id. Nevertheless, most of the identifying information contained in this database concerns past or current INS employees.

(d) Request No. 17 seeks identifying information about persons who have filed a Form I-151 — a document that has not been in use since 1983

The I-151 is an old version of the INS's Alien Registration Receipt Cards, also known as the "green card." INS Decl., ¶ 11(17). The I-151 was superseded by the I-551 in 1983. Neither the I-151 or the superseding I-551 were ever "filed" by aliens, but were issued to them instead. Id. For both of these reasons, this request will not produce any relevant information.

(e) Request No. 26 seeks identifying information on persons appearing in a database which does not contain any records more recent than 1953.

The Naturalization Index Tracking System ("NITS") system was based on an older system of paper records used to track naturalization certificates. Id. at ¶ 11(26). Any naturalization records contained in the NITS are over 45 years old. Id. Approximately six years ago, there was an effort to automate these records which involved taking pictures of the certificates and storing that visual information in an electronic database along with certain indexing information to permit access and retrieval. Id. This automation effort was ended approximately two years ago. Id. The server that accessed the

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8 See note 7, supra, and INS Decl., ¶ 11(15) & (16).

NITS database system has been disabled since January of this year. Id.

D. Some of the Requests Seek Information That the INS Does Not Maintain and Cannot Provide

The following information requests seek identifying information related to documents that the INS does not keep in its records.

1. Applications for "unique non-immigrant status" for Mexican Nationals under NAFTA (Request No. 9)

The INS is not aware of this information request's reference to applications for "unique non-immigrant status" for Mexican nationals under NAFTA. Id. at ¶ 11(9).

2. Defense Discharge Forms (DD 214) (Request No. 12)

FORM DD-214 is a form issued by the Department of Defense that is used to memorialize the nature of an individual's discharge from the armed services. Id. at ¶ 11(12). Information from this form is not maintained by the INS in any computer database nor is it required for any INS application. Id. While it is possible that some individual case files may contain Form DD-214s, these forms may not be used in lieu of a completed N-426 as evidence of military service in support of an application for naturalization. Id.

3. Employee Verification Form (I-9) (Request No. 21)

Form I-9 is an employer verification form that employers are required to fill out with respect to individual employees under certain circumstances. Id. at ¶ 11(21). These forms are not filed with the INS. Instead, the INS checks to see that these forms have been properly filled out as part of its enforcement audits. Id.

4. Deportable Aliens database ("DATS") (Request No. 32)

The INS has no database described as the Deportable Aliens database or "DATS." Id. at ¶ 11(32).

F. Contestants' Requests for Information Should Be Modified To The Extent That They Are Unreasonably Duplicative

Many of the information requests would produce significant duplication in the responsive information that could be retrieved by the INS from its databases. At this time, INS has identified two main groups of duplicative requests. Since the Contestant can have no legitimate interest in being provided duplicative information, these duplicative requests, at a minimum, should be quashed.[9]

1. Request Nos. 11, 15, 20, 24, 25 and 34 are duplicative of Request No. 1

Request No. 1 seeks identifying information for persons who filed applications for naturalization (N-400). The requests listed below seek duplicative identifying information in connection with either (i) forms that are filed in support of an initial application for naturalization; (ii) forms that are filed after naturalization has been granted; (iii) INS databases that are used to track naturalization cases (which begin with an application for naturalization); or (iv) persons who have already been naturalized.

Request No. 11: Request for certification of military service (Form N-426). INS Decl., ¶ 11(11).

Request No. 15: Summons to office regarding naturalization application (Form N-14). Id. at ¶ 11(15).

Request No. 24: Notices of Intent to Reopen Naturalization Proceedings. Id. at ¶ 11(24).

Request No. 25: Identifying information for persons appearing in the INS's NACS database. Id. at ¶ 11(25).

Request No. 34: Identifying information for all persons naturalized from January 1, 1996, to the present. Id. at ¶ 11(34).

Responding to these requests for information would only be likely to produce smaller subsets of the information than the information that could be retrieved from INS databases in response to Request No. 1.

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9 Even to the extent that the requests described in this section are not duplicative, the separate objections raised by the INS in support of the motion to quash regarding burden, irrelevance and statutory prohibitions on disclosure are also applicable to these requests.

2. Request Nos. 2, 5, 6, 7, 17, 18 and 22 are duplicative of Request No. 30.

Request No. 30 seeks identifying information on persons appearing in the INS's Computer-Linked Application Management Information System ("CLAIMS"). Information concerning the requests listed below is also maintained in the CLAIMS database. Therefore, these requests seek duplicative sets of identifying information.

Request No. 2. Identifying information for persons who filed late Amnesty Applications. Id. at ¶ 11(2).

Request No. 5. Identifying information for persons who have filed applications for a re-entry permit (Form I-131). Id. at ¶ 11(5).

Request No. 6. Identifying information for persons who have filed a Petition for a Non-Immigrant Worker (I-129). Id. at ¶ 11(6).

Request No. 7. Identifying information for persons who have filed a Petition for an Alien Relative (I-130). Id. at ¶ 11(7).

Request No. 8. Identifying information for persons who have filed applications for family preference visas.[10] Id. at ¶ 11(8).

Request No. 18. Identifying information for persons who have filed a Form FD-258 (Fingerprint cards). Id. at ¶ 11(18).

Request No. 22. Identifying information for persons who have filed Applications for Temporary Visa (Forms H1 and H1B). Id. at ¶ 11(22).

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10 Request No. 8 is not only duplicative of Request No. 30, but it is identical to Request No. 7. The Petition for Alien Relative (Form I-130) referenced in Request No. 7 is the form that would be used to make the "application for a family preference visa" referenced in Request No. 8.

II. OBJECTIONS OF THE CUSTODIAN OF RECORDS, UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA, NATURALIZATION DIVISION

The Contestant's subpoena demands the production of all documents (in either "hard copy" or computer data format), that contain the name, address, date of birth and/or date of naturalization of all persons who became naturalized United States citizens in the Central District of California since October 1, 1994. Complying with the information request served on the Custodian of Records will impose a significant and unreasonable burden on the Court to the detriment of its important pubic business. The significant costs in both money and staff resources that will be borne by the district court in order to respond to these information requests will produce a great mass of paper documents which the Contestant is unlikely to be able to effectively digest or even review. Moreover, the information sought by the request — a list of persons naturalized in that district in the past two years - is largely irrelevant to Contestant's claims that aliens or non-lawful permanent residents improperly voted in last fall's elections.

A. Contestant's Request for Information Would Impose An Unreasonable Burden On The District Court

There are two sets of documents maintained by the Court that may be responsive to Contestant's request: (i) lists prepared by the INS and transmitted to the Office of the Clerk of the Court containing the names of those individuals whom the INS has determined to be eligible to participate in the next naturalization ceremony; and (ii) copies of the forms processed by the INS concerning requests by candidates for naturalization to have their names changed (Court Form N-5). Declaration of Chief Deputy Clerk Allen Abersman, ¶ 4 ("Abersman Decl.") (attached at Tab D). For the most part, the lists of naturalization candidates which have been provided by the INS remain in the form of computer print-outs. Id. at 7. Between 350,000 and 400,000 individuals have been naturalized in this district since October 1, 1994. Id. The lists of naturalization candidates from this time period approximate 15,000 large computer print-out pages. Id. The district court also has on file between 250,000 to 300,000 Court Form N-5s (name-change forms) dated later than October 1, 1994. Id. at 8-9.

Without any system available for electronic data retrieval of the requested information, the resources of the district court would be significantly burdened in the event that production of both of the categories of documents responsive to this request were required. As the Chief Deputy Clerk of the Court explains in his accompanying declaration, that office is already understaffed in relation to its workload. Abersman Decl., ¶ 10.

Committing additional staff time to retrieving, preparing, copying, and returning these documents to storage could easily involve hundreds of man-hours. Id. Such a task would also require the use of one or more of the office's copy machines, which are presently needed for copying by members of the public, the internal needs of that office, and for tasks related to district court litigation. Id. In addition, due to the non-standard size of the computer print-outs containing the lists of naturalization candidates, these documents could not be copied in the office and such a task would have to be assigned to an outside contractor at a cost estimated to exceed $10,000. Id.[11] In addition, it is the practice of that office to assign a staff member to accompany original court documents to a contractor's premises whenever off-site copying is required. Id. Therefore, sending the documents to a contractor still reduces the staff resources available to conduct the work of that office. Id.

These burdens are especially unreasonable in light of the fact that much of the information sought by this information request is patently irrelevant to Contestant's claims. For example, there is little doubt that persons naturalized from 1994 through much of 1996 would have faced no legal impediment to their registration and/or voting in the 1996 elections. On its face, therefore, the subpoena sweeps far more broadly than is reasonably necessary.

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11 In the event that production is required, the United States District Court asks that the Contestant bear these costs. See 2 U.S.C. § 388(e).

CONCLUSION

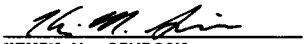
For the foregoing reasons, we respectfully request that the subpoenas served against the Custodian of Records for the United States District Court and the INS Custodian of Records be quashed in their entirety. We are prepared to provide the Committee with any additional information that it may need to resolve these issues.

Respectfully submitted,

FRANK W. HUNGER
Assistant Attorney General

GARY G. GRINDLER
Deputy Assistant Attorney General

DAVID J. ANDERSON
ANNE L. WEISMANN



KEVIN M. SIMPSON
Attorneys
Federal Programs Branch
U.S. Department of Justice
Room 938
Washington, D.C. 20530

Attorneys for Immigration and Naturalization Service and Clerk of the Court, United States District Court, Central District of California

CERTIFICATE OF SERVICE

I, Kevin M. Simpson, hereby certify that copies of the ›regoing Motion Of The Immigration And Naturalization Service ıd The Custodian Of Records, United States District Court For ıe Central District Of California To Quash Contestant's bpoenas, accompanied by supporting declarations and exhibits ve been served this 15th day of April 1997, by overnight mail the following parties:

Contestant's Counsel

William Hart
Hart, King & Coldren
200 East Sandpointe, Suite 400
Santa Ana, California 92707

Kevin M. Simpson

WILLIAM M. THOMAS, CALIFORNIA
CHAIRMAN

VERNON J. EHLERS, MICHIGAN
PAT ROBERTS, KANSAS
JOHN A. BOEHNER, OHIO
JENNIFER DUNN, WASHINGTON
LINCOLN DIAZ-BALART, FLORIDA
ROBERT W. NEY, OHIO

JOE FAZIO, CALIFORNIA
RANKING MINORITY MEMBER

SAM GEJDENSON, CONNECTICUT
STENY H. HOYER, MARYLAND
WILLIAM J. JEFFERSON, LOUISIANA
ED PASTOR, ARIZONA

STACY CARLSON
STAFF DIRECTOR
TOM LUKEDICH
MINORITY STAFF DIRECTOR

Congress of the United States

House of Representatives

COMMITTEE ON HOUSE OVERSIGHT

1309 LONGWORTH HOUSE OFFICE BUILDING
(202) 225-8281

Washington, DC 20515-0250

April 18, 1997

Immigration and Naturalization Service
300 N. Los Angeles Street
Room 8108
Los Angeles, CA 90012

William R. Hart, Esquire
Hart, King & Clodren
200 East Sandpointe, Suite 400
Santa Ana, CA 92707

The Honorable Gary L. Taylor
United States District Court
Central District of California
751 West Santa Ana Boulevard
Courtroom #2
Santa Ana, CA 92701

Re: Dornan v. Sanchez Election Contest - Motion to Quash Subpeona

Gentlemen:

The House Oversight Committee, through its Task Force governing the above-referenced matter, has considered the motion to modify, limit or quash subpoena filed by Immigration and Naturalization Service. Pursuant to 2 U.S.C. §388(e) and based upon the March 18, 1997 opinion of the Honorable Gary L. Taylor, United States District Court for the Central District of California, the Committee hereby modifies the subpoena as set forth in the attachment to this letter.

If you have any questions, please do not hesitate to contact either me, or Stacy Carlson, Staff Director to the Committee on House Oversight, at 202-225-8281.

Sincerely,

Bill Thomas

William M. Thomas
Chairman
Committee on House Oversight

IMMIGRATION AND NATURALIZATION SERVICE

General Rules Regarding Subpoena

(applicable where action is required either of respondent or party seeking discovery)

1. Contestant shall provide witnesses with the normal and usual costs provided for under the rules of the local federal district court, and reasonable out-of-pocket costs for producing documents, and other necessary costs.

2. Response to this letter is required within fifteen (15) days from April 16, 1997. Only reasonable requests for extensions will be granted.

Specific Modifications to Subpoena

(numbers refer to specific subpoena request)

1. Response to subpoena by Respondent is required as set forth above.

97 JUN -2 PM 1:19
HOUSE COMMITTEE

IN THE HOUSE OF REPRESENTATIVES

OF THE UNITED STATES OF AMERICA

IN THE MATTER OF THE CONTESTED ELECTION OF LORETTA SANCHEZ et.al. ROBERT K. DORNAN, Contestant, VS. LORETTA SANCHEZ, Contestee.	MOTION TO QUASH OR MODIFY SUBPOENA (2 U.S.C.§388(e))

MOTION TO QUASH OR MODIFY SUBPOENA
(2 U.S.C. §388(e))

MARK S. ROSEN
Attorney at Law
2700 No. Main
Suite 630
Santa Ana, California 92705
(714) 972-8040
Telefax: (714)285-9840

Attorney for
Michael Farber

TO THE CLERK OF THE HOUSE OF REPRESENTATIVES, THE COMMITTEE ON HOUSE OVERSIGHT, THE SPECIAL ELECTIONS SUBCOMMITTEE FOR THE ELECTION CONTEST IN THE 46TH CONGRESSIONAL DISTRICT OF CALIFORNIA, AND TO ALL PARTIES:

Michael Farber moves to quash a subpoena caused to be issued by Contestant Robert K. Dornan, through his law firm, Hart, King & Coldren, served on or about Friday, May 30, 1997. The subpoena calls for Farber's deposition and production of documents on June 2, 1997, at 10:00 a.m. The date of service, May 30, 1997, was the last business day before the scheduled deposition. A true and correct copy of the subpoena is attached hereto as Exhibit A.

The subpoena referenced herein calls for an appearance and production of records on June 2, 1997. Immediate action is therefore requested on this motion. Mr. Farber will not appear nor produce documents until this motion has been acted upon.

This motion is brought on the following grounds:

General Objections to the Subpoena

1. The subpoena is untimely. Under the Federal Contested Elections Act, at 2 U.S.C.§386(c), the contestant may take testimony only within thirty days after the time for answer has expired. Under contestant's count, the thirty day period commenced March 12 and ended no later than April 11. Contestee did no discovery. Under contestee's count, the time to commence discovery has not yet begun because the committee has yet to rule on the motions to dismiss brought by Congresswoman Sanchez. Under either count, this subpoena does not fall within any window for the taking

of testimony.

2. The subpoena was not served within a reasonable period of time, having been served on the last business day immediately preceding the scheduled deposition. It is therefore untimely under §387(a) and §388(b).

3. The subpoena is invalid because Sections 386 through 391 of the Federal Contested Elections Act are an unconstitutional delegation of the subpena power and the investigatory power of the House of Representatives to a private party for a function that is constitutionally solely within the purview and power of the House of Representatives. The Constitution, at Article I, Section 5, Clause 1, provides that "Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members". The House cannot delegate the power to conduct an investigation for this unique Congressional function to a private party without setting forth intelligible principles for guiding the use of the delegated Congressional power. The unlimited power by the contestant to utilize the subpoena power of the House, without limitation, is an unconstitutional delegation of authority.

4. The discovery provisions of the Federal Contested Elections Act are also unconstitutional as a violation of due process under the First, Fourth and Fifth Amendments of the United States Constitution because they require discovery and the production of documents without any means of protecting witnesses from unreasonable intrusions in violation of their constitutional and statutory rights. The Act does not provide sufficient protections. The instant matter illustrates this constitutional defect. The subpoena was served in an unreasonably short time prior to the

deposition date. The Act provides no means for ex parte relief or pre-discovery resolution of objections. The subpoena was served at a time when the House was not in session due to the Memorial Day recess. The Act provides for none of the protections which are afforded by the federal judiciary.

5. This subpoena is invalid as applied in that it seeks the production of materials which are objectionable for the reasons set forth below; and furthermore, that the subpoena seeks materials which could not be germane to an election contest under Article I, Section 5, of the United States Constitution.

6. In order to preserve all rights, this witness reserves his right to asserts his rights under the Fifth Amendment of the United States Constitution protecting witnesses against self-incrimination, and all California constitutional and statutory provisions which provide the same right, and moves to quash the subpoena on that basis.

7. To preserve its rights, the moving party further objects to the subpoena to the extent it seeks information which is privileged under the attorney-client or attorney-work-product privilege or any other privilege of the laws of the State of California.

8. The moving party further objects to the subpoena and moves that it be quashed on the basis that it continues to ask for documents from fixed time periods "to the present", although every order made by the committee has limited document production to a time certain. Dornan has deliberately ignored the dictates of the committee.

Objections to Specific Requests in the Subpoena

In addition to the grounds set forth above, the moving party moves to quash the individual requests for documents contained in the subpoena on the grounds which follow.

The moving party notes for the record that he was the Democratic nominee in the 46th Congressional District in 1994 against Dornan, and was a candidate for the Democratic nomination in the same district in 1996, and was defeated by Loretta Sanchez. During the course of the 1994 campaign, both Dornan and Dornan's wife, Sallie Dornan, sued Mr. Farber for defamation. The complaint was stricken by a state court judge on a demurrer and the Dornans chose not to refile. Farber brought a cross-complaint, which he chose to voluntarily dismiss. Thereafter, in public statements, on television and radio, and in the printed press, contestant has pursued a personal vendetta against Farber. This intrusive subpoena, as well as the subpoena for the bank records of Farber's business, the Gutenberg Group, is for the purpose of pursuing that vendetta rather than for any legitimate purpose in this election contest.

1. Without waiving any of the objections set forth herein, Farber objects to Categories 1, 2, 5, 9, 10, 11, 12, 14, 17, 20, 21, 22, 23, 24, 25, and 27 on the basis that the request is overbroad and improperly burdensome and not limited to the issue of the 1996 election and the returns of that election, designed to harass the witness, seeks information which is irrelevant and not calculated to lead to the discovery of admissible evidence and which is beyond the limited scope of the Federal Contested Elections Act, and is in violation of the First Amendment right

held by Farber of political and organizational freedom of association.

2. Without waiving any of the objections set forth herein, Farber objects to Categories 3, 4, 6, 7, 8, 13, 15, 16, 18, 19, and 26 on the basis that the request is overbroad and improperly burdensome and not limited to the issue of the 1996 election and the returns of that election, designed to harass the witness, seeks information which is irrelevant and not calculated to lead to the discovery of admissible evidence and which is beyond the limited scope of the Federal Contested Elections Act, and is in violation of the First Amendment right held by Farber of political and organizational freedom of association, and further that the requests call for information unrelated to Mike Farber.

Request for Opportunity to Argue and Request for Detailed Response to Objections

This committee has thus far deprived counsel for any of the witnesses an opportunity to argue about the merits of any objections to the subpoenas. The committee's orders on prior objections have also failed to respond to individualized objections. The committee has not given advance notice of its meetings, even on the committee's website. This witness objects to this lack of opportunity to address the committee and lack of advance notice of any hearing on these objections.

DATED: May 30, 1997

MARK S. ROSEN
Attorney for Michael Farber

Issued by the
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
PURSUANT TO THE FEDERAL CONTESTED ELECTION ACT
2 USC 386, 388, 390 et seq.

COMMITTEE ON HOUSE OVERSIGHT
1309 Longworth Building
Washington, D.C. 20515

IN THE MATTER OF THE CONTESTED ELECTION OF LORETTA SANCHEZ TO THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES CONGRESS,

ROBERT K. DORNAN, Contestant

vs.

LORETTA SANCHEZ, Contestee.

SUBPOENA IN FEDERAL ELECTION CONTEST

CASE NUMBER: SACV 97-176-GLT

TO: Michael Farber
825 North Broadway
Santa Ana, CA 92701

☒ YOU ARE COMMANDED to appear at the place, date and time specified below to testify at the taking of a deposition in the above case:

PLACE OF DEPOSITION:		DATE AND TIME:
HART, KING & COLDREN 200 East Sandpointe, Suite 400 Santa Ana, California 92707	(714) 432-8700	June 2, 1997 10:00 a.m.

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date and time specified below:

SEE ATTACHMENT "A".

PLACE:		DATE AND TIME:
HART, KING & COLDREN 200 East Sandpointe, Suite 400 Santa Ana, California 92707	(714) 432-8700	June 2, 1997 10:00 a.m.

The officer before whom the deposition is taken shall be a certified shorthand reporter authorized to administer an oath and transcribe the testimony of the witness. That officer shall be a representative of PAULSON REPORTING SERVICE.

Any organization not a party to this election contest that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify.

ISSUING OFFICER SIGNATURE AND TITLE:

The Honorable Gary L. Taylor
Judge of the United States Court, Central District of California

PROOF OF SERVICE

DATE: PLACE:

SERVED:

SERVED ON: MANNER OF SERVICE:

SERVED BY: TITLE:

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____
DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

2 USC §§ 388, 389, 390 provides, in summary:

(1) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises must appear in person at the place of inspection for deposition, hearing or trial.
(2) Service of the subpena shall be made upon the witness no later than three days before the day on which his attendance is directed. A subpena may be served by any person who is not a party to the contested election case and is not less than eighteen years of age. Service of a subpena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering to him the fee for one day's attendance and the mileage allowed by section 10 [2 USC § 389]. Written proof of service shall be made under oath by the person making same and shall be filed with the Clerk.
(3) A witness may be required to attend an examination only in the county wherein he resides or is employed, or transacts his business in person, or is served with a subpena, or within forty miles of the place of service.
(4) Every subpena shall state the name and title of the officer issuing same and the title of the contested election case, and shall command each person to whom it is directed to attend and give testimony at a time and place and before an officer specified therein.
(5) A subpena may also command the person to whom it is directed to produce the books, papers, documents, or other tangible things designated therein, but the committee, upon motion promptly made to the Committee on House Oversight, U.S. House of Representatives, Washington, D.C., and in any event at or before the time specified in the subpena for compliance therewith, may (1) quash or modify the subpena if it is unreasonable or oppressive, or (2) condition denial of the motion upon the advancement by the party in whose behalf the subpena is issued of the reasonable cost of producing the books, papers, documents, or tangible things. In the case of public records or documents, copies thereof, certified by the person having official custody thereof, may be produced in lieu of the originals.
(6) Witnesses whose depositions are taken shall be entitled to receive from the party at whose instance the witness appeared the same fees and travel allowance paid to witnesses subpoenaed to appear before the House of Representatives or its committees.
(7) Every person who, having been subpoenaed as a witness under this Act to give testimony or to produce documents, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the contested election case, shall be deemed guilty of a misdemeanor punishable by fine of not more than $1,000 nor less than $100 or imprisonment for not less than one month nor more than twelve months, or both.

ATTACHMENT "A"

1. All voter registration documents including, but not limited to, lists of registered voters in your possession including, but not limited to, voter registration affidavits (including blank and completed affidavits), and any items detached from voter registration affidavits for the period January 1, 1995 to the present.

2. All computer-generated or printed hard-copy lists of persons who have been registered to vote with your assistance, for the period January 1, 1995 to the present.

3. All computer-generated or printed hard-copy lists of persons who have been registered to vote with the assistance of Hermandad Mexicana Nacional and/or Hermandad Mexicana Nacional Legal Center (HMN), for the period January 1, 1995 to the present.

4. All computer-generated or printed hard-copy lists of persons who have been registered to vote with the assistance of Nativo Lopez, for the period January 1, 1995 to the present.

5. All documents that evidence, substantiate or identify absentee voter ballot requests by persons whose address was in Santa Ana, Garden Grove or Anaheim, California, that you handled or processed in any way for the period January 1, 1995 to the present.

6. All documents that evidence, substantiate or identify absentee voter ballot requests by persons whose address was in Santa Ana, Garden Grove or Anaheim, California, that were handled or processed in any way by HMN, or anyone employed by, associated with or volunteering through HMN for the period January 1, 1995 to the present.

7. All documents that evidence, substantiate or identify absentee voter ballot requests by persons whose address was in Santa Ana, Garden Grove or Anaheim, California, that were handled or processed in any way by Nativo Lopez, or any person or entity acting on behalf or in concert with him for the period January 1, 1995 to the present.

8. All documents that evidence, substantiate or identify HMN's employees, associates or volunteers who engaged in the effort to register voters or encourage persons to vote for the period January 1, 1996 to November 6, 1996.

9. All documents, including telephone message slips and/or notes relating to telephone conversations between you and HMN and/or Nativo Lopez for School Board, or Loretta Sanchez, the Sanchez for Congress Campaign, or anyone acting on their behalf, Mike Farber, Citizens Forum, the Guttenberg Group, and/or Citizenship U.S.A., or anyone acting on their behalf, relating to voter registration, absentee ballot voting, and/or

encouraging persons to vote for the period January 1, 1996 to November 6, 1996.

10. All writings, correspondence, and memoranda to or from you and Loretta Sanchez, the Loretta Sanchez for Congress Campaign, or anyone acting on their behalf, for the period January 1, 1996 to the present.

11. All writings, correspondence, and memoranda to or from you and/or HMN, or anyone acting on its behalf, for the period January 1, 1996 to the present.

12. All writings, correspondence, and memoranda to or from you and the Nativo Lopez for School Board Campaign, or anyone acting on its behalf, for the period January 1, 1996 to the present.

13. All documents that evidence, substantiate or identify savings and/or checking accounts maintained by HMN, or any subsidiary or affiliate thereof, including passbooks, monthly statements, cancelled checks, cash withdrawal slips, cash deposit slips, and transfer forms, for the period January 1, 1996 to the present.

14. All documents that evidence, substantiate or identify communications between you, or anyone acting on your behalf and Get Out the Vote, for the period January 1, 1995 to the present.

15. All documents that evidence, substantiate or identify absentee voter ballot requests by persons whose address was in Santa Ana, Garden Grove or Anaheim, California, that were handled or processed in any way by Get Out the Vote, or anyone employed by, associated with or volunteering through Get Out the Vote for the period January 1, 1995 to the present.

16. All documents that evidence, substantiate or support payments that were made to any persons and/or organizations or entities in return for their efforts to have people register and/or vote in the November 5, 1996 election.

17. All documents that evidence, substantiate or identify incentives, promotions, raffles, and/or lotteries that were designed to induce people to register and/or vote in connection with the November 5, 1996 election, that were promoted by or participated in by you, or anyone acting on your behalf, for the period January 1, 1996 to the present.

18. All documents that evidence, substantiate or identify incentives, promotions, raffles, and/or lotteries that were designed to induce persons to register and/or vote in connection with the November 5, 1996 election, that were promoted by or participated in by HMN for the period January 1, 1996 to the present.

19. All documents that evidence, substantiate or identify incentives, promotions, raffles, and/or lotteries that were designed to induce persons to register and/or vote in the November 5, 1996 election that were promoted by or participated in by Nativo Lopez for School Board, or anyone acting on its behalf, from January 1, 1996 to the present.

20. All writings, correspondence and memoranda to or from you and Loretta Sanchez, the Loretta Sanchez for Congress Campaign, or anyone acting on their behalf for the period January 1, 1996 to the present.

21. All writings, correspondence and memoranda to or from you and/or HMN, or anyone acting on its behalf for the period January 1, 1996 to the present.

22. All writings, correspondence and memoranda to or from you and the Nativo Lopez for School Board Campaign, or anyone acting on its behalf, for the period January 1, 1996 to the present.

23. All documents that evidence, substantiate or identify all communications between you and/or Southwest Voter Registration Project, for the period January 1, 1995 to the present.

24. All documents that evidence, substantiate or identify all communications between you and One Stop Immigration and Education Center, or anyone acting on their behalf, for the period January 1, 1995 to the present.

25. All writings, correspondence and memoranda authored or received by you, or anyone acting on your behalf, in any way addressing the issues of voter fraud, illegal voting, or any malconduct or irregularity regarding voter registration or voting, for the period January 1, 1996 to the present.

26. All documents that evidence, substantiate or identify the payment of any bounty, incentive, or any other enumeration paid to anyone as compensation for enlisting persons to register to vote or vote for the period January 1, 1995 to the present.

27. All documents that evidence, substantiate or identify plans, strategy, tactics, and/or efforts by you, or anyone acting on your behalf, in connection with the registration of voters or assisting persons to vote, for the period January 1, 1996 to November 6, 1996.

71362.001\162942.01

PROOF OF SERVICE BY MAIL, (2015.5 C.C.P.)

STATE OF CALIFORNIA, COUNTY OF ORANGE:

I am employed in the aforesaid county, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 2700 North Broadway, Suite 630, Santa Ana, California 92705.

I am familiar with the office's practice for depositing mail, and am aware that correspondence placed in the outgoing mail box would be deposited in the mail at Santa Ana, California on the same day. On May 30, 1997, I served and faxed the MOTION TO QUASH OR MODIFY SUBPOENA, on all interested parties by placing a true copy thereof, enclosed in a sealed envelope in the office outgoing mail box, in accordance with office practice, addressed as follows:

William R. Hart
HART, KING & COLDREN
200 E. Sandpoints, #400
Santa Ana, CA 92707
FAX: 714-546-7457

Fredric D. Woocher
STRUMWASSER & WOOCHER
100 Wilshire Blvd., Ste 1900
Santa Monica, CA 90401
FAX: 310/319-0156

Wylie A. Aitken, Esq.
Law Offices of Wylie A. Aitken
3 Imperial Promenade, Ste 800
Santa Ana, CA 92707-2555
FAX: 714/434-3600

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

DATED: May 30, 1997

PATTIE LIMON

WILLIAM M. THOMAS, CALIFORNIA
CHAIRMAN

ROBERT W. NEY, OHIO
JOHN L. MICA, FLORIDA

Congress of the United States

House of Representatives

COMMITTEE ON HOUSE OVERSIGHT

1309 LONGWORTH HOUSE OFFICE BUILDING
(202) 225-8281

Washington, DC 20515-6157

STAFF DIRECTOR

September 25, 1997

Michael Farber
c/o Mark S. Rosen, Esq.
2700 No. Main Street, Suite 630
Santa Ana, CA 92705

William R. Hart, Esq.
Hart, King & Coldren
200 East Sandpointe, Suite 400
Santa Ana, CA 92707

The Honorable Gary L. Taylor
United States District Court
Central District of California
751 West Santa Ana Boulevard
Courtroom #2
Santa Ana, CA 92701

Re: Dornan v. Sanchez Election Contest - Motion to Quash Subpoena

Gentleman:

The House Oversight Committee has considered the motion to modify, limit or quash the subpoena filed by Michael Farber. Pursuant to 2 U.S.C. §388(e) and based upon the March 18, 1997 and September 24, 1997 opinions of the Honorable Gary L. Taylor, United States District Court for the Central District of California, the Committee hereby modifies the subpoena as set forth in the attachment to this letter.

If you have any questions, please do not hesitate to contact John Kelliher, Counsel to the Committee on House Oversight, at (202) 225-8281.

Best regards,

Bill Thomas
Chairman

Attachment

MICHAEL FARBER

General Rules Regarding Subpoena

(applicable where action is required either of respondent or party seeking discovery)

1. Contestant shall provide witnesses with the normal and usual costs provided for under the rules of the local federal district court, and reasonable out-of-pocket costs for producing documents, and other necessary costs.

2. Response to this letter is required within fifteen (15) days from September 24, 1997. Only reasonable requests for extensions will be granted.

3. This material will be produced pursuant to the "Michael Farber/Active Citizenship Campaign" protective order.

Specific Modifications to Subpoena

(numbers refer to specific subpoena requests)

1. In the last line, delete "present" and add instead "December 31, 1996."

2. In the last line, delete "present" and add instead "December 31, 1996."

3. In the last line, delete "present" and add instead "December 31, 1996."

4. In the last line, delete "present" and add instead "December 31, 1996."

5. In the last line, delete "present" and add instead "December 31, 1996."

6. In the last line, delete "present" and add instead "December 31, 1996."

7. In the last line, delete "present" and add instead "December 31, 1996."

10. In the last line, delete "present" and add instead "December 31, 1996."

11. In the last line, delete "present" and add instead "December 31, 1996."

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22. In the last line, delete "present" and add instead "December 31, 1996.'

23. In the last line, delete "present" and add instead "December 31, 1996.'

24. In the last line, delete "present" and add instead "December 31, 1996.'

25. In the last line, delete "present" and add instead "December 31, 1996.'

26. In the last line, delete "present" and add instead "December 31, 1996.'

BEFORE THE COMMITTEE ON HOUSE OVERSIGHT
UNITED STATES HOUSE OF REPRESENTATIVES
105TH CONGRESS

Robert Dornan,	)	
Contestant,	)	
v.	)	**ELECTION CONTEST** **46TH DISTRICT OF CALIFORNIA**
Loretta Sanchez,	)	
Contestee.	)	

MICHAEL FARBER AND ACTIVE CITIZENSHIP CAMPAIGN
PROTECTIVE ORDER

IT IS HEREBY ORDERED:

1. This Order ("Protective Order") shall govern the use and dissemination of all documents and things stamped "confidential" ordered to be produced by the Task Force on the Contested Election to the 46th District of California, pursuant to subpoenas issued by Contestant Robert Dornan to Michael Farber and Active Citizenship Campaign.

2. The term "Confidential Document" shall mean the documents referred to in paragraph 1 and shall include letters, words, or numbers, or their equivalent, set down by handwriting, type-writing, printing, photostating, magnetic impulse, mechanical or electronic recording, or other form of data compilation, and any information taken or derived from such materials.

3. The term "Counsel for the Parties" shall mean, for contestant, Mr. William R. Hart, and for Contestee, Mssrs. Stanley Brand, Frederic Woocher, William Kopeny, and Wylie Aitken, as well as partners, associates and staff within each of their respective firms. The term does not include Of Counsel or other outside attorneys, professionals or other persons with a contractual or other non-full time employee relationship with the firm.

Use of Documents

4. Confidential Documents shall not be disclosed other than as expressly authorized in this Order and may be disclosed only as follows:

a. Disclosure shall be made first to to the staff of the Committee on House Oversight, represented by the Staff Director of the Committee on House Oversight who will distribute copies to a staff representative of the Minority and other staff persons, but only upon the execution of the attached Confidentiality Agreement by each staff person. Members of the Committee on House Oversight may also review the Confidential Documents.

b. Notwithstanding paragraph 4.a., upon order of the Task Force, disclosure of portions of the Confidential Documents deemed relevant by the Task Force may be made available to Counsel for the Parties, upon execution by each such person of the attached Confidentiality Agreement.

c. All Confidentiality Agreements executed shall be filed with the Clerk of the House.

d. Confidential Documents and all copies thereof shall be returned by counsel for the parties to the producing parties within 10 days of the conclusion of this Contest.

e. Confidential Documents, including notes or summaries of such information, shall be maintained in a secure room at the counsels' for the parties offices. Access to the secure room shall be restricted to the persons executing Confidentiality Agreements, as described above. No computers, voice transcribers, cameras, photocopiers, telephones or other devices for facilitating document copying or summarization shall be permitted in the secure room.

f. If Confidential Documents are submitted to the Task Force as an exhibit or otherwise as part of the record of the Contest as described at 2 U.S.C. § 392, such material shall be filed under seal with the Clerk and revealed subsequently only as ordered by the Task Force.

5. No one may attend, or review the transcripts of the portions of. any deposition at which Confidential Documents are shown or discussed, other than the court reporter (who shall first have executed a Confidentiality Agreement), counsel for the parties as designated in paragraph 3, and representatives of, and counsel for, the deponent.

General Provisions

6. Confidential Documents shall not be used or disclosed for any purpose other than the preparation and disposition of this Contest and/or any judicial proceeding arising therefrom.

7. Any summary, compilation, copy, electronic image or database containing Confidential Documents shall be subject to the terms of this Order to the same extent as the material or information from which such summary, compilation, copy, electronic image or database is made or derived.

8. Nothing in this Order shall be deemed to restrict in any manner the use by any person or entity, of any information in its own documents and materials, and nothing in this Order shall be deemed to limit or restrict the ability of such persons or entities to assert legitimate claims of privilege.

9. If a court or governmental agency subpoenas or orders production of Confidential Documents that a party has obtained under the terms of this Protective Order, such party shall use all reasonable efforts to resist production of such Confidential Documents interposing all available defenses. Additionally, such party shall immediately notify the persons or entities that produced the Confidential Documents of the subpoena or order and shall allow them to assist in such defense if they so request. The party shall not produce any Confidential Documents unless, after the interposition of all available defenses, a court or Committee of Congress orders production of such material. If a court or Committee of Congress orders the release of such documents to the public or any party, the court or Committee shall provide 48 hours notice to all parties.

10. This Protective Order is without prejudice to the right of any party to seek modification from the Task Force. It shall remain in effect until such time as it is modified, amended or rescinded by the Task Force.

11. This Task Force shall have continuing jurisdiction to modify, amend, enforce, interpret or rescind this Order notwithstanding the termination of this action.

SO ORDERED

For the Committee on House Oversight
and Task Force on the Contested
Election in the 46th District
of California

Dated _____.

BEFORE THE COMMITTEE ON HOUSE OVERSIGHT
UNITED STATES HOUSE OF REPRESENTATIVES
105TH CONGRESS

Robert Dornan,	)	
	)	
Contestant,	)	
	)	
v.	)	**ELECTION CONTEST**
	)	**46TH DISTRICT OF CALIFORNIA**
Loretta Sanchez,	)	
	)	
Contestee.	)	
	)	

CONFIDENTIALITY AGREEMENT FOR MICHAEL FARBER AND ACTIVE CITIZENSHIP CAMPAIGN DOCUMENTS

STATE OF _____)

COUNTY OF _____)

I. _____, being duly sworn on oath, state the following:

1. I have read and understand the Order to which this Exhibit A is annexed and I attest to my understanding that access to information designated "Confidential Documents" may be provided to me and that such access is pursuant to the terms and conditions and restrictions of the Order and I agree to be bound by the terms of the Order, and acknowledge Congress' power to enforce it, which I acknowledge to be an expressly intended beneficiary of the undertakings I give in this Confidentiality Agreement.

2. I shall not use or disclose to others, except in accordance with the Order, any Confidential Documents. In the event that I am requested or required, by legal process or otherwise, to disclose any such Confidential Documents, I shall use all reasonable efforts to resist such disclosure, interposing all available defenses. In addition, I shall notify the person or entity that produced that document immediately and allow them to assist in such defense if they so request. Such effort shall continue until the process is quashed or a final order enforcing the process is entered.

3. If I shall fail to abide by the terms of this Confidentiality Agreement or the Order, I understand that I shall be subject to sanctions by way of contempt of Congress and to separate legal and equitable recourse. I hereby waive any claim of privilege or immunity I may now or hereafter have as a defense to violation or enforcement of the Order or breach of this Confidentiality Agreement.

Dated: _____

_____
Signature

_____
Printed Name

_____
Address

_____
Individual or Entity Represented

Subscribed and sworn to
before me this ___ day
of _____, 1997.
Witness my hand and official seal.

_____
Notary Public
My Commission expires:

97 JUL 20 AM 9:09

IN THE HOUSE OF REPRESENTATIVES

OF THE UNITED STATES OF AMERICA

IN THE MATTER OF THE CONTESTED ELECTION OF LORETTA SANCHEZ et.al. ROBERT K. DORNAN, Contestant, VS. LORETTA SANCHEZ, Contestee.	MOTION TO QUASH OR MODIFY SUBPOENA (2 U.S.C.§388(e))

MOTION TO QUASH OR MODIFY SUBPOENA
SERVED ON NATIVO LOPEZ
(2 U.S.C. §388(e))

MARK S. ROSEN
Attorney at Law
2700 No. Main
Suite 630
Santa Ana, California 92705
(714) 972-8040
Telefax: (714)285-9840

Attorney for
Hermandad Mexicana Nacional

TO THE CLERK OF THE HOUSE OF REPRESENTATIVES, THE COMMITTEE ON HOUSE OVERSIGHT, THE SPECIAL ELECTIONS SUBCOMMITTEE FOR THE ELECTION CONTEST IN THE 46TH CONGRESSIONAL DISTRICT OF CALIFORNIA, AND TO ALL PARTIES:

Hermandad Mexicana Nacional moves to quash a subpoena addressed to Nativo Lopez, caused to be issued by Contestant Robert K. Dornan, through his law firm, Hart, King & Coldren, and served on or about June 10, 1997. The subpoena calls for Lopez's deposition and production of documents on June 24, 1997, at 10:00 a.m.. A true and correct copy of the subpoena has heretofore been supplied to the committee by counsel for Dornan.

The subpoena referenced herein calls for an appearance and production of records on June 24, 1997. Immediate action is therefore requested on this motion.

This motion is brought on the following grounds:

General Objections to the Subpoena

1. The subpoena is untimely. Under the Federal Contested Elections Act, at 2 U.S.C.§386(c), the contestant may take testimony only within thirty days after the time for answer has expired. Under contestant's count, the thirty day period commenced March 12 and ended no later than April 11. Contestee did no discovery. Under contestee's count, the time to commence discovery has not yet begun because the committee has yet to rule on the motions to dismiss brought by Congresswoman Sanchez. Under either count, this subpoena does not fall within any window for the taking of testimony.

2. Mr. Lopez was subpoenaed in his individual capacity, and not as custodian of records for Hermandad Mexicana Nacional or any affiliated entity. Hermandad Mexicana Nacional therefore objects to the document request in its entirety to the extent that it calls for an individual, in his individual capacity, to produce documents which belong to the corporation. Hermandad Mexicana Nacional does not waive any objection it has heretofore filed to requests for its records, and does not relinquish custody, control, or possession of any of its documents to any individual.

3. The subpoena is invalid because Sections 386 through 391 of the Federal Contested Elections Act are an unconstitutional delegation of the subpoena power and the investigatory power of the House of Representatives to a private party for a function that is constitutionally solely within the purview and power of the House of Representatives. The Constitution, at Article I, Section 5, Clause 1, provides that "Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members". The House cannot delegate the power to conduct an investigation for this unique Congressional function to a private party without setting forth intelligible principles for guiding the use of the delegated Congressional power. The unlimited power by the contestant to utilize the subpoena power of the House, without limitation, is an unconstitutional delegation of authority.

4. The discovery provisions of the Federal Contested Elections Act are also unconstitutional as a violation of due process under the First, Fourth and Fifth Amendments of the United States Constitution because they require discovery and the production of documents without any means of protecting witnesses from

unreasonable intrusions in violation of their constitutional and statutory rights. The Act provides for none of the protections which are afforded by the federal judiciary.

5. This subpoena is invalid as applied in that it seeks the production of materials which are objectionable for the reasons set forth below; and furthermore, that the subpoena seeks materials which could not be germane to an election contest under Article I, Section 5, of the United States Constitution.

6. To preserve its rights, the moving party further objects to the subpoena to the extent it seeks information which is privileged under the attorney-client or attorney-work-product privilege or any other privilege of the laws of the State of California.

7. The moving party further objects to the subpoena and moves that it be quashed on the basis that it continues to ask for documents from fixed time periods "to the present", although every order made by the committee has limited document production to a time certain. Dornan has deliberately ignored the dictates of the committee.

Objections to Specific Requests in the Subpoena

In addition to the grounds set forth above, the moving party moves to quash the individual requests for documents contained in the subpoena on the grounds which follow.

1. Without waiving any of the objections set forth herein, Hermandad Mexicana Nacional objects to Categories 1, 2, 3, 4, 5, 7. 8. 9, 10, 11, 12, 14, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27,

28, 29, 30, 31, 32, 33, 34, 35, 36, 37, and 38, on the basis that the request is overbroad and improperly burdensome and not limited to the issue of the 1996 election and the returns of that election, designed to harass this moving party, seeks information which is irrelevant and not calculated to lead to the discovery of admissible evidence and which is beyond the limited scope of the Federal Contested Elections Act, and is in violation of the First Amendment right held by Hermandad Mexicana Nacional and its clients of organizational freedom of association and privacy.

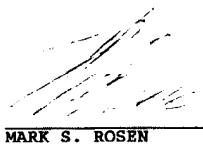
2. Without waiving any of the objections set forth herein, Hermandad Mexicana Nacional objects to each and every other category on the grounds set forth above to the extent that any category would include documents that the subpoenaed witness obtained as a result of access to documents belonging to this objecting party.

Request for Opportunity to Argue and Request for Detailed Response to Objections

This committee has thus far deprived counsel for any of the witnesses an opportunity to argue about the merits of any objections to the subpoenas. The committee's orders on prior objections have also failed to respond to individualized objections. The committee has not given advance notice of its meetings, even on the committee's website, even though Rule 9 of the Rules of the House Oversight Committee provide for one week's notice of any meetings. This moving party objects to this lack of opportunity to address the committee and lack of advance notice of

any hearing on these objections.

DATED: June 17, 1997



MARK S. ROSEN
Attorney for Hermandad
Mexicana Nacional

PROOF OF SERVICE BY MAIL, (2015.5 C.C.P.)

STATE OF CALIFORNIA, COUNTY OF ORANGE:

I am employed in the aforesaid county, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 2700 North Broadway, Suite 630, Santa Ana, California 92705.

I am familiar with the office's practice for depositing mail, and am aware that correspondence placed in the outgoing mail box would be deposited in the mail at Santa Ana, California on the same day. On June 17, 1997, I served the MOTION TO QUASH OR MODIFY SUBPOENA (2 U.S.C.§388(e)), on all interested parties by placing a true copy thereof, enclosed in a sealed envelope in the office outgoing mail box, in accordance with office practice, addressed as follows:

See attached list

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

DATED: June 17, 1997

PATTIE D'AGOSTINO-LIMON

House Oversight Committee
1309 Longworth House of Building
Washington, D.C. 20515

William R. Hart
HART, KING & COLDREN
200 E. Sandpointe, #400
Santa Ana, CA 92707

Fredric D. Woocher
STRUMWASSER & WOOCHER
100 Wilshire Blvd., Ste 1900
Santa Monica, CA 90401

Wylie A. Aitken, Esq.
Law Offices of Wylie A. Aitken
3 Imperial Promenade, Ste 800
Santa Ana, CA 92707-2555

Ed Munoz
1717 S. State College Blvd,
Suite 125
Anaheim, CA 92806

WILLIAM M. THOMAS, CALIFORNIA
CHAIRMAN

VERNON J. EHLERS, MICHIGAN
JAY ROBERTS, KANSAS
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VIC FAZIO, CALIFORNIA,
RANKING MINORITY MEMBER

SAM GEJDENSON, CONNECTICUT
STENY H. HOYER, MARYLAND
WILLIAM J. JEFFERSON, LOUISIANA
ED PASTOR, ARIZONA

STACY CARLSON
STAFF DIRECTOR
COMMITTEE ON
MINORITY STAFF DIRECTOR

Congress of the United States

House of Representatives

COMMITTEE ON HOUSE OVERSIGHT

1309 LONGWORTH HOUSE OFFICE BUILDING
(202) 225-8281

Washington, DC 20515-0250

April 18, 1997

Hermandad Mexicana Nacionale
Legal Center
c/o Mark S. Rosen, Esquire
2107 No. Broadway, Suite 202
Santa Ana, CA 92706

Custodian of Records
Union Bank of California
3403 10th Street
Riverside, CA 90321-3824

William R. Hart, Esquire
Hart, King & Coldren
200 East Sandpointe, Suite 400
Santa Ana, CA 92707

The Honorable Gary L. Taylor
Judge of the United States Court
Central District of California
751 West Santa Ana Boulevard
Courtroom #2
Santa Ana, CA 92701

Re: Dornan v. Sanchez Election Contest - Motion to Quash Subpeona

Gentlemen:

The House Oversight Committee, through its Task Force governing the above-referenced matter, has considered the motion to modify, limit or quash subpoena filed by Hermandad Mexicana Nacionale Legal Center. Pursuant to 2 U.S.C. §388(e) and based upon the March 18, 1997 opinion of the Honorable Gary L. Taylor, United States District Court for the Central District of California, the Committee hereby modifies the subpoena as set forth in the attachment to this letter.

If you have any questions, please do not hesitate to contact either me, or Stacy Carlson, Staff Director to the Committee on House Oversight, at 202-225-8281.

Sincerely,

Bill Thomas

William M. Thomas
Chairman
Committee on House Oversight

HERMANDAD MEXICANA NACIONAL LEGAL CENTER
(Union Bank of California)

General Rules Regarding Subpoena

(applicable where action is required either of respondent or party seeking discovery)

1. Contestant shall[1] provide witnesses with the normal and usual costs provided for under the rules of the local federal district court, and reasonable out-of-pocket costs for producing documents, and other necessary costs.

2. Response to this letter is required within fifteen (15) days from April 16, 1997. Only reasonable requests for extensions will be granted.

Specific Modifications to Subpoena

(numbers refer to specific subpoena request)

1. Produce pursuant to "Protective Order" attached.

WYLIE A. AITKEN, BAR NO. 37770
LAW OFFICES OF WYLIE A. AITKEN
WILLIAM J. KOPENY, ESQ.
KOPENY & POWELL
STAN BRAND, ESQ.
DAVID FRULLA, ESQ.
BRAND, LOWELL & RYAN
FREDERIC D. WOOCHER, ESQ.
STRUMWASSER & WOOCHER
3 IMPERIAL PROMENADE, SUITE 800
P.O. BOX 2555
SANTA ANA, CA 92707-2555
(714) 434-1424

Attorneys for Contestee, LORETTA SANCHEZ

COMMITTEE ON HOUSE OVERSIGHT OF THE

HOUSE OF REPRESENTATIVES OF THE UNITED STATES

In the Matter of the Contested Election of LORETTA SANCHEZ for the Office of the House of Representatives to the United States Congress, ROBERT K. DORNAN,	)	**OBJECTIONS/MOTION TO QUASH RE: SUBPOENAS**
	)	
	)	2 USC 386 et seq.
Contestant,	)	
vs.	)	
LORETTA SANCHEZ,	)	
Contestee.	)	

TO: THE COMMITTEE ON HOUSE OVERSIGHT AND

TO ALL PARTIES AND THE ATTORNEYS OF RECORD HEREIN:

Gentlemen:

The following objections/motion is presented to you pursuant to the Fedcral Contested Election Act. Though we are giving the House Oversight Committee the courtesy

pursuant to section 2 USC 389 of providing our objections, you should note that we consider this procedure discretionary under the Act and that any discovery is premature, not supported under the Act, and to the extent permitted, an unconstitutional delegation of powers of the House to a private citizen, and of course, in this case, not just any private citizen but Bob Dornan. To illustrate our point attached is Exhibit A, the subpoena served on an organization entitled Sanchez for Congress, a subpoena served on the District Director for Congresswoman Sanchez at her Congressional office. Our formal objections are attached as Exhibit B.

INTRODUCTION

We find ourselves today before this Committee due to Congresswoman Sanchez's invitation in good faith for the Task Force to come to Orange County and conduct a "field hearing." A field hearing should have been calculated to meet its citizens, its public officials, including its Registrar, to see first hand the constituents of the 46th District who elected her, and to learn first hand of their hopes, their aspirations, and their love and respect for the democratic process, citizens from all walks of life, of all ages, and citizens by birth and naturalization.

1. CONGRESSWOMAN SANCHEZ'S SUPPORT OF ANY WORTHWHILE EFFORT TO PROTECT THE INTEGRITY OF THE ELECTORAL PROCESS, SO LONG AS THE CONSTITUTION IS PROTECTED AT EVERY STEP, IS WELL DOCUMENTED.

In constantly asserting her position that no one, who is not legally qualified to vote, should be permitted to vote, she has supported any independent lawful investigation. However, she has not and cannot condone an uncontrolled witch hunt calculated to intimidate new citizens. In that endeavor she is joined by such leaders as Ronald Reagan

who stated ". . . the magnet that draws them is freedom and the beacon that guides them is hope." The five year process that culminates in naturalized citizenship for immigrants who have paid their taxes, served in the armed forces and built new communities bestows one additional privilege, the right to vote. That right to vote should be as zealously protected as the right to investigate those who should not vote.

2. IN LIGHT OF DORNAN AND HIS REPRESENTATIVES' OWN KNOWLEDGE AND ADMISSIONS THAT THE SANCHEZ FOR CONGRESS HAD ABSOLUTELY NO INVOLVEMENT WITH NATIVO LOPEZ. NATIVO LOPEZ FOR SCHOOL BOARD, OR HERMANDAD NACIONALE, OR ANY OF THEIR VOTER REGISTRATION ACTION ACTIVITIES, THE REQUESTS DIRECTED IN THAT RESPECT ARE OUTRAGEOUS, PURELY POLITICAL AND IMPUGN THE INTEGRITY OF THE HOUSE AND HIGHLIGHTS THE LEGAL INSANITY TURNED LOOSE AGAINST ONE OF ITS OWN MEMBERS.

Despite Dornan's admissions, through his counsel Michael Schroeder, that there is no connection between Congresswoman Loretta Sanchez and Hermandad Nacionale, or its director Nativo Lopez, or with Michael Farber's Dump Dornan Committee, a subpoena attempted to be served on Congresswoman Sanchez's Committee purports to request writings and correspondence known not to exist. See Request No. 9. Attempts are made to bring in other organizations well beyond Hermandad. See Requests Nos. 10, 11, 12 which can best be described as either a witch hunt, a fishing expedition, or both.

3. THIS COMMITTEE, ITS CHAIRMAN AND ITS TASK FORCE, ARE ON RECORD PROCLAIMING AN INTENT TO CONDUCT A FAIR, UNBIASED AND NON PARTISAN INVESTIGATION INTO THE CHARGES WHICH CAN BE MADE SO EASILY AND SO IRRESPONSIBLY.

This document reflects a real opportunity to see if its actions will follow its words. The Committee should act in a bi-partisan way to quash a subpoena which is patently:

A. Oppressive

B. Unreasonable

C. Overbroad

D. Tramples on the First Amendment to the Constitution, including the Right to Vote and the Fundamental Right of Association.

E. Directs the turning over of information for an evil purpose - the attempts of citizen Bob Dornan to set aside the will of the voters and gain and unfair advantage in a potential special election by allowing him to rampage through Congresswoman Sanchez's lawful campaign organization.

F. A part of a scheme to unfairly classify foreign born, recently registered voters and to attempt to burden their right to vote.

G. Seek attorney/client and/or work product information which is clearly privileged.

H. Seek information totally unrelated to the issues raised by this bogus contest, in other words, there is no "pertinency" to the alleged voter fraud.

The Committee and its counsel are encouraged to carefully review the documents sought, requests which would offend the sensitivities of students in a high school freshmen

Civics class. If the Committee is not immediately offended, the citizens of Orange County await an explanation of the reasons for ever condoning the following:

1. The names, addresses and phone numbers of employees, associates or volunteers for Loretta Sanchez who engaged in the civic activity of "encouraging persons to vote" (See Request No. 4).

2. All employee lists for no stated reason (See Request No. 5).

3. All telephone records generated in the campaign, again for no stated reason (See Request No. 6).

4. All telephone message slips and/or notes between Sanchez for Congress and any other person or entity again relating to the civic activity of "encouraging persons to vote." (See Request No. 7).

5. All writings involving the same "reprehensible" activity: encouraging persons to vote (See Request No. 8).

6. All financial records of the Congresswoman's campaign even up to the present - March 1997! (See Request No. 13)

7. Requests No. 15 and 16 are truly classic. A private citizen makes charges he cannot substantiate. He, therefore, then requests of a member of Congress that she turn over to him everything she has done to defend herself against his unfounded allegations.

If one were to take these requests seriously, you would be asking a member of Congress to surrender to an announced opponent who has already been described as "an historic sore loser" her entire campaign structure. Which members of this Committee stand ready to set such a precedent? But it gets worse, Mr. Dornan wants all of Congresswoman Sanchez's plans, strategy, tactics and efforts. Had we only known this new definition of a

contested election we could have invited him to all our campaign meetings during the election. (See Request No. 21.)

One can only imagine what our founding fathers would have thought of a federal bureaucracy demanding comprehensive reports on the internal workings of the campaigns of its members who briefly find themselves in the minority.

4. DESPITE THEIR UNCONSTITUTIONALITY, THEIR PATENT LACK OF RELEVANCY, PERTINENCY, PROCEDURAL DEFECTS, ETC. IN A SPIRIT OF COOPERATION, THE SANCHEZ COMMITTEE VOLUNTEERS A GREAT DEAL OF INFORMATION TO ATTEMPT TO HALT MR. DORNAN'S HARASSMENT OF THE CITIZENS IN THE 46TH CONGRESSIONAL DISTRICT.

As the Committee is well aware, there is in existence a Federal Election Campaign Act which interpreted by the Supreme Court in *Buckley v. Valeo*, 424 US 1 (1976), imposes a system of limits and disclosure that has been held not to infringe on First Amendment protections. Those detailed disclosures which contain extensive information and are a matter of public record are being provided to citizen Dornan. We have further responded voluntarily that the "fish" being sought in this expedition do not even exist. To do more would have a "chilling" effect on the exercise of free speech and association which we cannot and will not condone.

5. PURSUANT TO THE ACT, THE SANCHEZ COMMITTEE IS ENTITLED TO THE REASONABLE COST OF PRODUCING THE ATTACHED DOCUMENTS, THEREFORE, DEMAND IS HEREBY MADE FOR SUCH COST OR IN LIEU THEREOF, IN LIGHT OF MR. DORNAN'S COMMITMENT TO GOOD GOVERNMENT, WE WOULD REQUEST A DONATION TO THE COMMITTEE TO RE-ELECT LORETTA SANCHEZ.

If we have no concern for the taxpayers and the cost of this charade which may long haunt the halls of the House, perhaps we can at least compensate those citizens in Orange County whose lives are being disrupted thousand of miles from the beltway. Community colleges should be left alone and allowed to teach, Catholic charities should be allowed to do their work, registrars to help people vote, unions to help the working class, and so life goes in Orange County. Citizen Dornan, long an advocate of "loser pays", will soon have the opportunity to reimburse us all. We can only hope he can afford it.

POINTS AND AUTHORITIES

I. THE SUBPOENAS TO THE EXTENT AUTHORIZED BY STATUTE REPRESENT AN UNCONSTITUTIONAL DELEGATION OF POWERS OF THE HOUSE TO A PRIVATE CITIZEN.

INS v. CHADHA, 462 U.S. 919 (1983) (Congress may not interfere in an individual adjudication or exercise of delegated judicial power except by enacting plenary legislation through bicameral passage and presentment).

II. THE DORNAN SUBPOENAS SEEK DOCUMENTS PROTECTED BY THE FIRST AMENDMENT UNDER CONTROLLING CASE LAW.

It is well settled that "[B]efore a state or federal body can compel disclosure of information which would trespass upon first amendment freedoms, a `subordinating interest

of the State' must be proffered and it must be compelling." *Fed. Election Comm'n v. Machinists' Non-Partisan Political League*, 655 F.2d 380, 389 (D.C. Cir. 1981) (quoting NAACP v. Alabama, 357 U.S. 449, 463 (1958)). A subpoena seeking disclosure of first amendment protected information must thus be precisely drawn to seek only that information for which such a compelling need for disclosure exists. A private claimant in a FCEA proceeding has no greater authority to employ Governmental processes to fish for disclosure of first amendment protected activities.

The Dornan subpoenas seek a wealth of information that has been held to be first amendment protected and is far afield from that which appropriately be ordered to be disclosed under the Federal Election Campaign Act. Certain of the categories of information that have been held to fall within such protection.

The courts have been clear that requests for such information cannot be used to "chill the free exercise of political speech and association" of a political adversary. *Machinists Non-Partisan Political League*, 655 F.2d at 388 (noting the potential for such abuse when an agency whose members are appointed by the President seeks information concerning the activity of a group that seeks to encourage a popular political figure to run against the President). It is clear Mr. Dornan, an announced candidate for election in 1998, seeks these records for the precise reason they are protected under the First Amendment -- to chill Representative Sanchez and her supporters in the legitimate exercise of their free speech, electoral and associational rights.

III. THE DORNAN SUBPOENAS SEEK DOCUMENTS AND INFORMATION THAT IS NOT "PERTINENT" TO THE ISSUES PENDING BEFORE THE TASK FORCE IN THE CONTESTED ELECTION.

The FCEA makes statutory "pertinency" an absolute requirement for subpoenas issued in contested elections. 2 U.S.C. §390. The requirement of "pertinency" is designed not only to protect against abusive subpoenas but to insure that the authority delegated by the full House to its committees and subcommittees is properly implemented.

In this connection, the proponent of the subpoena (in this case a private citizen) has the burden to demonstrate that the documents sought are "pertinent" with the degree of explicitness and clarity" that the Due Process Clause requires." *Watkins v. United States*, 354 U.S. 178, 209 (1957). "Pertinency" must be shown with "indisputable clarity," *Watkins*, 354 U.S. at 214, and "to be meaningful, the explanation must describe what the topic under inquiry is and the connective reasoning whereby the precise [documents] sought relate to it." Id. The inquiry here is whether the contestant can ultimately produce "credible evidence" that the outcome of the election would be different.

It is therefore requested that the subpoena be quashed in its entirety and swiftly.

Dated: March 25, 1997

Respectfully submitted,

LAW OFFICES OF WYLIE A. AITKEN
KOPENY & POWELL
BRAND, LOWELL & RYAN
STRUMWASSER & WOOCHER

By: WYLIE A. AITKEN
Attorneys for Contestee
LORETTA SANCHEZ

WYLIE A. AITKEN, BAR NO. 37770
LAW OFFICES OF WYLIE A. AITKEN
WILLIAM J. KOPENY, ESQ.
KOPENY & POWELL
STAN BRAND, ESQ.
DAVID FRULLA, ESQ.
BRAND, LOWELL & RYAN
FREDERIC D. WOOCHER, ESQ.
STRUMWASSER & WOOCHER
3 IMPERIAL PROMENADE, SUITE 800
P.O. BOX 2555
SANTA ANA, CA 92707-2555
(714) 434-1424

Attorneys for Contestee, LORETTA SANCHEZ

COMMITTEE ON HOUSE OVERSIGHT OF THE

HOUSE OF REPRESENTATIVES OF THE UNITED STATES

In the Matter of the Contested Election of LORETTA SANCHEZ for the Office of the House of Representatives to the United States Congress, ROBERT K. DORNAN, Contestant, vs. LORETTA SANCHEZ, Contestee.	)))))))))	OBJECTIONS/MOTION TO QUASH RE: SUBPOENAS (GENERAL AND SPECIFIC OBJECTIONS TO REQUEST TO PRODUCE) 2 USC 386 et seq.

TO: THE COMMITTEE ON HOUSE OVERSIGHT AND

TO ALL PARTIES AND THE ATTORNEYS OF RECORD HEREIN:

GENERAL OBJECTION TO REQUESTS TO PRODUCE

A campaign committee is a legal distinct entity from the candidate. The correct name of Congresswoman Sanchez's Committee was the Committee for Loretta Sanchez (Not

the fictional Sanchez for Congress). The District Director who was served is not an official in any way associated with Committee for Loretta Sanchez, but in fact, a dedicated public servant. Therefore, there is no duty to respond whatsoever.

The subpoena is also premature in that pursuant to the dictates of the Federal Contested Election Act, the appropriate procedures have not been followed in order to trigger formal discovery. In addition, the Act itself as utilized by the House Oversight Committee amounts to an unconstitutional delegation of its subpoena power to a private citizen.

SPECIFIC OBJECTIONS TO REQUESTS TO PRODUCE

OBJECTION TO REQUEST No. 1:

This subpoena request is a constitutional violation of First Amendment rights in that, among others things, it attempts to compel the disclosure of information which would trespass upon First Amendment freedoms, including but not limited to the right to associate, the right to participate in the election process and engage in political activity, attempts to chill the free exercise of political speech and as applied lacks constitutional due process. See *Fed. Election Comm'n v. Machinists' Non-Partisan Political League*, 655 F.2d 380, 389 (D.C. Cir. 1981), *Olagues v. Russoniello*, 797 F.2d 1511, 1519 (9th Cir. 1986).

The request calls for information not relevant or pertinent to the subject matter of this action nor to the discovery of admissible evidence at any hearing on the merits.

The request is overly broad and remote and as such is not calculated to lead to the discovery of information relevant to the subject matter of this action nor to the discovery of admissible evidence at any hearing on the merits.

The request invades contestee's right of privacy, is impermissibly overbroad and, therefore oppressive, burdensome, and irrelevant to the subject matter of this action and, does not relate to the allegations which are the subject of this action.

To answer this request would result in annoyance, embarrassment, or oppression to contestee in that the question is overly broad, indefinite as to time and without reasonable limitation in its scope.

The request is oppressive and burdensome because it is vague, ambiguous, and unintelligible so as to make a response impossible.

OBJECTION TO REQUEST No. 2:

This subpoena request is a constitutional violation of First Amendment rights in that, among others things, it attempts to compel the disclosure of information which would trespass upon First Amendment freedoms, including but not limited to the right to associate, the right to participate in the election process and engage in political activity, attempts to chill the free exercise of political speech and as applied lacks constitutional due process. See *Fed. Election Comm'n v. Machinists' Non-Partisan Political League*, 655 F.2d 380, 389 (D.C. Cir. 1981), *Olagues v. Russoniello*, 797 F.2d 1511, 1519 (9th Cir. 1986).

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The request is oppressive and burdensome because it is vague, ambiguous, and unintelligible so as to make a response impossible.

Notwithstanding these objections, including the general objections, and without waiving same, NO SUCH LISTS EXIST.

OBJECTION TO REQUEST No. 3:

This subpoena request is a constitutional violation of First Amendment rights in that, among others things, it attempts to compel the disclosure of information which would trespass upon First Amendment freedoms, including but not limited to the right to associate, the right to participate in the election process and engage in political activity, attempts to chill the free exercise of political speech and as applied lacks constitutional due process. See *Fed. Election Comm'n v. Machinists' Non-Partisan Political League*, 655 F.2d 380, 389 (D.C. Cir. 1981), *Olagues v. Russoniello*, 797 F.2d 1511, 1519 (9th Cir. 1986).

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The request is oppressive and burdensome because it is vague, ambiguous, and unintelligible so as to make a response impossible.

Notwithstanding these objections, including the general objections, and without waiving same, NO SUCH DOCUMENTATION IS IN OUR POSSESSION AS WE DID NOT PROCESS ABSENTEE BALLOTS OR REQUEST FORMS.

OBJECTION TO REQUEST No. 4:

This subpoena request is a constitutional violation of First Amendment rights in that, among others things, it attempts to compel the disclosure of information which would trespass upon First Amendment freedoms, including but not limited to the right to associate, the right to participate in the election process and engage in political activity, attempts to chill the free exercise of political speech and as applied lacks constitutional due process. See *Fed. Election Comm'n v. Machinists' Non-Partisan Political League*, 655 F.2d 380, 389 (D.C. Cir. 1981), *Olagues v. Russoniello*, 797 F.2d 1511, 1519 (9th Cir. 1986).

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To answer this request would result in annoyance, embarrassment, or oppression to contestee in that the question is overly broad, indefinite as to time and without reasonable limitation in its scope.

The request is oppressive and burdensome because it is vague, ambiguous, and unintelligible so as to make a response impossible.

Notwithstanding these objections, including the general objections, and without waiving same, THE SANCHEZ CAMPAIGN NEVER ACTIVELY ENGAGED IN VOTER REGISTRATION OR OUTREACH BUT FOCUSED ON VOTER PERSUASION. VOTERS WHO WERE REGISTERED BY OUR OFFICE WERE WALK INS. "ENCOURAGE TO VOTE" IS AN ACTIVITY OF ALL POLITICAL CAMPAIGNS. IT JUST THAT SOME DO IT BETTER THAN OTHERS.

OBJECTION TO REQUEST No. 5:

This subpoena request is a constitutional violation of First Amendment rights in that, among others things, it attempts to compel the disclosure of information which would trespass upon First Amendment freedoms, including but not limited to the right to associate, the right to participate in the election process and engage in political activity, attempts to chill the free exercise of political speech and as applied lacks constitutional due process. See

Fed. Election Comm'n v. Machinists' Non-Partisan Political League, 655 F.2d 380, 389 (D.C. Cir. 1981), *Olagues v. Russoniello*, 797 F.2d 1511, 1519 (9th Cir. 1986).

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The request is oppressive and burdensome because it is vague, ambiguous, and unintelligible so as to make a response impossible.

Notwithstanding these objections, including the general objections, and without waiving same, SEE FEDERAL ELECTION COMMISSION REPORTS ATTACHED.

OBJECTION TO REQUEST No. 6:

This subpoena request is a constitutional violation of First Amendment rights in that, among others things, it attempts to compel the disclosure of information which would trespass upon First Amendment freedoms, including but not limited to the right to associate, the right to participate in the election process and engage in political activity, attempts to chill the free exercise of political speech and as applied lacks constitutional due process. See

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OBJECTION TO REQUEST No. 7:

This subpoena request is a constitutional violation of First Amendment rights in that, among others things, it attempts to compel the disclosure of information which would trespass upon First Amendment freedoms, including but not limited to the right to associate, the right to participate in the election process and engage in political activity, attempts to chill the free exercise of political speech and as applied lacks constitutional due process. See *Fed. Election Comm'n v. Machinists' Non-Partisan Political League*, 655 F.2d 380, 389 (D.C. Cir. 1981), *Olagues v. Russoniello*, 797 F.2d 1511, 1519 (9th Cir. 1986).

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OBJECTION TO REQUEST No. 8:

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To answer this request would result in annoyance, embarrassment, or oppression to contestee in that the question is overly broad, indefinite as to time and without reasonable limitation in its scope.

The request is oppressive and burdensome because it is vague, ambiguous, and unintelligible so as to make a response impossible.

The request seeks information which is protected from disclosure by the attorney's work product privilege.

Attorney/client privilege protects disclosure of the information sought.

Notwithstanding these objections, including the general objections, and without waiving same, AND TO EXTENT IT RELATES TO VOTER REGISTRATION AND ABSENTEE BALLOTS ON OR BEFORE THE ELECTION, NONE EXIST.

OBJECTION TO REQUEST No. 9:

This subpoena request is a constitutional violation of First Amendment rights in that, among others things, it attempts to compel the disclosure of information which would trespass upon First Amendment freedoms, including but not limited to the right to associate, the right to participate in the election process and engage in political activity, attempts to chill the free exercise of political speech and as applied lacks constitutional due process. See

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The request is oppressive and burdensome because it is vague, ambiguous, and unintelligible so as to make a response impossible.

Notwithstanding these objections, including the general objections, and without waiving same, NONE EXIST AS THERE IS NOT AND NEVER HAS BEEN ANY CONNECTION BETWEEN CONGRESSWOMAN SANCHEZ'S CAMPAIGN AND NATIVO LOPEZ, NATIVO LOPEZ FOR SCHOOL BOARD, AND HERMANDAD MEXICANA NACIONALE.

OBJECTION TO REQUEST No. 10:

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the right to participate in the election process and engage in political activity, attempts to chill the free exercise of political speech and as applied lacks constitutional due process. See *Fed. Election Comm'n v. Machinists' Non-Partisan Political League*, 655 F.2d 380, 389 (D.C. Cir. 1981), *Olagues v. Russoniello*, 797 F.2d 1511, 1519 (9th Cir. 1986).

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The request is oppressive and burdensome because it is vague, ambiguous, and unintelligible so as to make a response impossible.

Notwithstanding these objections, including the general objections, and without waiving same, NONE EXIST.

OBJECTION TO REQUEST No. 11:

This subpoena request is a constitutional violation of First Amendment rights in that, among others things, it attempts to compel the disclosure of information which would trespass upon First Amendment freedoms, including but not limited to the right to associate,

the right to participate in the election process and engage in political activity, attempts to chill the free exercise of political speech and as applied lacks constitutional due process. See *Fed. Election Comm'n v. Machinists' Non-Partisan Political League*, 655 F.2d 380, 389 (D.C. Cir. 1981), *Olagues v. Russoniello*, 797 F.2d 1511, 1519 (9th Cir. 1986).

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The request invades contestee's right of privacy, is impermissibly overbroad and, therefore oppressive, burdensome, and irrelevant to the subject matter of this action and, does not relate to the allegations which are the subject of this action.

To answer this request would result in annoyance, embarrassment, or oppression to contestee in that the question is overly broad, indefinite as to time and without reasonable limitation in its scope.

The request is oppressive and burdensome because it is vague, ambiguous, and unintelligible so as to make a response impossible.

Notwithstanding these objections, including the general objections, and without waiving same, NONE EXIST.

OBJECTION TO REQUEST No. 12:

This subpoena request is a constitutional violation of First Amendment rights in that, among others things, it attempts to compel the disclosure of information which would trespass upon First Amendment freedoms, including but not limited to the right to associate,

the right to participate in the election process and engage in political activity, attempts to chill the free exercise of political speech and as applied lacks constitutional due process. See *Fed. Election Comm'n v. Machinists' Non-Partisan Political League*, 655 F.2d 380, 389 (D.C. Cir. 1981), *Olagues v. Russoniello*, 797 F.2d 1511, 1519 (9th Cir. 1986).

The request calls for information not relevant or pertinent to the subject matter of this action nor to the discovery of admissible evidence at any hearing on the merits.

The request is overly broad and remote and as such is not calculated to lead to the discovery of information relevant to the subject matter of this action nor to the discovery of admissible evidence at any hearing on the merits.

The request invades contestee's right of privacy, is impermissibly overbroad and, therefore oppressive, burdensome, and irrelevant to the subject matter of this action and, does not relate to the allegations which are the subject of this action.

To answer this request would result in annoyance, embarrassment, or oppression to contestee in that the question is overly broad, indefinite as to time and without reasonable limitation in its scope.

The request is oppressive and burdensome because it is vague, ambiguous, and unintelligible so as to make a response impossible.

Notwithstanding these objections, including the general objections, and without waiving same, NONE EXIST.

OBJECTION TO REQUEST No. 13:

This subpoena request is a constitutional violation of First Amendment rights in that, among others things, it attempts to compel the disclosure of information which would trespass upon First Amendment freedoms, including but not limited to the right to associate,

the right to participate in the election process and engage in political activity, attempts to chill the free exercise of political speech and as applied lacks constitutional due process. See *Fed. Election Comm'n v. Machinists' Non-Partisan Political League*, 655 F.2d 380, 389 (D.C. Cir. 1981), *Olagues v. Russoniello*, 797 F.2d 1511, 1519 (9th Cir. 1986).

The request calls for information not relevant or pertinent to the subject matter of this action nor to the discovery of admissible evidence at any hearing on the merits.

The request is overly broad and remote and as such is not calculated to lead to the discovery of information relevant to the subject matter of this action nor to the discovery of admissible evidence at any hearing on the merits.

The request invades contestee's right of privacy, is impermissibly overbroad and, therefore oppressive, burdensome, and irrelevant to the subject matter of this action and, does not relate to the allegations which are the subject of this action.

To answer this request would result in annoyance, embarrassment, or oppression to contestee in that the question is overly broad, indefinite as to time and without reasonable limitation in its scope.

The request is oppressive and burdensome because it is vague, ambiguous, and unintelligible so as to make a response impossible.

OBJECTION TO REQUEST No. 14:

This subpoena request is a constitutional violation of First Amendment rights in that, among others things, it attempts to compel the disclosure of information which would trespass upon First Amendment freedoms, including but not limited to the right to associate, the right to participate in the election process and engage in political activity, attempts to chill the free exercise of political speech and as applied lacks constitutional due process. See

Fed. Election Comm'n v. Machinists' Non-Partisan Political League, 655 F.2d 380, 389 (D.C. Cir. 1981), *Olagues v. Russoniello*, 797 F.2d 1511, 1519 (9th Cir. 1986).

The request calls for information not relevant or pertinent to the subject matter of this action nor to the discovery of admissible evidence at any hearing on the merits.

The request is overly broad and remote and as such is not calculated to lead to the discovery of information relevant to the subject matter of this action nor to the discovery of admissible evidence at any hearing on the merits.

The request invades contestee's right of privacy, is impermissibly overbroad and, therefore oppressive, burdensome, and irrelevant to the subject matter of this action and, does not relate to the allegations which are the subject of this action.

To answer this request would result in annoyance, embarrassment, or oppression to contestee in that the question is overly broad, indefinite as to time and without reasonable limitation in its scope.

The request is oppressive and burdensome because it is vague, ambiguous, and unintelligible so as to make a response impossible.

Notwithstanding these objections, including the general objections, and without waiving same, CONGRESSWOMAN SANCHEZ'S CAMPAIGN DID NOT ENGAGE IN INCENTIVES, PROMOTIONS, RAFFLES AND/OR LOTTERIES.

OBJECTION TO REQUEST No. 15:

This subpoena request is a constitutional violation of First Amendment rights in that, among others things, it attempts to compel the disclosure of information which would trespass upon First Amendment freedoms, including but not limited to the right to associate, the right to participate in the election process and engage in political activity, attempts to

chill the free exercise of political speech and as applied lacks constitutional due process. See *Fed. Election Comm'n v. Machinists' Non-Partisan Political League*, 655 F.2d 380, 389 (D.C. Cir. 1981), *Olagues v. Russoniello*, 797 F.2d 1511, 1519 (9th Cir. 1986).

The request calls for information not relevant or pertinent to the subject matter of this action nor to the discovery of admissible evidence at any hearing on the merits.

The request is overly broad and remote and as such is not calculated to lead to the discovery of information relevant to the subject matter of this action nor to the discovery of admissible evidence at any hearing on the merits.

The request invades contestee's right of privacy, is impermissibly overbroad and, therefore oppressive, burdensome, and irrelevant to the subject matter of this action and, does not relate to the allegations which are the subject of this action.

To answer this request would result in annoyance, embarrassment, or oppression to contestee in that the question is overly broad, indefinite as to time and without reasonable limitation in its scope.

The request is oppressive and burdensome because it is vague, ambiguous, and unintelligible so as to make a response impossible.

The request seeks information which is protected from disclosure by the attorney's work product privilege.

Attorney/client privilege protects disclosure of the information sought.

OBJECTION TO REQUEST No. 16:

This subpoena request is a constitutional violation of First Amendment rights in that, among others things, it attempts to compel the disclosure of information which would trespass upon First Amendment freedoms, including but not limited to the right to associate,

the right to participate in the election process and engage in political activity, attempts to chill the free exercise of political speech and as applied lacks constitutional due process. See *Fed. Election Comm'n v. Machinists' Non-Partisan Political League*, 655 F.2d 380, 389 (D.C. Cir. 1981), *Olagues v. Russoniello*, 797 F.2d 1511, 1519 (9th Cir. 1986).

The request calls for information not relevant or pertinent to the subject matter of this action nor to the discovery of admissible evidence at any hearing on the merits.

The request is overly broad and remote and as such is not calculated to lead to the discovery of information relevant to the subject matter of this action nor to the discovery of admissible evidence at any hearing on the merits.

The request invades contestee's right of privacy, is impermissibly overbroad and, therefore oppressive, burdensome, and irrelevant to the subject matter of this action and, does not relate to the allegations which are the subject of this action.

To answer this request would result in annoyance, embarrassment, or oppression to contestee in that the question is overly broad, indefinite as to time and without reasonable limitation in its scope.

The request is oppressive and burdensome because it is vague, ambiguous, and unintelligible so as to make a response impossible.

The request seeks information which is protected from disclosure by the attorney's work product privilege.

Attorney/client privilege protects disclosure of the information sought.

Notwithstanding these objections, including the general objections, and without waiving same, SUBSEQUENT TO THE ELECTION NOTES AND INFORMATION WAS RECEIVED DETAILING EVIDENCE OF VOTER INTIMIDATION.

OBJECTION TO REQUEST No. 18:

This subpoena request is a constitutional violation of First Amendment rights in that, among others things, it attempts to compel the disclosure of information which would trespass upon First Amendment freedoms, including but not limited to the right to associate, the right to participate in the election process and engage in political activity, attempts to chill the free exercise of political speech and as applied lacks constitutional due process. See *Fed. Election Comm'n v. Machinists' Non-Partisan Political League*, 655 F.2d 380, 389 (D.C. Cir. 1981), *Olagues v. Russoniello*, 797 F.2d 1511, 1519 (9th Cir. 1986).

The request calls for information not relevant or pertinent to the subject matter of this action nor to the discovery of admissible evidence at any hearing on the merits.

The request is overly broad and remote and as such is not calculated to lead to the discovery of information relevant to the subject matter of this action nor to the discovery of admissible evidence at any hearing on the merits.

The request invades contestee's right of privacy, is impermissibly overbroad and, therefore oppressive, burdensome, and irrelevant to the subject matter of this action and, does not relate to the allegations which are the subject of this action.

To answer this request would result in annoyance, embarrassment, or oppression to contestee in that the question is overly broad, indefinite as to time and without reasonable limitation in its scope.

The request is oppressive and burdensome because it is vague, ambiguous, and unintelligible so as to make a response impossible.

Notwithstanding these objections, including the general objections, and without waiving same, NO SUCH DOCUMENTS EXIST.

OBJECTION TO REQUEST No. 19:

This subpoena request is a constitutional violation of First Amendment rights in that, among others things, it attempts to compel the disclosure of information which would trespass upon First Amendment freedoms, including but not limited to the right to associate, the right to participate in the election process and engage in political activity, attempts to chill the free exercise of political speech and as applied lacks constitutional due process. See *Fed. Election Comm'n v. Machinists' Non-Partisan Political League*, 655 F.2d 380, 389 (D.C. Cir. 1981), *Olagues v. Russoniello*, 797 F.2d 1511, 1519 (9th Cir. 1986).

The request calls for information not relevant or pertinent to the subject matter of this action nor to the discovery of admissible evidence at any hearing on the merits.

The request is overly broad and remote and as such is not calculated to lead to the discovery of information relevant to the subject matter of this action nor to the discovery of admissible evidence at any hearing on the merits.

The request invades contestee's right of privacy, is impermissibly overbroad and, therefore oppressive, burdensome, and irrelevant to the subject matter of this action and, does not relate to the allegations which are the subject of this action.

To answer this request would result in annoyance, embarrassment, or oppression to contestee in that the question is overly broad, indefinite as to time and without reasonable limitation in its scope.

The request is oppressive and burdensome because it is vague, ambiguous, and unintelligible so as to make a response impossible.

OBJECTION TO REQUEST No. 20:

This subpoena request is a constitutional violation of First Amendment rights in that, among others things, it attempts to compel the disclosure of information which would trespass upon First Amendment freedoms, including but not limited to the right to associate, the right to participate in the election process and engage in political activity, attempts to chill the free exercise of political speech and as applied lacks constitutional due process. See *Fed. Election Comm'n v. Machinists' Non-Partisan Political League*, 655 F.2d 380, 389 (D.C. Cir. 1981), *Olagues v. Russoniello*, 797 F.2d 1511, 1519 (9th Cir. 1986).

The request calls for information not relevant or pertinent to the subject matter of this action nor to the discovery of admissible evidence at any hearing on the merits.

The request is overly broad and remote and as such is not calculated to lead to the discovery of information relevant to the subject matter of this action nor to the discovery of admissible evidence at any hearing on the merits.

The request invades contestee's right of privacy, is impermissibly overbroad and, therefore oppressive, burdensome, and irrelevant to the subject matter of this action and, does not relate to the allegations which are the subject of this action.

To answer this request would result in annoyance, embarrassment, or oppression to contestee in that the question is overly broad, indefinite as to time and without reasonable limitation in its scope.

The request is oppressive and burdensome because it is vague, ambiguous, and unintelligible so as to make a response impossible.

OBJECTION TO REQUEST No. 21:

This subpoena request is a constitutional violation of First Amendment rights in that, among others things, it attempts to compel the disclosure of information which would trespass upon First Amendment freedoms, including but not limited to the right to associate, the right to participate in the election process and engage in political activity, attempts to chill the free exercise of political speech and as applied lacks constitutional due process. See *Fed. Election Comm'n v. Machinists' Non-Partisan Political League*, 655 F.2d 380, 389 (D.C. Cir. 1981), *Olagues v. Russoniello*, 797 F.2d 1511, 1519 (9th Cir. 1986).

The request calls for information not relevant or pertinent to the subject matter of this action nor to the discovery of admissible evidence at any hearing on the merits.

The request is overly broad and remote and as such is not calculated to lead to the discovery of information relevant to the subject matter of this action nor to the discovery of admissible evidence at any hearing on the merits.

The request invades contestee's right of privacy, is impermissibly overbroad and, therefore oppressive, burdensome, and irrelevant to the subject matter of this action and, does not relate to the allegations which are the subject of this action.

To answer this request would result in annoyance, embarrassment, or oppression to contestee in that the question is overly broad, indefinite as to time and without reasonable limitation in its scope.

The request is oppressive and burdensome because it is vague, ambiguous, and unintelligible so as to make a response impossible.

OBJECTION TO REQUEST No. 22:

This subpoena request is a constitutional violation of First Amendment rights in that, among others things, it attempts to compel the disclosure of information which would trespass upon First Amendment freedoms, including but not limited to the right to associate, the right to participate in the election process and engage in political activity, attempts to chill the free exercise of political speech and as applied lacks constitutional due process. See *Fed. Election Comm'n v. Machinists' Non-Partisan Political League*, 655 F.2d 380, 389 (D.C. Cir. 1981), *Olagues v. Russoniello*, 797 F.2d 1511, 1519 (9th Cir. 1986).

The request calls for information not relevant or pertinent to the subject matter of this action nor to the discovery of admissible evidence at any hearing on the merits.

The request is overly broad and remote and as such is not calculated to lead to the discovery of information relevant to the subject matter of this action nor to the discovery of admissible evidence at any hearing on the merits.

The request invades contestee's right of privacy, is impermissibly overbroad and, therefore oppressive, burdensome, and irrelevant to the subject matter of this action and, does not relate to the allegations which are the subject of this action.

To answer this request would result in annoyance, embarrassment, or oppression to contestee in that the question is overly broad, indefinite as to time and without reasonable limitation in its scope.

The request is oppressive and burdensome because it is vague, ambiguous, and unintelligible so as to make a response impossible.

The request seeks information which is protected from disclosure by the attorney's work product privilege.

Attorney/client privilege protects disclosure of the information sought.

Notwithstanding these objections, including the general objections, and without waiving same, AS TO ANY MATTERS NOT TRIGGERED BY MANY OF DORNAN'S UNFOUNDED AND IRRESPONSIBLE ALLEGATION, NO SUCH DOCUMENTS EXIST.

OBJECTION TO REQUEST No. 23:

This subpoena request is a constitutional violation of First Amendment rights in that, among others, things it attempts to compel the disclosure of information which would trespass upon First Amendment freedoms, including but not limited to the right to associate, the right to participate in the election process and engage in political activity, attempts to chill the free exercise of political speech and as applied lacks constitutional due process. See *Fed. Election Comm'n v. Machinists' Non-Partisan Political League*, 655 F.2d 380, 389 (D.C. Cir. 1981), *Olagues v. Russoniello*, 797 F.2d 1511, 1519 (9th Cir. 1986).

The request calls for information not relevant or pertinent to the subject matter of this action nor to the discovery of admissible evidence at any hearing on the merits.

The request is overly broad and remote and as such is not calculated to lead to the discovery of information relevant to the subject matter of this action nor to the discovery of admissible evidence at any hearing on the merits.

The request invades contestee's right of privacy, is impermissibly overbroad and, therefore oppressive, burdensome, and irrelevant to the subject matter of this action and, does not relate to the allegations which are the subject of this action.

To answer this request would result in annoyance, embarrassment, or oppression to contestee in that the question is overly broad, indefinite as to time and without reasonable limitation in its scope.

The request is oppressive and burdensome because it is vague, ambiguous, and unintelligible so as to make a response impossible.

The request seeks information which is protected from disclosure by the attorney's work product privilege.

Attorney/client privilege protects disclosure of the information sought.

Dated: March 25, 1997

Respectfully submitted,

LAW OFFICES OF WYLIE A. AITKEN
KOPENY & POWELL
BRAND, LOWELL & RYAN
STRUMWASSER & WOOCHER

By: WYLIE A. AITKEN
Attorneys for Contestee
LORETTA SANCHEZ

BEFORE THE COMMITTEE ON HOUSE OVERSIGHT
UNITED STATES HOUSE OF REPRESENTATIVES

ROBERT K. DORNAN,	)
Contestant	)
v.	)
THE HONORABLE LORETTA SANCHEZ,	)
Contestee.	)

THE HONORABLE LORETTA SANCHEZ'S MOTION TO QUASH MR. DORNAN'S SUBPOENA *AD TESTIFICANDUM* DIRECTED TO HER AND SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES

MOTION TO QUASH

The Honorable Loretta Sanchez hereby moves, pursuant to 2 U.S.C. § 388(e), to quash the subpoena *ad testificandum*, issued by Contestant Robert Dornan to her in the above-captioned contest.[1] The subpoena would require the Congresswoman to submit to a deposition in Orange County, California on April 11, 1997.

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[1] Congresswoman Sanchez's support of all legitimate efforts to protect the integrity of the electoral process is well documented. In consistently asserting her position that no one who is not legally qualified to vote, should be permitted to vote, she has supported all valid independent investigations. However, she has not and cannot condone intimidation of new citizens under the guise of investigation. As President Ronald Reagan stated "...the magnet that draws [new citizens] is freedom and the beacon that guides them is hope." The five year process that culminates in naturalized citizenship for immigrants who have paid their taxes, served in the armed forces and built new communities bestows one additional privilege, the right to vote. That right to vote should be as zealously protected as the right to investigate those who should not vote.

Congresswoman Sanchez respectfully moves for the Committee to quash Mr. Dornan's subpoena to her for the following reasons:

(1) Our research has not revealed any other election contest in the history of the House of Representatives, if not the Republic, in which a contestant in a contested election case was permitted to depose the contestee.

(2) Mr. Dornan has not made the requisite showing, and the record in this election contest does not otherwise demonstrate, nor could it, that Congresswoman Sanchez has any information that is pertinent, relevant, or in any way essential to this election contest.

(3) As explained in Contestee's Committee's Objections/Motion to Quash re: Subpoenas addressing the subpoena *duces tecum* that Mr. Dornan issued to Contestee's Committee, the subpoena is also premature in that, pursuant to the dictates of the Federal Contested Elections Act, the appropriate procedures have not been followed in order to trigger formal discovery. In addition, the Act itself as utilized by the House Committee on Oversight amounts to an unconstitutional delegation of its subpoena power to a private citizen.

(4) Additionally, pursuant to Mr. Dornan's own timetable, Congresswoman Sanchez's deposition was noticed outside the statutorily authorized discovery period. Her deposition is either premature or too late but in no event "authorized."

MEMORANDUM OF POINTS AND AUTHORITIES SUPPORTING CONTESTEE'S MOTION TO QUASH MR. DORNAN'S SUBPOENA *AD TESTIFICANDUM*

1. The Federal Contested Elections Act requires that a discovery request purportedly issued pursuant to its authority seek only "pertinent" information. *See* 2 U.S.C. § 390. In evaluating the same pertinency standard in the congressional contempt statute, 2 U.S.C. § 192, the Supreme Court explained that "pertinency is a 'jurisdictional concept' and it must be determined by reference to the authorizing resolution of an investigation." *Gojack v. United States*, 384 U.S. 702, 708 (1966) (*quoting Watkins v. United States*, 354 U.S. 178, 201 (1957)). Contestant Dornan must make such a pertinency demonstration with the "explicitness and clarity that the Due Process Clause requires . . . ." *See Watkins*, 354 U.S. at 209.

2. The pertinency standard applies substantive limits on Mr. Dornan's authority to conduct discovery in this contested election case. *See Deutch v. United States*, 367 U.S. 456, 470 (1961) (committee inquiring into activities in the "Albany area" could not question a witness about his student years at Cornell University because "it can hardly be seriously contended that Cornell University is in the Albany area"). The level of exactitude required for a pertinency showing demonstrates Mr. Dornan's failure to meet the applicable standard.

3. In addition, the Federal Contested Elections Act requires that any such request be "relevant to the subject matter

involved in the pending contested election." *See* 2 U.S.C. § 386(b).

4. Mr. Dornan's bare subpoena *ad testificandum* does not make the requisite showing that Congresswoman Sanchez is expected to offer oral testimony that is pertinent or relevant to this election contest, nor can it.

5. Furthermore, nothing can be divined from the record of this election contest that would reasonably indicate that Congresswoman Sanchez would possess knowledge that is pertinent or relevant to Mr. Dornan's case. As best as can be gleaned from the melange of materials Mr. Dornan has filed with the Committee, the ever-changing theory of his election contest involves allegations that the Orange County Registrar of Voters was guilty of malconduct in conducting the election and that certain individuals -- many of whom were allegedly assisted by Hermandad Mexicana Nacionale -- allegedly illegally voted in the 46th District election. Nowhere has Mr. Dornan alleged, nor can he allege, that Congresswoman Sanchez was party to any such alleged malconduct or improper voting.

6. Based on this record, the Congresswoman's testimony also appears to be cumulative, equally obviating any need for the deposition. The record shows that Mr. Dornan can obtain, and has obtained, information from others that he might be expecting to elicit from Contestee. For instance, Congresswoman Sanchez's principal campaign committee, the Committee for Loretta Sanchez, has already confirmed that the Sanchez campaign had no

involvement in what appears to be the gravamen of Mr. Dornan's election contest -- as best as such a gravamen can be ascertained from Mr. Dornan's vague and ever-mutating allegations.[2]

More specifically:

- Contestee's Committee "did not process absentee ballots or [absentee ballot] request forms." *See* Contestee's Committee's Response to Dornan Document Request ## 3, 8.
- "The Sanchez Campaign never actively engaged in voter registration or outreach but focused on voter persuasion." *See* Contestee's Committee's Response to Dornan Document Request # 4.
- The Sanchez Campaign has no documents relating to any unorganized, isolated walk up voter registration activities it may have assisted. *See* Contestee's Committee's Response to Dornan Document Request ## 4, 8.
- Contestee's Committee confirmed there "never has been any connection between Congresswoman Sanchez's campaign and Mr. Nativo Lopez, Nativo Lopez for School Board, and Hermandad Mexicana Nacionale." *See* Contestee's Committee's Response to Dornan Document Request # 9.
- Nor are there any documented communications between Contestee's Committee and One-Stop Immigration and Education Center. *See* Contestee's Committee's Response to Dornan Document Request # 10.
- "Congresswoman Sanchez's campaign did not engage in incentives, promotions, raffles and/or lotteries" of any sort, not to mention the voter registration raffles alleged by Mr. Dornan. *See* Contestee's Committee's Response to Dornan Document Request # 14.

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[2] The Contestee and her principal campaign committee are, moreover, separate legal entities. The treasurer and other official representatives of a principal campaign committee are legally answerable for its actions as is the case with any federally registered political committee. *See, e.g., Fed. Election Comm'n v. Gus Savage for Congress '82 Committee*, 606 F. Supp. 541 (N.D. Ill. 1985).

- Nor do documents exist that "evidence, substantiate or identify printed or written material disseminated by Sanchez for Congress (sic), or anyone acting on its behalf, with respect to voter registration and/or voting procedures and/or voting advice for the period January 1, 1996 to November 6, 1996" or that "evidence, substantiate or identify the payment of any bounty, incentive, or other remuneration paid to anyone as compensation for enlisting persons to register to vote or vote at anytime for the period January 1, 1996 to November 6, 1996." *See* Contestee's Committee's Response to Dornan Document Request ## 17 & 18.

7. Public policy and caselaw governing subpoenas of elected officials also requires that such an official "should not be called to testify personally unless 'a clear showing is made that such a proceeding is essential to prevent prejudice or injustice to the party who would require it.'" *Bardoff v. United States*, 628 A.2d 86, 92 (D.C. 1993) (*quoting Davis v. United States*, 390 A.2d 976, 981 (D.C. 1978)) (trial judge appropriately quashed defendants' criminal trial subpoenas to two senators and a committee counsel who were percipient witnesses to the defendants' alleged disruption of Col. Oliver North's Senate Foreign Relations Committee Iran-Contra hearing testimony). *See also Sweeney v. Bond*, 669 F.2d 542, 546 (8th Cir.) (upholding district court's decision quashing subpoena to then Governor Bond because plaintiff made no showing the Governor, a party to the litigation, possessed information "essential" to its case), *cert. denied sub nom, Schenburg v. Bond*, 459 U.S. (1982); *In re United States*, 985 F.2d 510 (11th Cir.) (issuing extraordinary writ of *mandamus* quashing a criminal defendant's subpoena for testimony

directed to FDA Commissioner David Kessler), *cert. denied sub nom, Faloon v. United States*, 510 U.S. 989 (1993).

8. If Mr. Dornan has not demonstrated that the Congresswoman's testimony is pertinent or relevant, he cannot possibly have made the showing (and, indeed, cannot make the showing) that her testimony is "essential" to this election contest. In fact, the opposite is true.

9. By Contestant's own calculations and representations to the Court, the time for Contestant to take any deposition testimony under the FCEA has expired.

The FCEA carefully delimits a thirty day period, with a statutorily prescribed starting and finishing date, for a contestant to conduct discovery purportedly authorized pursuant to that statute. *See* 2 U.S.C. § 386(c). As Contestant is aware, it is Contestee's position that the time for the taking of any depositions under the FCEA has not yet commenced, and that the subpoenas issued to Congresswoman Sanchez and others are premature and thus unauthorized under the Act.

In responding to Contestee, Mr. Dornan articulated a very definite discovery period that he asserted was controlling: Contestant has asserted and represented to the District Court that "the time for commencement of oral deposition discovery in this election contest began on Monday, March 10, 1997." *See* Contestant Dornan's *Ex Parte* Application to Issue Subpoenas in

Election Contest (Case No. SACV 97-176-GLT), at 3.[3] Accordingly, by Contestant's own calculation, his statutory "window of opportunity for discovery" closed on *April 9, 1997* -- 30 days after March 10, 1997. Indeed, Contestant's counsel has previously advised the Court that, "Contestant and his attorneys, including myself, are very cognizant regarding the order and timing of taking testimony pursuant to oral depositions made reference to in 2 U.S.C. § 386." *See* Declaration of William R. Hart in Support of Contestant's Opposition to Contestee's *Ex Parte* Application to Vacate Order to Issue Subpoenas and Request for Sanctions, ¶ 8.

With the April 9 deadline looming and known to Mr. Dornan, he should have planned accordingly. In the meantime, however, he has run out of time to harass people, even under his own interpretation of the FCEA. Thus, the deposition noticed for Congresswoman Sanchez on April 11, 1997, cannot lawfully proceed.

10. Mr. Dornan's track record of abusing the discovery process in this election contest (as evidenced by the many motions to quash his discovery requests that are in the record of

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[3] The pleadings that Contestant filed with the District Court in support of the issuance of these very subpoenas also unambiguously asserted that, "Monday, March 10, 1997, marked the last day upon which Congresswoman Sanchez had to file an answer to the election contest pursuant to 2 U.S.C. § 383(d). We now find ourselves within the 30-day window of opportunity for discovery." *See* Contestant's *Ex Parte* Application to Issue Subpoenas in Election Contest, at 3; *accord, id.* at 4-5 ("the time to answer is triggered pursuant to this section and elapsed on or about March 10, 1997. The 30-day discovery period then commences.").

this proceeding) also militates strongly in favor of requiring Mr. Dornan to demonstrate in advance that he reasonably expects to obtain essential, non-cumulative, *and appropriate*[4] testimony from Contestee.

CONCLUSION

The record reveals that a deposition of the Congresswoman would be nothing more than grand-standing by Mr. Dornan at best, and a vindictive fishing expedition at worst. The law neither requires nor permits a Member of Congress or any other citizen to be subjected to such tactics. Congresswoman Sanchez has a duty to stand up, not just for herself, but alongside numerous others, whether they be Catholic Charities, community colleges, labor unions, or private citizens, and clearly say, "Enough is enough."

For the foregoing reasons, the Honorable Loretta Sanchez respectfully requests that her Motion to Quash Mr. Dornan's Subpoena *Ad Testificandum* be granted.

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[4] Contestee would note that Mr. Dornan has already sought to subpoena all documents relating to her campaign's strategy and staffing, even though such information is obviously First Amendment protected and inappropriate for discovery, particularly because Mr. Dornan has already announced he is running against the Congresswoman again.

Respectfully submitted this 11th day of April, 1997.

BRAND, LOWELL & RYAN, P.C.

Stanley M. Brand
David E. Frulla
923 Fifteenth Street, N.W.
Washington, DC 20005
(202) 662-9700

STRUMWASSER & WOOCHER

Fredric D. Woocher
Michael J. Strumwasser
100 Wilshire Blvd., Ste. 1900
Santa Monica, CA 90401
(310) 576-1233

LAW OFFICES OF WYLIE A. AITKEN

Wylie A. Aitken, P.C.
One Imperial Promenade
Suite 800
Santa Ana, CA 92707-0555
(714) 434-1424

KOPENY & POWELL, P.C.

William J. Kopeny
John W. Powell
8001 Irvine Center Drive
Irvine, CA 92618-2933
(714) 453-2243

Counsel for the Honorable Loretta Sanchez

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the enclosed Honorable Loretta Sanchez's Motion to Quash Mr. Dornan's Subpoena *Ad Testificandum* Directed to Her and Supporting Memorandum of Points and Authorities was sent in the following manner on this 11th day of April, 1997 to:

VIA HAND-DELIVERY:

William R. Hart, Esq.
Hart, King & Coldren
200 East Sandpointe, Fourth Floor
Santa Ana, California 92707

The Honorable Robin H. Carle
Clerk of the House of Representatives
H-154, United States Capitol
Washington, D.C. 20515

James S. Portnoy, Esq.
General Counsel to the Minority
Committee on House Oversight
1339 Longworth House Office Building
Washington, D.C. 20515

Roman Buhler, Esq.
General Counsel to the Committee on
House Oversight
1309 Longworth House Office Building
Washington, D.C. 20515



David E. Frulla

WILLIAM M. THOMAS, CALIFORNIA
CHAIRMAN

ROBERT W. NEY, OHIO
BILL BARRETT, NEBRASKA
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RANKING MINORITY MEMBER

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STAFF DIRECTOR
ROBERT E. BAGAN
MINORITY STAFF DIRECTOR

Congress of the United States

House of Representatives

COMMITTEE ON HOUSE OVERSIGHT
1309 LONGWORTH HOUSE OFFICE BUILDING
(202) 225-8281
Washington, DC 20515-0515

September 25, 1997

The Honorable Loretta Sanchez
c/o David E. Frulla, Esq.
Brand, Lowell & Ryan, P.C.
923 Fifteenth Street, N.W.
Washington, D.C. 20005

The Honorable Loretta Sanchez
c/o Wylie A. Aitken, Esq.
One Imperial Promenade
Suite 800
Santa Ana, CA 92707

William R. Hart, Esq.
Hart, King & Coldren
200 East Sandpointe, Suite 400
Santa Ana, CA 92707

The Honorable Gary L. Taylor
United States District Court
Central District of California
751 West Santa Ana Boulevard
Courtroom #2
Santa Ana, CA 92701

Re: Dornan v. Sanchez Election Contest – Motion to Quash Subpoena

Gentleman:

The House Oversight Committee has considered the motion to modify, limit or quash the subpoena filed by Loretta Sanchez. Pursuant to 2 U.S.C. §388(e) and based upon the March 18, 1997 and September 24, 1997 opinions of the Honorable Gary L. Taylor, United States District Court for the Central District of California, the Committee hereby modifies the subpoena as set forth in the attachment to this letter.

If you have any questions, please do not hesitate to contact John Kelliher, Counsel to the Committee on House Oversight, at (202) 225-8281.

Best regards,

Bill Thomas
Chairman

Attachment

LORETTA SANCHEZ

Specific Modifications to Subpoenas

Quash all requests.

WILLIAM M. THOMAS, CALIFORNIA
CHAIRMAN

ROBERT W. NEY, OHIO
JOHN A. BOEHNER, OHIO
VERNON J. EHLERS, MICHIGAN
KAY GRANGER, TEXAS
JOHN L. MICA, FLORIDA

SAM GEJDENSON, CONNECTICUT
RANKING MINORITY MEMBER

[illegible] MARYLAND
[illegible] MICHIGAN

[illegible]
STAFF DIRECTOR
ROBERT F. BASKIN
MINORITY STAFF DIRECTOR

Congress of the United States

House of Representatives

COMMITTEE ON HOUSE OVERSIGHT
1309 LONGWORTH HOUSE OFFICE BUILDING
(202) 225-8281
Washington, DC 20515-0157

September 25, 1997

Nativo Lopez
c/o Mark S. Rosen, Esq.
2700 No. Main Street, Suite 630
Santa Ana, CA 92705

William R. Hart, Esq.
Hart, King & Coldren
200 East Sandpointe, Suite 400
Santa Ana, CA 92707

The Honorable Gary L. Taylor
United States District Court
Central District of California
751 West Santa Ana Boulevard
Courtroom #2
Santa Ana, CA 92701

Re: Dornan v. Sanchez Election Contest – Motion to Quash Subpoena

Gentleman:

The House Oversight Committee has considered the motion to modify, limit or quash the subpoena filed by Nativo Lopez. Pursuant to 2 U.S.C. §388(e) and based upon the March 18, 1997 and September 24, 1997 opinions of the Honorable Gary L. Taylor, United States District Court for the Central District of California, the Committee hereby modifies the subpoena as set forth in the attachment to this letter.

If you have any questions, please do not hesitate to contact John Kelliher, Counsel to the Committee on House Oversight, at (202) 225-8281.

Best regards,

Bill Thomas
Chairman

Attachment

NATIVO LOPEZ

General Rules Regarding Subpoena

(applicable where action is required either of respondent or party seeking discovery)

1. Contestant shall provide witnesses with the normal and usual costs provided for under the rules of the local federal district court, and reasonable out-of-pocket costs for producing documents, and other necessary costs.

2. Response to this letter is required within fifteen (15) days from September 24, 1997. Only reasonable requests for extensions will be granted.

3. This material will be produced pursuant to the "Nativo Lopez" protective order.

Specific Modifications to Subpoena

(numbers refer to specific subpoena requests)

1. In the last line, delete "present" and add instead "December 31, 1996."

2. In the last line, delete "present" and add instead "December 31, 1996."

3. In the last line, delete "present" and add instead "December 31, 1996."

4. In the last line, delete "present" and add instead "December 31, 1996."

5. In the last line, delete "present" and add instead "December 31, 1996."

6. In the last line, delete "present" and add instead "December 31, 1996."

7. In the last line, delete "present" and add instead "December 31, 1996."

8. In the last line, delete "present" and add instead "December 31, 1996."

10. In the last line, delete "present" and add instead "December 31, 1996."

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19. In the last line, delete "present" and add instead "December 31, 1996."

20. In the last line, delete "present" and add instead "December 31, 1996."

21. In the last line, delete "present" and add instead "December 31, 1996."

22. In the last line, delete "present" and add instead "December 31, 1996."

26. In the last line, delete "present" and add instead "December 31, 1996."

27. In the last line, delete "present" and add instead "December 31, 1996."

28. In the last line, delete "present" and add instead "December 31, 1996."

29. In the last line, delete "present" and add instead "December 31, 1996."

30. In the last line, delete "present" and add instead "December 31, 1996."

31. In the last line, delete "present" and add instead "December 31, 1996."

36. In the last line, delete "present" and add instead "December 31, 1996."

37. In the last line, delete "present" and add instead "December 31, 1996."

41. Delete the word "present."

44. In the last line, delete "present" and add instead "December 31, 1996."

45. In the last line, delete "present" and add instead "December 31, 1996."

46. In the last line, delete "present" and add instead "December 31, 1996."

47. In the last line, delete "present" and add instead "December 31, 1996."

48. In the last line, delete "present" and add instead "December 31, 1996."

49. In the last line, delete "present" and add instead "December 31, 1996."

50. In the last line, delete "present" and add instead "December 31, 1996."

51. In the last line, delete "present" and add instead "December 31, 1996."

53. In the last line, delete "present" and add instead "December 31, 1996."

BEFORE THE COMMITTEE ON HOUSE OVERSIGHT
UNITED STATES HOUSE OF REPRESENTATIVES
105TH CONGRESS

Robert Dornan,	)	
	)	
Contestant,	)	
	)	
v.	)	**ELECTION CONTEST**
	)	**46TH DISTRICT OF CALIFORNIA**
Loretta Sanchez,	)	
	)	
Contestee.	)	
	)	

NATIVO LOPEZ PROTECTIVE ORDER

IT IS HEREBY ORDERED:

1. This Order ("Protective Order") shall govern the use and dissemination of all documents and things stamped "confidential" ordered to be produced by the Task Force on the Contested Election to the 46th District of California, pursuant to subpoenas issued by Contestant Robert Dornan to Nativo Lopez.

2. The term "Confidential Document" shall mean the documents referred to in paragraph 1 and shall include letters, words, or numbers, or their equivalent, set down by handwriting, type-writing, printing, photostating, magnetic impulse, mechanical or electronic recording, or other form of data compilation, and any information taken or derived from such materials.

3. The term "Counsel for the Parties" shall mean, for contestant, Mr. William R. Hart, and for Contestee, Mssrs. Stanley Brand, Frederic Woocher, William Kopeny, and Wylie

Aitken, as well as partners, associates and staff within each of their respective firms. The term does not include Of Counsel or other outside attorneys, professionals or other persons with a contractual or other non-full time employee relationship with the firm.

Use of Documents

4. Confidential Documents shall not be disclosed other than as expressly authorized in this Order and may be disclosed only as follows:

a. Disclosure may be made only to Counsel for the Parties, as designated in paragraph 3, after execution by each such person of the attached Confidentiality Agreement.

b. Notwithstanding paragraph 4.a., upon order of the Task Force, disclosure may be made to this Task Force and other Members of the Committee on House Oversight.

c. Notwithstanding paragraph 4.a., upon order of the Task Force, disclosure may be made to the staff of the Committee on House Oversight, but only upon their execution of the attached Confidentiality Agreement.

d. All Confidentiality Agreements executed shall be filed with the Clerk of the House.

e. Confidential Documents and all copies thereof shall be returned by counsel for the parties to the producing parties within 10 days of the conclusion of this Contest.

f. Confidential Documents, including notes or summaries of such information, shall be maintained in a secure room at the counsels' for the parties offices. Access to the secure room shall be restricted to the persons executing Confidentiality Agreements, as described above. No computers, voice transcribers, cameras, photocopiers, telephones or other

devices for facilitating document copying or summarization shall be permitted in the secure room.

g. If Confidential Documents are submitted to the Task Force as an exhibit or otherwise as part of the record of the Contest as described at 2 U.S.C. § 392, such material shall be filed under seal with the Clerk and revealed subsequently only as ordered by the Task Force.

5. No one may attend, or review the transcripts of the portions of, any deposition at which Confidential Documents are shown or discussed, other than the court reporter (who shall first have executed a Confidentiality Agreement), counsel for the parties as designated in paragraph 3, and representatives of, and counsel for, the deponent.

General Provisions

6. Confidential Documents shall not be used or disclosed for any purpose other than the preparation and disposition of this Contest and/or any judicial proceeding arising therefrom.

7. Any summary, compilation, copy, electronic image or database containing Confidential Documents shall be subject to the terms of this Order to the same extent as the material or information from which such summary, compilation, copy, electronic image or database is made or derived.

8. Nothing in this Order shall be deemed to restrict in any manner the use by any person or entity, of any information in its own documents and materials, and nothing in this Order shall be deemed to limit or restrict the ability of such persons or entities to assert legitimate claims of privilege.

9. If a court or governmental agency subpoenas or orders production of Confidential Documents that a party has obtained under the terms of this Protective Order, such party shall use all reasonable efforts to resist production of such Confidential Documents interposing all available defenses. Additionally, such party shall immediately notify the persons or entities that produced the Confidential Documents of the subpoena or order and shall allow them to assist in such defense if they so request. The party shall not produce any Confidential Documents unless, after the interposition of all available defenses, a court or Committee of Congress orders production of such material. If a court or Committee of Congress orders the release of such documents to the public or any party, the court or Committee shall provide 48 hours notice to all parties and respondents.

10. This Protective Order is without prejudice to the right of any party to seek modification from the Task Force. It shall remain in effect until such time as it is modified, amended or rescinded by the Task Force.

11. This Task Force shall have continuing jurisdiction to modify, amend, enforce, interpret or rescind this Order notwithstanding the termination of this action.

SO ORDERED

_____

For the Committee on House Oversight
and Task Force on the Contested
Election in the 46th District
of California

Dated _____.

249992 v 6

BEFORE THE COMMITTEE ON HOUSE OVERSIGHT
UNITED STATES HOUSE OF REPRESENTATIVES
105TH CONGRESS

Robert Dornan,	)	
Contestant,	)	
v.	)	**ELECTION CONTEST**
	)	**46TH DISTRICT OF CALIFORNIA**
Loretta Sanchez,	)	
Contestee.	)	

CONFIDENTIALITY AGREEMENT FOR NATIVO LOPEZ DOCUMENTS

STATE OF _____)

COUNTY OF _____)

I. _____, being duly sworn on oath, state the following:

1. I have read and understand the Order to which this Exhibit A is annexed and I attest to my understanding that access to information designated "Confidential Documents" may be provided to me and that such access is pursuant to the terms and conditions and restrictions of the Order and I agree to be bound by the terms of the Order, and acknowledge Congress' power to enforce it, which I acknowledge to be an expressly intended beneficiary of the undertakings I give in this Confidentiality Agreement.

2. I shall not use or disclose to others, except in accordance with the Order, any Confidential Documents. In the event that I am requested or required, by legal process or

otherwise, to disclose any such Confidential Documents, I shall use all reasonable efforts to resist such disclosure, interposing all available defenses. In addition, I shall notify the person or entity that produced that document immediately and allow them to assist in such defense if they so request. Such effort shall continue until the process is quashed or a final order enforcing the process is entered.

3. If I shall fail to abide by the terms of this Confidentiality Agreement or the Order, I understand that I shall be subject to sanctions by way of contempt of Congress and to separate legal and equitable recourse. I hereby waive any claim of privilege or immunity I may now or hereafter have as a defense to violation or enforcement of the Order or breach of this Confidentiality Agreement.

Dated: _____

_____
Signature

_____
Printed Name

_____
Address

_____
Individual or Entity Represented

Subscribed and sworn to
before me this ___ day
of _____, 1997.
Witness my hand and official seal.

_____
Notary Public
My Commission expires:

249992 v.6

97 JAN 20 PM 3 03

IN THE HOUSE OF REPRESENTATIVES

OF THE UNITED STATES OF AMERICA

IN THE MATTER OF THE CONTESTED ELECTION OF LORETTA SANCHEZ et.al. ROBERT K. DORNAN, Contestant, VS. LORETTA SANCHEZ, Contestee.	MOTION TO QUASH OR MODIFY SUBPOENA (2 U.S.C. §388(e))

MOTION TO QUASH OR MODIFY SUBPOENA
(2 U.S.C. §388(e))

EDWARD R. MUÑOZ
Attorney at Law
1717 S. State College
Suite 125
Anaheim, CA 92806
(714) 978-6989
Telefax:(714) 978-3210

Attorney for
Nativo Lopez

TO THE CLERK OF THE HOUSE OF REPRESENTATIVES, THE COMMITTEE ON HOUSE OVERSIGHT, THE SPECIAL ELECTIONS SUBCOMMITTEE FOR THE ELECTION CONTEST IN THE 46TH CONGRESSIONAL DISTRICT OF CALIFORNIA, AND TO ALL PARTIES:

Nativo Lopez moves to quash a subpoena caused to be issued by Contestant Robert K. Dornan, through his law firm, Hart, King & Coldren, served on or about Thursday, June 12, 1997. The subpoena calls for Mr Lopez' deposition and production of documents on June 24, 1997, at 10:00 a.m. A true and correct copy of the subpoena is attached hereto as Exhibit A.

The subpoena referenced herein calls for an appearance and production of records on June 24, 1997. Immediate action is therefore requested on this motion. Mr. Lopez will not appear nor produce documents until this motion has been acted upon.

This motion is brought on the following grounds:

General Objections to the Subpoena

1. The subpoena is untimely. Under the Federal Contested Elections Act, at 2 U.S.C.§386c), the contestant may take testimony only within thirty days after the time for answer has expired. Under contestant's count, the thirty day period commenced March 12 and ended no later than April 11. Contestee did no discovery. Under contestee's count, the time to commence discovery has not yet begun because the committee

has yet to rule on the motions to dismiss brought by Congresswoman Sanchez. Under either calculation, this subpoena does not fall within any jurisdictional window for the taking of testimony.

2. The subpoena is invalid because Sections 386 through 391 of the Federal Contested Elections Act are an unconstitutional delegation of the subpoena power and the investigatory power of the House of Representatives to a private party for a function that is constitutionally solely within the purview and power of the House of Representatives. The United States Constitution, at Article I, Section 5, Clause 1, provides that "Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members". The House cannot delegate the power to conduct an investigation for this unique Congressional function to a private party without setting forth intelligible principles for guiding the use of the delegated Congressional power. The unlimited power by the contestant to utilize the subpoena power of the House, without limitation, is an unconstitutional delegation of authority.

3. The discovery provisions of the Federal Contested Elections Act are also unconstitutional as a violation of due process under the First, Fourth, Fifth and Fourteenth Amendments of the United States Constitution because they require discovery and the production of documents without any means of protecting witnesses from unreasonable intrusions in

violation of their constitutional and statutory rights. The Act does not provide sufficient protection of these individualized rights. The instant matter illustrates this constitutional defect. The Act provides no means for ex parte relief or pre-discovery resolution of objections. The Act provides for none of the protections which are afforded by the federal judiciary.

4. This subpoena is invalid as applied in that it seeks the production of materials which are objectionable for the reasons set forth below; and furthermore, that the subpoena seeks material which could not be germane to the instant election contest under Article I, Section 5, of the United States Constitution.

5. In order to preserve all rights, this witness reserves his right to assert his rights under the Fifth and Fourteenth Amendments of the United State Constitution protecting witnesses against self-incrimination, and all California constitutional and statutory provisions which provide the same right, and moves to quash the subpoena on that basis.

6. To preserve its rights, the moving party further objects to the subpoena to the extent it seeks information which is privileged under the attorney-client or attorney-work-product privilege or any other privilege of the laws of the State of California.

7. The moving party further objects to the subpoena

and moves that it be quashed on the basis that it continues to ask for documents from fixed time periods "to the present", although every order made by the committee has limited document production to a time certain. Citizen Dornan has deliberately ignored the dictates of the committee.

Objections to Specific Requests in the Subpoena

In addition to the grounds set forth above, the moving party, Mr. Lopez, moves to quash the particularized requests for documents contained in the subpoena on the grounds which follow.

Mr. Lopez notes for the record that in late 1996, the Orange County District Attorney's Office and the Secretary of State's Office of California initiated a joint criminal investigation directed at Hermandad Mexicana Nacional, Santa Ana and Mr. Nativo Lopez. This investigation culminated in the service of a criminal search warrant on January 14, 1997, upon the business premises of Hermandad Mexicana Nacional, Santa Ana. A true and correct copy of the warrant portion is attached hereto as Exhibit B. Pursuant to service of the warrant virtually all the documents sought by this subpoena were seized and remain within the custody and control of the county prosecutors in their original form. Moreover, every indication emanating from the District Attorney's Office and the Secretary State's Office confirms that this criminal investigation is continuing and ongoing

and that Mr. Lopez appears to be the central individual target. The moving party asserts that this is noteworthy in that once a criminal investigation is initiated, the scope of the self-incrimination privilege is expanded.

1. Without waiving any of the objections set forth herein, Mr. Lopez objects to Categories 1 through 23 and 26 through 59 on the basis that the request is overbroad and improperly burdensome and not limited to the issue of the 1996 election and the returns of that election, designed to harass the witness, seeks information which is irrelevant and not calculated to lead to the discovery of admissible evidence and which is beyond the limited scope of the Federal Contested Elections Act, and is in violation of the First and Fourteenth Amendments right to freedom of organizational association and right of privacy.

2. Without waiving any of the objections set forth herein, Mr. Lopez objects to Categories 1 through 23 and 26 through 59 and on the basis that the request is violative of the Fifth and Fourteenth Amendments of the United States Constitution.

3. Without waiving any of the objections set forth herein, Mr. Lopez objects to Categories 23 and 28 on the basis

that request is violative of attorney work-product and attorney-client privilege.

Respectfully Submitted,

DATED: June 18, 1997

EDWARD R. MUNOZ
Attorney for Nativo Lopez

cc: William R. Hart, Esq.
Hart, King & Coldren

Issued by the
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
PURSUANT TO THE FEDERAL CONTESTED ELECTION ACT
2 USC 386, 388, 390 et seq.

COMMITTEE ON HOUSE OVERSIGHT
1309 Longworth Building
Washington, D.C. 20515

IN THE MATTER OF THE CONTESTED ELECTION OF LORETTA SANCHEZ TO THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES CONGRESS,

ROBERT K. DORNAN, Contestant

vs.

LORETTA SANCHEZ, Contestee.

SUBPOENA IN FEDERAL ELECTION CONTEST

CASE NUMBER: SACV 97-176-GLT

TO: Nativo Lopez
2218 South Van Ness
Santa Ana, California 92702

☒ YOU ARE COMMANDED to appear at the place, date and time specified below to testify at the taking of a deposition in the above case:

PLACE OF DEPOSITION:		DATE AND TIME:
HART, KING & COLDREN 200 East Sandpointe, Suite 400 Santa Ana, California 92707	(714) 432-8700	June 24, 1997 10:00 a.m.

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date and time specified below:

SEE ATTACHMENT "A".

PLACE:		DATE AND TIME:
HART, KING & COLDREN 200 East Sandpointe, Suite 400 Santa Ana, California 92707	(714) 432-8700	June 24, 1997 10:00 a.m.

The officer before whom the deposition is taken shall be a certified shorthand reporter authorized to administer an oath and transcribe the testimony of the witness. That officer shall be a representative of Paulson Reporting Service.

Any organization not a party to this election contest that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify.

ISSUING OFFICER'S SIGNATURE AND TITLE:

The Honorable Gary L. Taylor
Judge of the United States Court, Central District of California

Attachment "A"

1. All documents including, but not limited to, lists that evidence, substantiate or identify naturalization and/or citizenship services and/or citizenship classes offered by Hermandad Mexicana Nacional, or any subsidiary or affiliate thereof, (hereinafter "HMN") to all persons for the period January 1, 1995 to the present.

2. All documents incy
luding, but not limited to, lists that evidence, substantiate or identify the names, dates of birth, addresses, telephone numbers and/or place of national origin of all persons to whom HMN has provided services regarding naturalization and/or citizenship services and/or citizenship classes for the period of January 1, 1995 to the present.

3. All documents including, but not limited to, lists that evidence, substantiate or identify the names, dates of birth, addresses, telephone numbers and/or place of national origin of all the persons who have attended HMN's naturalization and/or citizenship classes for the period of January 1, 1995 to the present.

4. All documents that evidence, substantiate or identify the names, addresses, dates of birth, telephone numbers and/or country of national origin of HMN's clients and/or students who were or are in the process of becoming naturalized U.S. citizens at any time, for the period January 1, 1995 to the present.

5. All documents including, but not limited to, lists that evidence, substantiate or identify the names, dates of birth, addresses, telephone numbers, place of national origin, and/or dates of official citizenship of each person who was naturalized with the assistance of HMN, or anyone acting on its behalf, for the period January 1, 1995 to the present.

6. All voter registration documents including, but not limited to, lists of registered voters in your possession including, but not limited to voter registration affidavits, (including blank and completed affidavits), and any items detached from voter registration affidavits for the period January 1, 1995 to the present.

7. All computer generated or printed hard-copy lists of persons who have been registered to vote with the assistance of HMN, for the period January 1, 1995 to the present.

8. All documents that evidence, substantiate or identify absentee voter ballot requests by persons whose address was in Santa Ana, Garden Grove or Anaheim, California, that were handled or processed in any way by HMN, or by anyone employed by, associated with or volunteering through HMN for the period January 1, 1995 to the present.

9. All documents that evidence, substantiate or identify HMN's employees, associates or volunteers who engaged in the effort to register voters or encourage persons to vote for the period January 1, 1996 to November 6, 1996.

10. HMN's client and/or student list(s) or roster(s), either in printed hard-copy or electronic computer data format, for the period January 1, 1995 to the present.

11. All telephone records for HMN for the period January 1, 1996 to November 6, 1996.

12. All telephone message slips and/or notes relating to telephone conversations between HMN, or anyone acting on its behalf, and Loretta Sanchez, the Sanchez for Congress campaign, Mike Farber, Citizens Forum, The Guttenberg Group, and/or Citizenship USA, or anyone acting on their behalf, relating to voter registration, absentee ballot voting, and/or encouraging persons to vote, for the period January 1, 1996 to November 6, 1996.

13. All writings, correspondence and memoranda to or from you and Loretta Sanchez, the Loretta Sanchez for Congress campaign, or anyone acting on their behalf, for the period January 1, 1996 to the present.

14. All writings, correspondence and memoranda to or from you and/or Hermandad Mexicana Nacional, or anyone acting on its behalf, for the period January 1, 1996 to the present.

15. All writings, correspondence and memoranda to or from you and the Nativo Lopez for School Board Campaign, or anyone acting on its behalf, for the period January 1, 1996 to the present.

16. All writings, correspondence and memoranda to or from you and the Immigration and Naturalization Service and/or Citizenship USA for the period January 1, 1996 to the present.

17. All documents that evidence, substantiate or identify communications between you and/or HMN and Southwest Voter Registration Project, for the period January 1, 1995 to the present.

18. All documents that evidence, substantiate or identify all communications between you and/or HMN and One Stop Immigration and Education Center, for the period January 1, 1995 to the present.

19. All documents that evidence, substantiate or identify all communications between you and/or HMN and the Carpenter's Union or any local thereof, for the period January 1, 1995 to the present.

20. All documents that evidence, substantiate or identify all communications between you and/or HMN and the Laborer's Union or any local thereof, for the period January 1, 1995 to the present.

21. All documents that evidence, substantiate or identify savings and/or checking accounts maintained by HMN, or any subsidiary or affiliate thereof, including passbooks, monthly statements, canceled checks, cash withdrawal slips, cash deposit slips, and transfer forms, for the period January 1, 1996 to the present.

22. All documents that evidence, substantiate or identify incentives, promotions, raffles and/or lotteries that were promoted by or participated in by HMN for the period January 1, 1996 to present.

23. All documents that evidence, substantiate or identify any investigation and/or interviews HMN has conducted with anyone regarding the November 5, 1996 election and/or the Election Contest

filed by Robert K. Dornan.

24. HMN's Articles of Incorporation.

25. HMN's Bylaws.

26. HMN's Minutes of Board of Director's meetings, including all special meetings, wherein the subject of voter registration and/or voting activity of any kind was recorded for the period January 1, 1996 to the present.

27. All expense account documentation for HMN, or anyone acting on its behalf, for the period January 1, 1996 to the present.

28. All writings, correspondence and memoranda authored or received by you and/or HMN, or anyone acting on their behalf in any way addressing the issues of voter fraud, illegal voting, or any malconduct or irregularity regarding voter registration or voting, for the period January 1, 1996 to the present.

29. All audio and video tapes prepared by or utilized by HMN in connection with naturalization and/or citizenship classes, and/or voter registration and voting services provided through HMN that are in HMN's custody, possession or control for the period January 1, 1995 to the present.

30. All documents that evidence, substantiate or identify printed or written material disseminated by HMN, or anyone acting on its behalf with respect to voter registration and/or voting procedures and/or voting advice, for the period of January 1, 1996 to present.

31. All documents that evidence, substantiate or identify the payment of any bounty, incentive, or any other remuneration paid to anyone as compensation for enlisting persons to register to vote or vote for the period January 1, 1995 to present.

32. All documents that evidence, substantiate or identify any guidelines, rules, and/or procedures followed or disseminated by HMN with respect to voter registration, voting at the polls, or voting by absentee ballot, for the period January 1, 1996 to November 6, 1996.

33. All documents that evidence, substantiate or identify plans, strategy, tactics and/or efforts by HMN, or anyone acting on its behalf, in connection with the registration of voters or assisting persons to vote, for the period January 1, 1996 to November 6, 1996.

34. All documents that evidence, substantiate or identify persons requesting, absentee ballot information, an absentee ballot, and/or voting by absentee ballot in the November 5, 1996 election.

35. All documents that evidence, substantiate or identify HMN employees, agents and/or volunteers participating in the effort to register persons to vote or assist persons to vote, for the period January 1, 1996 to November 6, 1996.

36. All documents including, but not limited to, lists that evidence, substantiate or identify the enrollment of HMN clients and/or students in naturalization and/or citizenship classes at any time, for the period January 1, 1995 to the present.

37. All documents that evidence, substantiate or identify HMN clients and/or students and the dates said clients and/or students were sworn in as U.S. citizens, for the period January 1, 1996 to the present.

38. All business plans and/or plans of operation for HMN in effect at any time, for the period of January 1, 1996 to November 6, 1996.

39. All computer generated or printed hard-copy lists of persons who have been registered to vote with the assistance of Nativo Lopez for School Board for the period January 1, 1996 to November 6, 1996.

40. All documents that evidence, substantiate or identify absentee voter ballot requests that were handled or processed in any way by Nativo Lopez for School Board, or by anyone employed by, associated with or volunteering through Nativo Lopez for School Board at any time, for the period January 1, 1996, to November 6, 1996.

41. All documents that evidence, substantiate or identify employees, associates or volunteers of Nativo Lopez for School Board who were engaged in the effort to register voters or encourage persons to vote for the period January 1, 1996 to November 6, 1996. present.

42. Nativo Lopez for School Board's client or student list(s) or roster(s), in printed hard copy and/or electronic computer data format, for the period January 1, 1996 to November 6, 1996.

43. All telephone records for Nativo Lopez for School Board

at each of its office locations for the period January 1, 1996 to November 6, 1996.

44. All telephone message slips and/or notes relating to telephone conversations between Nativo Lopez for School Board, or anyone acting on its behalf, and any other entity or person relating to voter registration, absentee ballot voting, and/or encouraging persons to vote, for the period January 1, 1996 to the present.

45. All writings, correspondence and memoranda to or from the Nativo Lopez for School Board campaign, or anyone acting on its behalf, relating to voter registration, absentee ballot voting and/or encouraging persons to vote for the period January 1, 1996 to the present.

46. All writings, correspondence and memoranda, to or from the Nativo Lopez for School Board and/or Lou Correa or the Lou Correa for State Assembly campaign, or anyone acting on their behalf, relating to voter registration, absentee ballot voting and/or encouraging persons to vote for the period January 1, 1996 to the present.

47. All writings, correspondence and memoranda to or from Nativo Lopez for School Board and the Immigration and Naturalization Service or Citizenship USA, for the period January 1, 1996 to the present.

48. All documents that evidence, substantiate or identify communications between Nativo Lopez for School Board and Southwest Voter Registration Project, during the period January 1, 1996 to the present.

49. All documents that evidence, substantiate or identify all communications between Nativo Lopez for School Board and One-Stop Immigration and Education Center, during the period January 1, 1996 to the present.

50. All documents that evidence, substantiate or identify savings and/or checking accounts maintained by Nativo Lopez for School Board, or any subsidiary or affiliate thereof, including passbooks, monthly statements, canceled checks, cash withdrawal slips, cash deposit slips, and transfer forms, for the period January 1, 1996 to the present.

51. All documents that evidence, substantiate or identify incentives, promotions, raffles and/or lotteries that were promoted by or participated in by Nativo Lopez for School Board, or anyone acting on its behalf, from January 1, 1996 to present.

52. All documents that evidence, substantiate or identify any investigation and/or interviews Nativo Lopez for School Board has conducted with anyone regarding the November 5, 1996 election and/or the Election Contest filed by Robert Dornan.

53. All expense account documentation for Nativo Lopez for School Board, or anyone acting on its behalf, for the period January 1, 1996 to the present.

54. All writings, correspondence and memoranda authored or received by Nativo Lopez for School Board, or anyone acting on their behalf, in any way addressing the issues of voter fraud, illegal voting, or any malconduct or irregularity regarding voter registration or voting for the period January 1, 1996 to November 6, 1996.

55. All audio and video tapes prepared by or utilized by Nativo Lopez for School Board in connection with naturalization, citizenship classes, and/or voter registration and voting services that were or are in Nativo Lopez for School Board's custody, possession or control at any time, for the period January 1, 1996 to November 6, 1996.

56. All documents that evidence, substantiate or identify printed or written material disseminated by Nativo Lopez for School Board, or anyone acting on its behalf, with respect to voter registration and/or voting procedures and/or voting advice for the period of January 1, 1996 to November 6, 1996.

57. All documents that evidence, substantiate or identify any guidelines, rules, and/or procedures followed or disseminated by Nativo Lopez for School Board, or anyone acting on its behalf, with respect to voter registration, voting at the polls, or voting by absentee ballot, for the period January 1, 1996 to November 6, 1996.

58. All documents that evidence, substantiate or identify plans, strategy, tactics and/or efforts by Nativo Lopez for School Board or anyone acting on its behalf, in connection with the registration of voters or assisting persons to vote, for the period January 1, 1996 to November 6, 1996.

59. All documents that evidence, substantiate or identify Nativo Lopez for School Board employees, agents and/or volunteers participating in the effort to register persons to vote or assist persons to vote, for the period January 1, 1996 to November 6, 1996.

nl2-71362001/162646

STATE OF CA IFORNIA — COUNT` OF ORANGE SW No.

HMN COPY

SEARCH WARRANT AND AFFIDAVIT
(AFFIDAVIT)

EDWARD R. CONTRERAS, swears under oath that the facts expressed by him/her in the attached and incoporated statement of probable cause are true and based thereon he/she has probable cause to believe and does believe that the property described below is lawfully seizable pursuant to Penal Code Section 1524, as indicated below, and is now located at the locations set forth below. Wherefore, affiant requests that this Search Warrant be issued.

(SIGNATURE OF AFFIANT) NIGHT SEARCH REQUESTED: YES [ ] NO [ ]

(SEARCH WARRANT)

THE PEOPLE OF THE STATE OF CALIFORNIA TO ANY SHERIFF, POLICEMAN OR PEACE OFFICER IN THE COUNTY OF ORANGE: proof by affidavit having been made before me by EDWARD R. CONTRERAS,
(NAME OF AFFIANT)

that there is probable cause to believe that the property described herein may be found at the locations set forth herein and that it is lawfully seizable pursuant to Penal Code Section 1524 as indicated below by "x" (s) in that it:

___ was stolen or embezzled
X was used as the means of committing a felony
___ is possessed by a person with the intent to use it as means of committing a public offense or is possessed by another to whom he or she may have delivered it for the purpose of concealing it or preventing its discovery.
X tends to show that a felony has been committed or that a particular person has committed a felony.
___ tends to show that sexual exploitation of a child, in violation of P.C. Section 311.3, has occurred or is occurring:

YOU ARE THEREFORE COMMANDED TO SEARCH:

See LOCATION TO BE SEARCHED description attached hereto as Page SW-1 and incorporated herein by reference.

FOR THE FOLLOWING PROPERTY:

See FOR THE FOLLOWING PROPERTY descriptions attached hereto as Pages SW-2 through SW-5 and incorporated herein by reference.

AND TO SEIZE IT IF FOUND and bring it forthwith before me, or this court, at the courthouse of this court. This Search Warrant and incorporated Affidavit was sworn to and subscribed before me this 30 day of January, 1997, at 5:55 A.M. (P.M) Wherefore, I find probable cause for the issuance of this Search Warrant and do issue it.

James R. Brooks, NIGHT SEARCH APPROVED: YES [ ] NO [X]
(SIGNATURE OF MAGISTRATE)

Judge of the Superior/Municipal Court, Central Judicial District

LOCATION TO BE SEARCHED

825 North Broadway Street, City of Santa Ana, County of Orange, State of California. This two story office building is located on the east side of Broadway. The numbers 825, black in color, are affixed to the west side (front) facing of the building. North of the numbers 825, is a marquee sign which reads: Hermandad Mexicana Nacional, Centro Bert Corona. The marquee sign is in black letters with a white background. The second story of the building has a roof access area which has a marquee sign on the south side. The marquee reads: Hermandad Mexicana Nacional, Centro Bert Corona. The letters are in black with a white background. The building a tan stucco building with brown brick facing. The front doors are located at the southwest corner of the building.

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FOR THE FOLLOWING PROPERTY:

(1) Employee records for employees hired or employed and/or VOLUNTEERS WORKING from March 1, 1996 to the present including all employee applications, Employee's Withholding Allowance Certificates (Form W - 4), employee rosters, work schedules, employee home addresses and phone numbers, organizational structure charts, job descriptions or other similar lists of job duties, performance evaluations mentioning voter assistance activities and employment starting and termination dates.

(2) Original, duplicated or photocopied blank, completed, partially completed, and/or signed but not completed voter registration affidavits, lists of persons who have signed or filled out, completed, partially completed, and signed but not completed voter registration affidavits, Lists of voter registration affidavit serial numbers that were in the possession of, completed by or with the assistance of, or partially completed by or with the assistance of Hermandad Mexicana Nacional or its directors, agents, subcontractors, employees or volunteers and lists of the names of the persons who completed, partially completed or signed but did not complete voter registration affidavits or for whom voter registration affidavits were completed or partially completed; Written distribution plans, policies, memos, written notes or directions for the distribution and completion of voter registration affidavits; and, list(s) of Hermandad Mexicana Nacional directors, agents, subcontractors, employees or volunteers assigned to register persons to vote or assist persons to register to vote.

(3) Original and photocopies or other duplications of applications for absentee voter ballots from March 1, 1996 to the present; Copies of lists of possible absentee voters; Distribution plans for absentee voter ballot applications; List(s) of Hermandad Mexicana Nacional directors, agents, subcontractors, employees or volunteers assigned to or in charge of coordinating the distribution of absentee voter ballot applications; List(s) of persons to whom absentee voter ballot applications were sent; and, list(s) of persons who completed absentee voter ballot applications and returned them

to Hermandad Mexicana Nacional or its directors, agents, subcontractors, employees or volunteers

(4) Records, schedules, lists, rosters, memos, written notes or documents from March 1, 1996 to the present, identifying all persons who applied for United States citizenship through Hermandad Mexicana Nacional including all attendees at Hermandad Mexicana Nacional citizenship naturalization classes, federal Immigration and Naturalization Service citizenship interviews, and/or English language classes.

(5) Original, photocopies, or otherwise duplicated bank account records of Hermandad Mexicana Nacional, Union Bank account number 122000496 from January 1, 1996 to the present; Including the checkbook register, check stubs, bank statements, canceled and returned checks; and evidence of bank wires, telephone transfers, deposits, withdrawals, and ledgers.

(6) Lists, records, rosters, memos, written notes or documents from March 1, 1996 to the present identifying persons receiving "raffle" tickets having voted for, or for registering to vote or applying for an absentee voter ballot application through or with the assistance of Hermandad Mexicana Nacional, its directors, agents, subcontractors, employees or volunteers; Records, ledgers, lists, bills, rosters, memos, written notes or other documents showing the total number of "raffle" tickets that were purchased from persons through Hermandad Mexicana Nacional its directors, agents, employees or volunteers; any unawarded or unassigned "raffle" tickets for a Chevrolet Camaro to be awarded in November 1996 for filling out an application for citizenship, becoming a member (or renewing membership) of the Hermandad Mexicana Nacional, registering to vote, requesting to vote by mail, submitting proof of having voted in the March 26 and/or November 5, 1996, buying additional tickets for $10.00 each, or presenting an immigration request for a family member, or other legal services through Hermandad Mexicana Nacional, its directors, agents, subcontractors, employees or volunteers; Written distribution plans or rules regarding a "raffle" with

the grand prize to be awarded in November 1996, which was organized by Hermandad Mexicana Nacional, its directors, agents, subcontractors, employees or volunteers; Ledgers, cost breakdowns, lists or other documents showing expenditures made by Hermandad Mexicana Nacional, its directors, agents, subcontractors, employees or volunteers associated with a "raffle" purported to be for a 1996 Chevrolet Camaro to be awarded in November 1996.

(7) Documents, lists, ledgers, schedules, memos, written notes or other documents containing fees charged for citizenship naturalization classes, citizenship testing services, and/or English language classes by/at Hermandad Mexicana Nacional; Ledgers, receipts, bills, checks, written notes and memos identifying the names of persons from whom fees were received for services rendered by Hermandad Mexicana Nacional, its directors, agents, subcontractors, employees or volunteers.

(8) Articles of personal property tending to establish the identity of the person(s) in control of the premises, including utility bills, rent or mortgage statements, opened or canceled mail, letterhead, correspondence, and keys.

(9) Regarding the electronic storage of items 1 through 8 above, electronic data processing and storage devices, computers and computer systems including central processing units; Internal and peripheral storage devices such as fixed disks, external hard disks, floppy disk drives and diskettes, tape drives and tapes, optical storage devices such as keyboards, printers, video display monitors, optical readers, and related communication devices such as modems; together with system documentation, operating logs and documentation, software and instruction manuals;

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(10) Articles of personal property tending to establish the identity of the person(s) in control of the room(s) or location(s) where the computer equipment is located. This is to include all computer related receipts, registration forms, canceled checks, warranty documents, purchase agreements, lease agreements, or any other documents establishing the ownership, control, and use of the computer(s).

PROOF OF SERVICE BY MAIL
(1013A (3) C.C.P.)

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of eighteen years and not a party to the within entitled action; my business address is : 1717 South State College Boulevard, Suite 125, Anaheim, CA 92806.

On **June 19, 1997,** personally served the foregoing documents described as **MOTION TO QUASH OR MODIFY SUBPOENA WITH EXHIBIT A AND EXHIBIT B** on all interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

THE HONORABLE WILLIAM M. THOMAS
CHAIRMAN, COMMITTEE ON HOUSE OVERSIGHT
UNITED STATES HOUSE OF REPRESENTATIVES
1309 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20510

I deposited such envelope in the mail at Anaheim, California. The envelope was mailed with potage thereon fully prepaid.

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Anaheim, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit of mailing affidavit.

Executed on **June 19, 1997,** at Anaheim, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

ALMA PASTRANA

APPENDIX K: FILINGS OF THE PARTIES

Robin H. Carle
Clerk

Linda G. Nave
Deputy Clerk

Office of the Clerk
U.S. House of Representatives
Washington, DC 20515–6601

December 30, 1996

BY HAND-DELIVERY

Honorable William M. Thomas, Chairman
Committee on House Oversight
U.S. House of Representatives
1309 Longworth House Office Bldg.
Washington, D.C. 20515

Re: Robert K. Dornan v. Loretta Sanchez

Dear Chairman Thomas:

Pursuant to 2 U.S.C. § 393(b), I hereby transmit a Notice of Election Contest, including a signed Verification, which was received in this office on December 26, 1996. I also enclose a hand-written memorandum, signed by the process server, Robert Hiler, regarding service of the Notice of Election Contest on the Office of the Clerk.

If you have any questions concerning this matter, please do not hesitate to contact Geraldine R. Gennet, the Acting General Counsel, at 225-9700.

With warm regards,

Sincerely,

Robin H. Carle

Robin H. Carle, Clerk
U.S. House of Representatives

Enclosures

William R. Hart, Bar No. 71127
Richard P. Gerber, Bar No. 59395
HART, KING & COLDREN
A PROFESSIONAL CORPORATION
200 E. Sandpointe, Fourth Floor
Santa Ana, California 92707
(714) 432-8700
Attorneys for Contestant, Robert K. Dornan

COMMITTEE ON HOUSE ADMINISTRATION

OF THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES

In the Matter of the Contested Election of Loretta Sanchez For the Office of House Representative to the United States Congress, Robert K. Dornan Contestant, vs. Loretta Sanchez, Contestee.	Case No. Notice of Election Contest

To: Loretta Sanchez

1. You are hereby notified that the undersigned, defeated candidate for the office Congressperson of the House Representatives to the United States Congress, 46 Congressional District Seat in the general election held on November 5, 1996, hereby files a contest of that election, this notice being served on you as the successful candidate.

2. You are further notified that unless you file a verified answer within thirty (30) days after the service of this notice,

exclusive of the day of its service, as required by 2 USCA § 383, the contestant will present to the Committee a motion for judgment in accordance with the allegations set forth in this notice.

3. You are further notified that Robert K. Dornan, Contestant is, and at all times mentioned herein was, an elector of 46th Congressional District, County of Orange, State of California.

4. You are further notified that the name of the Contestee is Loretta Sanchez.

5. You are further notified that this contest relates to the Contestee's right to hold and fill the Office of House Representative to the United States Congress, 46 Congressional District Seat.

6. You are further notified that the following are the grounds on which this contest is based:

A. That the precinct board or a member thereof was guilty of malconduct. The Precinct Board and members thereof and the Orange County Registrar's Office failed to properly and accurately account for the registered voters who actually voted and reconcile that total with the number of ballots cast in the election. There is a differential of approximately 1,985 more ballots that were counted than voters voting who were accounted for. These irregularities were sufficient to change the election result.

B. That illegal votes were cast. Illegal votes were cast in that multiple voters voted two and/or three times; voters voted from commercial business addresses instead of residential addresses; ballots were counted from absentee envelopes that were delivered by unauthorized third parties to the precinct; under age

voters voted; non-citizens of the United States voted; and convicted felons may have voted. These irregularities were sufficient to change the election result.

C. That the precinct board in conducting the election or in canvasing the returns, made error sufficient to change the result of the election. The Precinct Board counted ballots for which there was no voter accounted for; the Precinct Board counted ballots from non-citizens and persons otherwise not allowed to vote; the Precinct Board counted ballots voted by persons who were not registered to vote. The total number of errors exceeded the vote differential in the election. These irregularities were sufficient to change the election result.

D. That there was an error in the vote-counting programs or summation of ballot counts. There was an error in the vote counting programs and/or summation of the ballot counts in that the official election total was not consistent with the actual ballots cast with each candidate; and the Registrar of Voters own reports do not reconcile between the number of ballots cast and the number of voters who voted. These irregularities were sufficient to change the election result.

7. The date of declaration of the result of the election by the body canvasing returns thereof, the County Clerk, was November 26, 1996.

Dated: December 23, 1996

Robert K. Dorman

Robert K. Dorman, Contestant

71362.001/155359.01

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF ORANGE
I have read the foregoing NOTICE OF ELECTION CONTEST and know its contents.

☐ CHECK APPLICABLE PARAGRAPHS

☒ I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☐ I am ☐ an officer ☐ a partner _____ ☐ a _____ of _____, a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. ☐ I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. ☒ The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☐ I am one of the attorneys for _____, a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on December 23, 1996, at Garden Grove, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

ROBERT K. DORNAN
Type or Print Name

Robert K. Dornan
Signature

PROOF OF SERVICE
1013a (3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF
I am employed in the county of _____, State of California.
I am over the age of 18 and not a party to the within action; my business address is: _____

On _____, 19____ I served the foregoing document described as _____

_____ on _____ in this action

☐ by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:
☐ by placing ☐ the original ☐ a true copy thereof enclosed in sealed envelopes addressed as follows:

☐ BY MAIL
☐ *I deposited such envelope in the mail at _____, California. The envelope was mailed with postage thereon fully prepaid.
☐ As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at _____ California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
Executed on _____, 19____, at _____, California.

☐ **(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.
Executed on _____, 19____, at _____, California.

☐ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
☐ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

_____
Type or Print Name

_____
Signature

*(BY MAIL, SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG)
**(FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)

BEFORE THE COMMITTEE ON HOUSE OVERSIGHT
UNITED STATES HOUSE OF REPRESENTATIVES

ROBERT K. DORNAN,	
Contestant	
v.	
THE HONORABLE LORETTA SANCHEZ,	
Contestee.	

THE HONORABLE LORETTA SANCHEZ'S MOTION TO DISMISS NOTICE OF ELECTION CONTEST OR, IN THE ALTERNATIVE, FOR A MORE DEFINITE STATEMENT

Stanley M. Brand
David E. Frulla
BRAND, LOWELL & RYAN
923 15th St., N.W.
Washington, DC 20005
(202) 662-9700

Fredric D. Woocher
Michael J. Strumwasser
STRUMWASSER & WOOCHER
100 Wilshire Blvd.
Ste. 1900
Santa Monica, CA 90401
(310) 576-1233

Counsel for Contestee, Loretta Sanchez

BEFORE THE COMMITTEE ON HOUSE OVERSIGHT

UNITED STATES HOUSE OF REPRESENTATIVES

ROBERT K. DORNAN, **Contestant,** **v.** **THE HONORABLE LORETTA SANCHEZ,** **Contestee.**	**MOTION TO DISMISS NOTICE OF ELECTION CONTEST OR, IN THE ALTERNATIVE, FOR A MORE DEFINITE STATEMENT**

INTRODUCTION

Pursuant to Section 383, subdivision (b), of the Federal Contested Election Act ("FCEA"), 2 U.S.C. § 381 et seq., Congresswoman Loretta Sanchez ("Contestee") respectfully submits this Motion to Dismiss the Notice of Election Contest filed by Robert K. Dornan ("Contestant").

In brief, the Committee should grant Congresswoman Sanchez's Motion to Dismiss because Contestant Dornan has failed to comply with a series of fundamental requirements that the House has imposed on election contestants since the earliest days of the Republic. Contestant Dornan has failed to exhaust his legal remedies and develop the contest's factual record at the state level, has failed to plead his claims with particularity, has failed to make an actual claim for the 46th District seat, and has

failed even to file his Notice of Contest on time. The House has imposed these requirements to ensure that its processes are invoked with deliberation and are based upon substantial evidence, not imprudently and without pre-existing "credible" bases. The House's consideration of an election contest imposes significant costs on the House, the members of this Committee, and the Contestee, not to mention the taxpayers of this country.

If, however, the Committee chooses not to follow clear House precedents requiring dismissal of Contestant's Notice, Congresswoman Sanchez moves, in the alternative, for an order directing the Contestant to provide a more definite statement of the purported bases for his Notice of Contest within ten days. *See* 2 U.S.C. § 383(c).

I. FACTUAL BACKGROUND

Contestant Dornan and Contestee Sanchez were, respectively, the Republican and Democratic Party nominees for Congress in the 46th Congressional District of California in the November 5, 1996 general election. The 46th Congressional District is located entirely within the County of Orange, and Orange County Registrar of Voters Rosalyn Lever is the official authorized and designated by law to conduct the canvass and to certify the election results. Calif. Elec. Code §§ 15301, 15308-15310.

On November 26, 1996, the Orange County Registrar completed the official canvass and formally certified that Ms. Sanchez had defeated Mr. Dornan by 984 votes, 47,964 - 46,980. On December 9, 1996, California Secretary of State Bill Jones issued

a certificate of election to Congresswoman Sanchez, and she was duly sworn in as the Representative for California's 46th District in the One Hundred and Fifth Congress on January 7, 1997.

Under the leadership of Republican appointees, the Orange County Registrar's office has a long and enviable record of fair and accurate canvasses. The ballot counting for the 46th Congressional District election was closely monitored by representatives of Contestant Dornan and Congresswoman Sanchez, as well as by official representatives of this Committee. No challenges were made to the fairness and accuracy of the canvass, nor was any evidence provided to the County Registrar that would support any allegations of misconduct by the precinct boards or the Registrar's office.

On December 2, 1996, Mr. Dornan requested a formal recount of the votes cast in the 46th Congressional District election. The recount commenced on December 9, 1996, and continued from day-to-day for two whole weeks, until December 20, 1996. During the course of the recount, every single vote cast in the election was manually counted under the observation of representatives from both Mr. Dornan's and Congresswoman Sanchez's campaigns. Official representatives from the House Oversight Committee observed all aspects of the recount, as well. Mr. Dornan was given complete access to all relevant election materials, including every absentee and provisional ballot envelope, every precinct roster, every precinct reconciliation sheet, and all voter registration files and computer records. When Mr. Dornan failed to

avail himself of the opportunity to examine all of the returned, but disqualified, absentee and provisional ballot envelopes, representatives from Congresswoman Sanchez's campaign asked that such materials by made available for inspection (and paid for that examination), just so that no election materials would be left unexamined by the parties.

At the conclusion of this lengthy and detailed ballot-by-ballot recount, Congresswoman Sanchez's victory margin remained at 979 votes, 48,056 - 47,077, a change of a mere five votes. Because the recount did not result in a different candidate being elected, no new certification of the election results was issued by the Orange County Registrar. *See* Cal. Elec. Code, § 15632.

California law provides a losing candidate with a series of well-defined remedies to challenge an election result; however, Contestant Dornan did not exhaust these readily available remedies by filing a judicial contest challenging the results or propriety of the election. Instead, on December 26, 1996, Contestant filed with the Office of the Clerk of the House of Representatives, and directed to the "Committee on House Administration,"[1] a facsimile copy of a three-page (including caption) Notice of Election Contest.[2]

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[1] The One Hundred Fourth Congress changed this Committee's name to the Committee on House Oversight. This pleading defect does not appear material.

[2] The Notice's Certificate of Service avers it was served the Contestee by certified mail on December 26, 1996. The FCEA provides this Contestee with thirty days (2 U.S.C. § 383), plus three days pursuant to the mailing rule (2 U.S.C. § 394(b)), to file a responsive pleading, such as this Motion. This Motion, thus due on January 28, 1997, is timely filed on January 23, 1997.

The Notice is not only brief, but sets forth no particularization or substantiation of Contestant's charges. This Notice represents no more than bare "notice pleading" -- and perhaps less. In fact, the Notice does not (as even notice pleading requires) invoke any specific jurisdictional authority for this contest, except to reference an interior FCEA procedural citation.

The Notice does not specify in any detail the bases on which it purports to invoke the House's election contest procedures and processes. The pleading instead merely sets forth four generalized (and often repetitive) allegations that supposed errors were made in the vote count and that illegal voting occurred. Specifically, the Notice alleges that: "the precinct board or a member of the precinct board was guilty of malconduct"[3] (Notice, ¶ 6.A); "illegal votes were cast" in some unspecified quantity and in certain generically described ways (*id.* at ¶ 6.B); the precinct board committed "error" in "conducting the election or in canvasing [sic] the returns" for what appear to be the same reasons as are set forth in ¶¶ 6.A-B (*id.* at ¶ 6.C); and error occurred in the "vote-counting programs or summation of ballot counts" for what appear to be the same reasons as are set forth in ¶ 6.A (*id.* at ¶ 6.D). No specific votes are identified as illegal, nor does the Notice indicate the number of allegedly illegal ballots that were cast, or for whom they were voted, if they were even voted at all

[3] A definition of "malconduct" includes "dishonesty in managing public affairs." *Webster's 3rd International Dictionary* 1366 (G. & C. Merriam Co. 1976, unabridged).

in the 46th Congressional District election, as opposed to the Presidential election or some other race on the November 5, 1996, ballot.[4] And the Notice contains no allegation that the allegedly illegal votes involved fraud and no suggestion that Congresswoman Sanchez's campaign was in any way connected to or responsible for any irregularities.

Furthermore, the Notice (which was required to be verified by Contestant's oath or affirmation) never alleges that the Contestant actually won the election and is entitled to the 46th District seat. Instead, Contestant claims only that "this contest relates to the Contestee's right to hold and fill" that office. *Id.* at ¶ 5. The Notice of Contest alleges, again elliptically, that each set of "these irregularities *were sufficient to* change the election result" (*id.* at ¶¶ 6.A-D (emphasis added)), but not that the alleged irregularities *did* change the election result. The Notice does claim, in one sub-count, that there were "approximately 1,985" more ballots counted than voters voting. *Id.* at ¶ 6.A. But the Notice does not thereafter seek to explain on what basis this allegation is made, or how and why the alleged discrepancy had any actual or potential impact on the election's outcome.

The Notice's fatal indefiniteness is also manifested in its failure to seek any particular remedy. Apparently, and

---

[4]The certified results of the official canvass showed that almost four percent (4%) of the ballots cast by voters in the 46th Congressional District, amounting to some 3,771 ballots, contained no vote for *any* candidate in that election, but were voted only on some other race or proposition on the ballot.

contrary to House precedents, Contestant would leave it up to the Committee to divine the relief he seeks.

Wisely, the FCEA permits the Contestee to interpose this Motion to Dismiss to protect herself, the voters who elected her, the Congress and its processes, and the nation's taxpayers from Contestant Dornan's vague and unsubstantiated "fishing expedition." It has long been the policy of the House of Representatives that such "loose, extravagant, and unfounded charges being made the basis for an election contest with the consequent expense to the Government should be discouraged in the future." *See Clark v. Moore*, H. Rep. 367, 68th Cong., 1st. Sess. (1924) (*reported in* 6 Cannon's Precedents, § 161 (1936)). This is precisely such a case.

II. GROUNDS FOR DISMISSAL OF THE NOTICE OF ELECTION CONTEST

The FCEA provides Congresswoman Sanchez with four grounds for moving to dismiss this Notice of Contest:

> (1) Insufficiency of service of notice of contest[;] (2) Lack of standing of contestant[;] (3) Failure of notice of contest to state grounds sufficient to change result of election[; and] (4) Failure of contestant to claim right to contestee's seat.

2 U.S.C. § 383(b). These standards for dismissal are all jurisdictional. As explained herein, the House and its committees have long terminated election contests at the pleading stage if one (or more) of these bases for dismissal exists.

For the reasons set forth more fully in this submission, Congresswoman Sanchez respectfully moves this Committee to dismiss the above-captioned Notice of Contest pursuant to 2 U.S.C. §§ 383(b)(2),(3) & (4); pursuant to House precedents requiring

exhaustion of state remedies; and for failure to file the Notice of Contest with the Clerk of the House of Representatives according to FCEA's strict time limits.

A. Contestant's Notice Must Be Dismissed Pursuant to 2 U.S.C. § 383(b)(3) Because It Fails to State Grounds Sufficient to Change the Result of the Election

It has long been the law in the House that a contestant cannot, as Contestant Dornan is trying to do in this case, "notice plead" generic potential claims and then have the House undertake a publicly funded fishing expedition in hopes of uncovering some basis for that contest. A notice of contest does not represent, and has never represented, merely a "place holder" that satisfies timely filing requirements and permits a contestant to proceed with discovery in hopes of substantiating bare claims.

In order to proceed past the pleading stage, a House election contestant must amass and provide the Committee and the Contestee with "credible" evidence of electoral failings sufficient to displace the House's well-established presumption that a state's certification of an election result, such as California's in this instance, is correct. *See, e.g., Weber v. Simpson*, Comm. on Elections, H. Rep. 1494, 73rd Cong., 2d Sess. (1934) (there exists a "prima facie case made by the election returns upon which a certificate of election was given to the contestee") (*reported in* 2 Deschler's Precedents, Ch. 9, § 47.16 (1977)); *Galvin v. O'Connell*, 61st Cong., 2d Sess. (1910) (same) (*reported in* 6 Cannon's Precedents, § 126 (1936)).

To overcome the presumption of correctness at the

pleading stage, a contestant must particularize his or her claims (that is, provide some identification of their "what, when, where, how much, and by whom"). The FCEA subjects a notice of contest lacking in this fundamental respect to dismissal for "failure . . . to state grounds sufficient to change [the] result of [the] election." 2 U.S.C. § 383(b)(3).

Section 383(b)(3) incorporates long-standing House precedents and practices. By the Ninth Congress, the House had already made ineluctably clear that:

> A petition against the election of any person returned as a Member of the House of Representatives ought to state the ground on which the election is contested with such certainty as to give reasonable notice thereof to the sitting Member, and to enable the House to judge whether the same be verified by the proof, and, if proved, whether it be sufficient to vacate the seat; and the petitioner ought not to be permitted to give any evidence of any fact not substantially alleged in his petition.

Election Contest filed by Michael Leib, 9th Cong., 1st Sess. (1806) (*reported in* 1 Hinds' Precedents, § 679 (1907) (*quoting* Contested Election Cases in Congress, 1789 to 1834, at 165)). In *Leib*, the Ninth Congress permitted the contestant to dismiss his contest himself.

Subsequent committees have themselves dismissed insufficiently particularized notices of contest. For instance, in *Wilson v. Hinshaw*, the Committee on House Administration unanimously dismissed, pursuant to 2 U.S.C. § 383(b)(3), a notice of contest because the contestant had not provided sufficient substantiation of his thirty-four separate allegations of violations of law, misconduct, and other actions spanning two

election cycles. The accompanying report collected House precedent and explained:

> General arguments in pleadings are not sufficient (see, *Duffy v. Mason*, 48th Congress (1880), Hinds' Precedents of the House of Representatives, Vol. II, § 942). Allegations that are vague and uncertain as to particulars do not meet the requirement (see, *Gormley v. Goss*, 73rd Congress, 5th District of Connecticut, H. Rept. 73-893 (1934); *Chandler v. Burnham*, 73 Congress, 20th District of California, H. Rept. 73-1278 (1934)). *Allegations of fraud, etc. in the pleadings, sufficient to change the result of the election, should disclose, with particularity, what, when, where, how much, and by whom* (see, *Duffy v. Mason, supra;* Public Law 91-138, section 3(b)).

Wilson v. Hinshaw, Comm. on House Administration, H. Rep. 94-761, 94th Cong., 1st Sess. 3-4 (1975) (emphasis added). *See also Saunders v. Kelly*, Comm. on House Administration, H. Rep. 95-242, 95th Cong., 1st Sess. 3 (unanimous committee concluded that "[t]he [FCEA], together with its legislative history and the precedents construing it, indicate that *more than notice pleading and generalized allegations are required* if a motion to dismiss is to be denied")(emphasis added); *Hendon v. Clarke*, Comm. on House Administration, H. Rep. No. 98-453, 98th Cong., 1st Sess. 4 (1983) ("a contestant, in order to overcome a motion to dismiss must, inter alia, engage in more than notice pleading").

The House has long provided the same cogent and practical reasons for dismissing "notice" pleaded notices of contest. No House committee that has ever devoted its time and resources to resolving an election contest would quarrel with the conclusion of the 92nd Congress's Committee on House Administration, that:

> . . . [I]t has been the experience of Congress that exhaustive hearings and investigations have, in the past,

> been conducted only to find that if the contestant had been required at the outset to make proper allegations with sufficient supportive evidence that could most readily have been gathered at the time of the election such further investigation would have been unnecessary and unwarranted.

Tunno v. Veysey, Comm. on House Administration, H. Rep. 92-626, 92nd Cong., 1st Sess. 2 (1971).

Just last Congress, this Committee extensively reviewed House election contest precedents and confirmed that a notice of contest that does not furnish credible, particularized allegations of irregularity must be dismissed for failing to state grounds sufficient to change the result of the election. More specifically, the Committee concluded that, to survive an FCEA, § 383(b)(3) motion to dismiss, "a contestant must make *credible* allegations of irregularities of fraud which, if subsequently proven true, would likely change the result of the election." *Anderson v. Rose*, H. Rep. 104-852, 104th Cong., 2d Sess. 6 (1996) (emphasis added).

This Committee explained, moreover, that:

> A key word in this test is "credible." A Task Force should not allow a losing candidate to contest an election based on general . . . claims of fraud or irregularities. A contestant must provide specific, credible allegations which either invalidate sufficient ballots to affect the result of the election or would show the validity of the vote count to be seriously suspect because certain precincts were contaminated by fraud or other improper influences.

Id. at 7.

The Committee then carefully examined House precedents and the body's experience under the FCEA. It concluded these sources of authority left no doubt that an insufficiently

particularized notice of contest should be dismissed at the pleading stage:

> The reasons why *the Committee has and should demand more than mere allegations* as a court would require at summary judgment stage, are more complex. Normally a claim in federal or state court would be dismissed on summary judgment only after the party against whom dismissal was sought had an opportunity to gather evidence through the discovery process. However, under the FCEA, for a contestant to reach such discovery, he or she must first surmount the Motion to Dismiss hurdle. In order to keep frivolous cases from reaching discovery, the Committee standard incorporates the component of credibility into the review of a contestant's allegations similar to the standards a judge would utilize in reviewing the evidence in a Rule 56 motion for summary judgment.

Id. at 9-10 (emphasis added).

As Contestee demonstrates below, the vague and insufficiently particularized claims in Contestant Dornan's Notice of Contest do not satisfy the "credibility" threshold, as painstakingly delineated in *Anderson v. Rose*. The Notice does not even attempt to quantify the number of votes alleged to be illegal, much less to identify particular voters, nor does it allege that any of those votes were cast in favor of Congresswoman Sanchez rather than Contestant. Because the Notice fails to provide the requisite detail as to the "what, when, where, how much, and by whom" of any of its claims, the Committee should promptly grant Contestee's Motion to Dismiss. *See, e.g., Wilson v. Hinshaw, supra*. Neither Republican nor Democratic members of the Committee should permit Contestant to invoke House discovery processes, and consume public resources, in an FCEA discovery fishing expedition. *See Anderson v. Rose, supra,* at 11 ("Of course, on numerous

occasions where the allegations made in the contest were either vague, improbable on their face, or insufficient even if true to place the election result in doubt, Republicans have supported dismissals."); *Paul v. Gammage*, Comm. on House Administration, H. Rep. 95-243, 95th Cong., 1st Sess. 4 (1977) ("The burden placed upon the contestant requires more than bare notice pleading if the committee is to deny a motion to dismiss."). Therefore, the Notice should be dismissed pursuant to 2 U.S.C. § 383(b)(3) for failure to state grounds sufficient to change the result of the election.

1. Contestant's Allegations Regarding Discrepancies in the Vote Count

As noted above, there are only two grounds alleged in the Notice as the basis for Contestant's election contest: errors or irregularities in the vote count, and illegal voting. The initial ground in the Notice is the allegation that the Registrar of Voters "failed to properly and accurately account for the registered voters who actually voted and reconcile that total with the number of ballots cast in the election." Notice, ¶ 6.A. According to the Notice, "approximately 1,985 more ballots . . . were counted than voters voting who were accounted for." *Ibid.*

To begin with, this allegation on its face fails to state grounds sufficient to change the results of the election. Contestant does not identify the ballots in question (*e.g.*, by name, precinct, or locality); the circumstances under which any such alleged discrepancy arose; or what the alleged "malconduct" in counting these ballots might have entailed. Nor does Contestant

make (because he cannot) any effort to conjecture that these ballots were cast for Congresswoman Sanchez and not for himself. Indeed, Contestant does not even allege that any of these 1,985 "unaccounted for" ballots were illegal, or that they should not have been counted. To the contrary, the Notice contains a separate paragraph in which it alleges that illegal votes were cast, and that paragraph does not include any mention of these ballots. Nor could Contestant have made such a claim: his representatives monitored the meticulous manual recount of each and every ballot cast in the 46th Congressional District election; Contestant knows that each of the supposedly "unaccounted for" ballots actually exists, and that the total vote tally for every precinct could be reconciled with the official polling place records for that precinct.

Moreover, although the Notice includes only the bald assertion that 1,985 votes were not accounted for by the Registrar of Voters, without providing any indication on what basis this charge is levied, Contestant raised the identical allegation (referencing the same number of ballots) in a letter submitted by his counsel, William Hart, to Orange County Registrar Rosalyn Lever on December 18, 1996. (A true and correct copy of Mr. Hart's December 18, 1996, letter is appended hereto as Exhibit 1.) In that letter, Mr. Hart discloses that the 1,985 figure was derived by comparing the total number of ballots cast in the 46th Congressional District election according to the certified vote count with the number of persons shown to have voted on the "Voted

Tape" prepared by the County Registrar's office shortly after the November election.[5]

On January 17, 1997, Registrar of Voters Lever wrote to Mr. Hart, responding to his letter of December 18, 1996. (A true and correct copy of Ms. Lever's January 17, 1997, letter is appended hereto as Exhibit 2.) In her response, the County Registrar explains that the "Voted Tape" is not an official voting record and plays no part in the canvass and vote count. She also notes that the supporting data submitted in connection with Mr. Hart's letter was incorrectly compiled using "regular" precinct figures, rather than data from the "consolidated voting" precincts used in the November 1996 election. Finally, the Registrar's letter explains that the bulk of the 1,985 alleged "discrepancies" cited by Mr. Hart resulted from his failure to have taken into account some 1,348 ballots that were not included on the "Voted Tape," and that the remaining differential was the result of keypunching and other data entry errors in preparing the Tape.

The official reconciliation of ballots cast with voters voting is based upon the precinct rosters (showing the number of ballots of each type cast in that precinct, together with the signatures of each voter casting a ballot) and the tabulation of absentee and provisional ballot envelopes. All of these official voting records were made available during the recount and were

[5]The "Voted Tape" is a computer tape showing the voting record of all active registered voters in the jurisdiction, prepared by the County Registrar's office for the use of candidates and their political consultants in identifying likely and high-propensity voters of different parties based upon their voting history.

scrutinized by representatives of each candidate and of this Committee. Contestant's Notice nowhere alleges that *these official voting records* show any indication of a discrepancy in the number of ballots cast in this election.

2. Allegations of Illegal Voting.

The second ground stated in the Notice for contesting the election is the allegation that illegal votes were cast. Again, however, from the face of the pleading itself, it is apparent that the Notice does not state grounds sufficient to change the results of the election.

As indicated above, the Notice does not contain any allegation regarding the *number* of illegal votes that were supposedly cast in the 46th Congressional District election. Nor does the Notice allege or provide any basis for concluding that any of those allegedly illegal votes was cast for Congresswoman Sanchez, rather than for Contestant himself or for some other candidate. To state grounds sufficient to change the result of an election, of course, it is not enough to allege simply that illegal votes were cast. Rather, one must make "credible allegations" (*Anderson v. Rose, supra*), and then prove that the number of illegal votes cast for the Contestee was sufficient to change the results of the election. Where, as here, there is no allegation how any illegal vote was actually cast, those "votes [determined to actually be illegal] presumably would be deducted proportionally from both candidates, according to the entire vote returned for each." *See, e.g., Macy v. Greenwood*, Comm. on House

Administration, H. Rep. 1599, 82nd Cong., 2d Sess. (1952) (*reported in* 2 Deschler's Precedents, Ch. 9, ¶ 56.4 (1977)).

A simple exercise in arithmetic demonstrates that Contestant cannot possibly surmount this hurdle and reveals why Contestant apparently chose not to include in the Notice any quantification of the number of illegal votes allegedly cast in this election. That arithmetic reveals the inherent *in*credibility of any claim that the result of this election would have changed: Contestant lost by at least 979 votes, according to the manual recount. Overall, Contestee received 45.14% of the vote to Contestant's 44.21%. Since the Notice provides no basis for assuming that the allegedly illegal votes were cast in any different proportion than the legal votes, that would mean that for every 100 illegal votes in the 46th Congressional District race, approximately 45 would have been voted for Contestee and approximately 44 would have been voted for Contestant. In other words, for every 100 illegal votes that should be subtracted from the candidates' respective vote totals, Contestant would pick up a net of one vote. At that rate, it would require a showing of 97,900 (979 X 100) illegal votes to change the result of the election.[6]

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[6]Even if one were to assume, although the Notice alleges no basis for such an assumption, that the allegedly illegal votes were for some reason cast overwhelmingly in Contestee's favor -- for example, by a margin of 3 to 1, a margin greater than Contestee's victory margin in even her strongest precincts -- Contestant would need to allege and prove that almost 2,200 illegal votes were cast in order to overcome the 979 vote deficit and change the result of the election.

The Notice does not, and credibly could not, allege anywhere near the necessary number of illegal votes to state grounds sufficient to change the result of the election. Again, while Contestant's Notice provides absolutely no numbers, Mr. Hart's December 18, 1996, letter and the Registrar's January 17, 1997, response provide the information omitted, apparently intentionally, from the Notice. The Registrar's investigation of Contestant's allegations of illegal voting concluded that 4 persons voted from addresses that were not their residence, no voters were under age, absentee ballots were counted from 4 voters who had not properly executed their absentee ballots, and 11 instances of duplicate registrations were forwarded to the District Attorney for investigation of possible double-voting.

It is thus apparent that Contestant has not met in his Notice and, indeed, cannot meet his burden of alleging grounds sufficient to change the result of the election. As this Committee recently concluded, "to be allowed discovery, a contestant must make, at a minimum, credible allegations which show . . . that . . . more ballots were improperly cast than the margin of victory." *Anderson v. Rose, supra*, at 7. The Notice of Election Contest must therefore be dismissed.

B. The Committee Should Dismiss the Notice of Contest Pursuant to 2 U.S.C. § 383(b)(2) and General House Precedents Because Contestant Has Failed to Exhaust State Law Remedies Available to Him

The House has adopted another rule seeking to ensure the judicious and measured application of public resources to election contests. Specifically, the House requires a contestant to have

exhausted the remedies available to him under state law before making a claim on House resources. Such a requirement both helps to expose insubstantial claims and ensures that the bases for a contest are as fully developed as practicable by more local and proximate state authorities, before the House embarks on extraordinary procedures to consider them. As the Committee on House Administration has explained:

> Important policy considerations underlie these [exhaustion] decisions. The Federal Contested Election Act placed on the contestant a substantial burden to come forward with evidence. Admittedly, developing evidence involves effort and expense on the part of the contestant. But by placing this burden on the contestant, the Act seeks to guarantee that when the matter comes before the Committee, the issues are as fully developed and as ripe for resolution as time permits. Wasteful investigations of meritless claims are consequently avoided. It would therefore be contrary to purposes of the statute or the committee to allow contestant to ignore a source of information that is likely dispositive.

Hansen v. Stallings, Comm. on House Administration, H. Rep. 99-290, 99th Cong., 1st Sess. 6 (1985).

While the Committee on House Administration in *Hansen v. Stallings* premised its dismissal of Hansen's contest for failing to exhaust state remedies on general House precedents, that failure also essentially vitiates any standing a contestant might otherwise have had to bring this Notice of Contest. Failure to exhaust state remedies thus also implicates 2 U.S.C. § 383(b)(2).

The State of California has well-established and adequate procedures to address, in the first instance, the types of claims that Contestant Dornan appears, via his notice pleading tactic, to have been making. Actually, Contestant Dornan appears to have

filed with this Committee the same pleading that he should have filed in California, under that state's law.

More specifically, the California Elections Code has established a special judicial election contest proceeding in which any registered voter may challenge an election on the grounds, *inter alia*, that "the precinct board or any member thereof was guilty of malconduct," that "illegal votes were cast," and that "the precinct board in conducting the election or canvassing the returns, made errors sufficient to change the result of the election." Cal. Elec. Code, § 16100. These, of course, are the precise allegations contained in Contestant's Notice of Contest. Indeed, the Notice of Contest is even styled in the same form as the Statement of Contest pleading that would initiate the judicial election contest under California law. *See id.*, § 16400. Because Contestant Dornan failed to exhaust (actually, did not even begin to invoke) these California procedures, the Committee should dismiss the Notice pursuant to 2 U.S.C. § 383(b)(2) and the general House exhaustion precedents that preceded the FCEA's enactment.

The House has long imposed the dismissal remedy when a contestant failed to exhaust available state law remedies. For instance, in 1940, the Committee dismissed the Notice of Contest in *Swanson v. Harrington* at the pleading stage because the contestant did not invoke Iowa's state recount procedures, even over the contestant's objections that this state remedy was not available to him. *See* H. Rep. 1722, 76th Cong., 3d Sess (1940) (*reported in* 2 Deschler's Precedents, Ch. 9, ¶ 50.4 (1977). Contestant Swanson

had, moreover, done far more to state a cognizable claim than Contestant Dornan has in the contest at bar. Mr. Swanson had alleged a full fifty-two specific allegations of misconduct, fraud, and illegality, including precinct-by-precinct, voter-by-voter allegations for certain of his claims. *Ibid.* Moreover, the race in *Swanson* was even closer than the one at bar; Swanson only lost by 339 votes. *Ibid.*

More recently, the former Committee on House Administration dismissed former Representative Hansen's notice of election contest for failure to exhaust Idaho's recount provisions. *Hansen v. Stallings, supra.* In dismissing former Representative Hansen's notice of contest, the committee explained:

> If a state provides an adequate remedy, and that remedy does not intrude upon the constitutional prerogatives of the House in judging the election of its members this Committee [on House Administration] has required that, as a condition for obtaining this relief, a contestant must have pursued his state remedy.

Hansen v. Stallings, supra, at 6. *Accord McEvoy v. Peterson,* H. Rep. 1423, 78th Cong., 2d Sess. (1944) (*reported in* 2 Deschler's Precedents, Ch. 9, ¶ 52.2) (dismissing notice of contest for, *inter alia,* failure to exhaust Georgia state law remedies); *Carter v. LeCompte,* H. Rep. 1626, 85th Cong., 2d Sess. (1958) (*reported in* 2 Deschler's Precedents, Ch. 9, ¶ 57.1 (1977) (failure to exhaust Iowa's remedies as to questions regarding absentee ballots).[7]

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[7] In contrast to *Swanson v. Harrington, Carter v. LeCompte* did not require exhaustion of Iowa's recount remedy because Iowa's Attorney General had, in the meantime, informed the House that state recount provisions did not apply to a House race. No similar showing can be made here.

Contestant Dornan's failure to exhaust state remedies represents yet another tangible indication that he is making a claim upon House resources without having taken the preparatory steps that have long been held necessary to justify such action. Accordingly, this Committee should promptly dismiss this Notice of Contest, pursuant to 2 U.S.C. § 383(b)(3) for lack of standing and pursuant to general House precedents requiring the exhaustion of state remedies before the House's processes may be invoked.

C. The Notice of Contest Must Be Dismissed Pursuant to 2 U.S.C. § 383(b)(4) Because Contestant Failed to Claim A Right to Contestee's 46th District Seat

Section 382(a) of the FCEA, 2 U.S.C. § 382(a), limits the standing of those who can file an election contest for the House of Representatives to a person "claiming a right to such office." This requirement is jurisdictional. Accordingly, the Committee must dismiss the Notice pursuant to the FCEA, for "[f]ailure of contestant to claim right to contestee's seat." *See* 2 U.S.C. § 383(b)(4).

Contestant Dornan has been very careful *not* to allege that he won the November 5, 1996, election for Congresswoman Sanchez's 46th District seat and that he therefore is entitled to her seat. Rather, Contestant surgically pleaded that the unparticularized "irregularities" that he has alleged "were sufficient to change the result of the election" (*see* Notice, ¶ 6.A-D), without ever alleging that these irregularities *actually did* change the election's result. Similarly, Contestant averred that "this contest *relates to* Contestee's right to hold and fill

the Office of House Representative to the United States Congress, 46 Congressional District Seat" (*id.* at ¶ 5 (emphasis added)), but never claimed that the Contestee, Congresswoman Sanchez, has no "right to hold and fill" that seat.

Likewise, owing to the vagueness of his claims, Contestant Dornan cannot and does not begin to enumerate the relief to which he might consider himself entitled. For these reasons, Contestant has failed to carry forward with his obligation to make a claim for the seat in question. *Wilson v. Hinshaw, supra,* at 6; *Tunno v. Veysey, supra,* at 10-11. Even if a claim for Congresswoman Sanchez's 46th District seat could be implied from the Notice, such "[a] bare claim to the seat . . . without substantiating evidence ignores the impact of this requirement and a contest based on this . . . must under the precedents fail." *Tunno v. Veysey, supra,* at 10.[8]

In sum, Contestant Dornan cannot and does not allege that he actually would have won the 46th District election but for the alleged irregularities and illegal votes, and that he therefore claims a right to Contestee's seat. Pursuant to 2 U.S.C. § 383(b)(4), the Committee should dismiss the Notice for failure to make a claim for the Congresswoman's 46th District seat.

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[8]Moreover, even if the Committee could discern a cognizable claim for the 46th District seat from Contestant's deliberately ambiguous Notice, Contestant's contentions alleging improper handling of ballots under state law -- the bulk of his claims, including the thoroughly discredited alleged 1,985 vote discrepancy -- involve "directory" state election laws and would not justify voiding the election result in any event. *See, e.g., Chandler v. Burnham, supra; Macy v. Greenwood, supra* (rejecting claims similar to Contestant Dornan's in an election with only a 135 vote margin).

III. CONTESTEE'S MOTION, IN THE ALTERNATIVE, FOR A MORE DEFINITE STATEMENT PURSUANT TO 2 U.S.C. § 383(c)

For the reasons set forth above, permitting former Congressman Dornan's Notice to survive this Motion to Dismiss would represent an unprecedented act of grace by this Committee. In the event that the Committee breaks with precedent and denies her Motion to Dismiss, Contestee respectfully requests, in the alternative, that Contestant be required to provide a more definite statement of his Notice of Contest. The FCEA provides for this remedy where, as here, the "notice of contest to which an answer is required is so vague or ambiguous that the contestee cannot reasonably be required to frame a responsive answer . . . ." 2 U.S.C. § 383(c). At this stage, Contestee could only answer the Notice by filing a denial that is as general as the Notice itself.

Accordingly, if the Committee does not dismiss the Notice at this time, the Committee should direct Contestant Dornan to provide, within ten days (*see ibid.*), at least the following facts:

(1) the identity of each voter who Contestant asserts voted improperly;

(2) the reason(s) why Contestant asserts the voter was not qualified to vote;

(3) whether Contestant claims that the voter actually voted in the 46th District House race, and, if so, the basis for that claim; and

(4) whether Contestant claims that the voter actually voted for Congresswoman Sanchez, and, if so, the basis for that claim.

D. The Notice of Contest Must Be Dismissed Because It Was Not Filed in a Timely Manner

The FCEA requires a disappointed candidate to file his notice of contest "within thirty days after the result of such election shall have been declared by the officer or Board of Canvassers authorized by law to declare such result . . . ." 2 U.S.C. § 382(a). A notice of contest must be "file[d] with the Clerk [of the House of Representatives] and served upon the contestee . . . ." *Ibid.* Failure to comply with this timely filing requirement should result in dismissal.

The Orange County Registrar formally declared the 46th District election result on November 26, 1996. Pursuant to the FCEA, the Contestant should have filed his Notice with the Clerk of the House of Representatives, and served it upon the Contestee, on or before December 26, 1996. The Certificate of Service for the Notice avers that the Contestant's representative deposited the Contestee's service copy of the Notice in the United States mail (certified) on December 26, 1996.

Tellingly, however, the Certificate of Service's affiant did not aver how and when the Contestant had his Notice served upon the Clerk of the House. In actuality, it appears that the Clerk did not receive the Notice of Contest, with the Contestant's original signature, on December 26, 1996, but not until one or more days later. Thus, the Notice of Contest was not timely filed with the Clerk, in accordance with the FCEA's strict jurisdictional guidelines, and it must be dismissed.

CONCLUSION

For the foregoing reasons, Contestee's Motion to Dismiss the above-captioned Notice of Contest should be granted. In the alternative, Contestee's Motion for a More Definite Statement should be granted.

Respectfully submitted this 23rd day of January, 1997.

Stanley M. Brand
David E. Frulla
BRAND, LOWELL & RYAN
923 15th St., N.W.
Washington, DC 20005
(202) 662-9700

Fredric D. Woocher
Michael J. Strumwasser
STRUMWASSER & WOOCHER
100 Wilshire Blvd., Ste. 1900
Santa Monica, CA 90401
(310) 576-1233

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the enclosed Motion to Dismiss Notice of Election Contest, or, in the Alternative, for a More Definite Statement were sent in the following manner on this 23th day of January, 1997 to:

VIA FIRST-CLASS MAIL, FEDERAL EXPRESS:

William R. Hart, Esq.
Hart, King & Coldren
200 East Sandpointe, Fourth Floor
Santa Ana, California 92707

VIA HAND-DELIVERY:

The Honorable Robin H. Carle
Clerk of the House of Representatives
H-154, United States Capitol
Washington, D.C. 20515

James S. Portnoy, Esq.
General Counsel to the Minority
Committee on House Oversight
1339 Longworth House Office Building
Washington, D.C. 20515

Roman Buhler, Esq.
General Counsel to the Committee on
House Oversight
1309 Longworth House Office Building
Washington, D.C. 20515



David E. Frulla

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DEC 18 1996
Registrar of Voters

HART, KING & COLDREN
A PROFESSIONAL LAW CORPORATION

200 EAST SANDPOINTE, FOURTH FLOOR
DIRECT ALL MAIL TO: P.O. BOX 2507
SANTA ANA, CALIFORNIA 92707
TELEPHONE (714) 432-8700
FACSIMILE (714) 546-7457

INLAND EMPIRE OFFICE
[illegible] SHELBY STREET, SUITE 200
ONTARIO, CALIFORNIA 91764
TELEPHONE (909) 944-2514

ROBERT J. COLDREN
GARY R. KING
WILLIAM B. HART
CANDICE L. CAMPBELL
JOHN H. PENTECOST
C. WILLIAM DAHLIN
GLENN MONDO

BARBARA J. DIBBLE
CHRISTOPHER R. ELLIOTT
RICHARD P. GERBER
LINDA J. LESTER
RACHELLE B. MENAKER
ROBERT J. MULVIHILL

OF COUNSEL
MICHAEL J. SCHROEDER, P.C.

PERSONAL AND CONFIDENTIAL
HAND DELIVERED

December 18, 1996

Rosalyn Lever
Registrar of Voters
1300 South Grand, Building "C"
Santa Ana, CA 92705

Re: Congressman Robert K. Dornan - Recount

Dear Ms. Lever:

As you know, this firm represents Congressman Robert K. Dornan in connection with the ongoing recount of the election results in the Dornan/Sanchez race in the 47th Congressional District. During the recount, the investigation has taken a variety of directions, and I have attached to this letter, certain computer generated information that you are free to use in connection with my request. On behalf of Congressman Dornan, we are requesting that the Orange County Registrar of Voters decertify the election results unless and until the issues raised by this letter and the attached documentation can be reconciled and an explanation provided for what appears to be numerous discrepancies in the voting results and tabulations. Attached to this letter, please find the following:

1. A summary of the Orange County Voted Tape provided by the Registrar's office. There appears to be a differential between ballots counted and voters accounted for in the amount of 1,985 ballots. This suggests that 1,985 more ballots were counted than voters signing the roster and voting absentee. Even if provisionals are added (662 whites and 650 blues) there still appears to be a differential of 673 ballots unaccounted for.

2. A list of possible double voters in the District. We have identified over 100 such voters (possibly representing 200 votes) and need your assistance to explain these apparent discrepancies.

3. A list of voters who appear to be registered and voted from business addresses rather than residential addresses. While we understand that some of these may be combined businesses and residences, that would not apply to a number of the business addresses contained in the printout.

4. A list of records of two voters who appear to be under age (DOB: 1979).

5. A list of addresses where six or more voters reside. These voters actually voted according to your records, and we have attempted to screen out apartment buildings and nursing homes.

6. A list of voters that seemed to show two votes for a single registration. You will note that each voter voted both in person and absentee according to the printout. Is this a double vote, keying error or some other anomaly?

7. A list of registered voters who registered through Hermandad Mexicana Nationale in August, September, and October, 1996. It is our understanding that registrations should be returned within three days of completion by the voter. Were these registrations actually returned within three days of completion?

8. A list setting forth the breakdown of absentee ballot envelope discrepancies that we identified during our examination last week. The discrepancy column refers to what appear to be inadequately completed delivery information from third parties who delivered these absentee ballots. It is our understanding that these ballots may only be delivered by immediate blood relatives, not including nieces, nephews, aunts, uncles, friends, roommates, godfathers, etc. Why were any of these ballots counted when they appear not to comply with law? Please note that this is only a partial list and some 11,000 absentee ballots remain unexamined in this regard.

I will be pleased to meet with you concerning these issues at anytime and welcome any assistance you can give us in providing answers to these very serious questions.

Thank you for your immediate attention.

Very truly yours,

HART, KING & COLDREN

William R. Hart

WRH:ci
Enclosure(s)
71362.001/155173

Sanchez Exhibit #1

COUNTY OF ORANGE

GENERAL SERVICES AGENCY
1300 S. Grand Avenue
Santa Ana, California 92705
(714) 567-7600
TDD (714) 567-7808
FAX (714) 567-7627

ROBERT A. GRIFFITH, Director
General Services Agency

ROBERT G. LOVE, Deputy Director
General Services Agency

ROSALYN LEVER, Registrar of Voters
GSA/Registration and Elections

Mailing Address:
P.O. Box 11298
Santa Ana, California 92711

January 17, 1997

William R. Hart
Hart, King & Coldren
200 East Sandpointe, Fourth Floor
Santa Ana, California 92707

Dear Mr. Hart:

Our office has concluded its review of the various lists submitted by you on December 17, 1996. Though it would be inappropriate to discuss individual voter records, I have provided below summary data which should clarify and offer perspective on the issues you have raised.

Business Addresses

Of the 50 addresses submitted representing 122 voters, 8 of the addresses representing 29 voters were duplicated on your list. The resulting 42 addresses representing 93 voters were reviewed by staff. From that review the following was determined:

39 addresses representing 88 voters were locations which served as the voters' residence and, therefore, met criteria for registering to vote.

2 addresses representing 4 voters were locations which were not the voters' residence. Those records are being forwarded to the District Attorney for review and appropriate action.

1 address representing 1 voter was improperly entered in the computer system. The address information has been corrected. Both addresses were within the same ballot type for the general election.

Registrations Indicating the Voter was Under Age

Two records were submitted which appeared to indicate the voters were not 18 years of age at the time of election. After reviewing the original and prior affidavits of registration, staff has determined both individuals are over 18 years of age and the discrepancies were caused by data entry errors.

Sanchez Exhibit #2

Absentee Voter Records

Of the 128 records submitted, 5 records were duplicated on your list. The resulting 123 records were reviewed by staff. From that review the following was determined:

59	records appear to have met the basic criteria of absentee return in person, by certain authorized relatives, or in emergency by a designated representative.
60	records do not appear to have strictly conformed to the criteria of EC 3017 but were executed by the voter.
4	records that the absent voter had not properly executed.

Duplicate Registrations Indicating Possible Double Voting

Of the 114 registration groupings submitted, 17 registration groupings were duplicated on your list. The resulting 97 registration groupings were reviewed by staff. From that review the following was determined:

67	registration groupings, though appearing to indicate duplicated records on your list, were actually separate individuals with similar registration data.
19	registration groupings had duplicate records. However, after reviewing original documents, information does not support the conclusion that any of these voters actually voted twice. The duplicate registrations have been canceled.
11	registration groupings, representing 11 voters, have been referred to the District Attorney for review for possible Elections Code violations.

Addresses with 6 or More Registered Voters

Of the 145 addresses submitted with 6 or more registered voters, two addresses were also submitted and reviewed as part of the business address list. Staff reviewed the remaining 143 addresses with the following result.

127	addresses appear to be residences with multiple families or large family groups
11	addresses are apartment complexes
5	addresses are large residential facilities

Affidavits Potentially Held More than 3 Days Before Submittal to the Registrar of Voters

Holding records for more than three days does not affect the voter's eligibility to vote.

Sanchez Exhibit #2

"Voted Tape" and "Statement of Votes" do not Match

The "voted tape" is a tape of voter history and is not utilized in the official canvass. The "voted tape" is a computer product which is created from a static file of active voter registrations as of 29 days prior to the election and which are still active when the tape is created after the election and who have voted in the election. As a result the "white provisional" (NVRA Fail Safe) voters and "new citizen" voters are not included on the "voted tape". In addition, records canceled between election day and the creation of the tape will not appear on the "voted tape". Some voted records will not accurately reflect the method of voting.

The data you submitted was compiled by "regular" precinct and not "consolidated voting" precinct. This accounts for many of the discrepancies in the detail portion of your list. Due to the nature of the "voted tape" and the fact that the Statement of Votes is compiled by "consolidated voting" precinct, this office will address only the summary totals on your report.

The report submitted indicated 106,255 ballots cast on the Statement of Votes and 104,270 voters on the "voted tape". Staff has reviewed our "voted tape" and has determined there are 104,447 individual voter records on the "voted tape". Therefore, that shall be the base number used.

104,447	"Voted tape" total
666	"White provisional" voters not included on "voted tape"
218	"New citizen" voters not included on "voted tape"
464	Canceled records not included on "voted tape"
105,795	Total

This leaves a difference between the "voted tape" and the Statement of Votes of 460 records. The 460 records indicate an average of two data entry errors per "consolidated voting" precinct.

The information you have submitted has been valuable in providing an additional opportunity for this office to review various aspects of our operation. Thank you for bringing your concerns to my attention.

Very truly yours,

Rosalyn Lever
Registrar of Voters

cc: Ben deMayo, Deputy County Counsel
John Mott-Smith, Office of the Secretary of State
Mike Kirby, Committee on House Oversight
Mark Blencowe, Committee on House Oversight

REVIEW-3 1/17/97

Sanchez Exhibit #2

Robin H. Carle
Clerk

Linda G. Nave
Deputy Clerk

Office of the Clerk
U.S. House of Representatives
Washington, DC 20515-6601

97 FEB 10 PM 4:21

February 10, 1997

BY HAND-DELIVERY

Honorable William M. Thomas, Chairman
Committee on House Oversight
U.S. House of Representatives
1309 Longworth House Office Bldg.
Washington, D.C. 20515

Re: Robert K. Dornan v. Loretta Sanchez

Dear Chairman Thomas:

Pursuant to 2 U.S.C. § 393(b), I hereby transmit the originals of Robert K. Dornan's "Opposition to Motion to Dismiss Notice of Election Contest or, in the Alternative, for a More Definite Statement" and "Evidentiary Appendix," both of which were received in this office on February 10, 1997.

If you have any questions concerning this matter, please do not hesitate to contact Geraldine R. Gennet, the Acting General Counsel, at 225-9700.

With warm regards,

Sincerely,

Robin H. Carle, Clerk
U.S. House of Representatives

Enclosures

ORIGINAL

William R. Hart, Bar No. 71127
HART, KING & COLDREN
A PROFESSIONAL CORPORATION
200 E. Sandpointe, Fourth Floor
Santa Ana, California 92707
(714) 432-8700

Attorneys for Contestant, Robert K. Dornan

COMMITTEE ON HOUSE OVERSIGHT

OF THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES

In the Matter of the Contested Election of Loretta Sanchez For the Office of House Representatives to the United States Congress, Robert K. Dornan Contestant, vs. Loretta Sanchez, Contestee.	OPPOSITION TO MOTION TO DISMISS NOTICE OF ELECTION CONTEST OR, IN THE ALTERNATIVE, FOR A MORE DEFINITE STATEMENT [EVIDENTIARY APPENDIX FILED CONCURRENTLY AND IN SUPPORT OF OPPOSITION]

1. **ISSUES AND CONCLUSION:**

Issue No. 1: Whether a Notice of Election Contest ("Notice of Contest") that was properly filed with the House Oversight Committee ("Committee") of the House of Representatives of the United States Congress ("House") and whose allegations are by the day being substantiated by contestant, Robert K. Dornan ("Contestant"), and by other reliable objective independent sources, including the California Secretary of State's office, the Orange County District Attorney's office, the Los Angeles Times and

the Orange County Register, should be dismissed prior to formal discovery and a formal presentation of clear and convincing evidence to the Committee (as required by 2 USC §381, et seq., commonly known as the Federal Contested Election Act, hereinafter the "Act") on the alleged meritless, frivolous, and bogus grounds that the Contestant failed to exhaust state remedies, that the Notice of Contest does not contain sufficient particularity, that the contestant allegedly failed to make a claim for the contested seat, and that the Notice of Contest was allegedly untimely?

Conclusion: Loretta Sanchez' (Contestee) motion is without merit, frivolous and apparently filed for purposes of obfuscation and delay in complete disregard for the intelligence of this Committee and the integrity of the electoral process in that:

A) Pursuant to the Act this Committee has original jurisdiction sitting as a finder of fact to hear this election contest especially since this contest does not involve mere "pre-election irregularities" that could have been addressed under state law prior to the election;

B) The Notice of Contest contains sufficient particularity so as to permit the Contestee to formulate an answer and respond to the individual allegations contained therein, especially in light of the plethora of evidentiary information regarding the election fraud, irregularities and malconduct that have been uncovered by various entities, including the Orange County District Attorneys Office and the California Secretary of State and as

reported fully and completely in the electronic media and the printed press; (Los Angeles Times, Orange County Register, USA Today and Washington Times)

C) The alleged defect in the Notice of Contest that Contestant has failed to make a claim for the disputed seat is nothing more than legal sophistry given the unmistakable and direct allegations in the Notice of Contest;

D) The charge that the Notice of Contest was allegedly untimely is again nothing more than "legal shenanigans" that cry out for an imposition of sanctions against Contestee and her attorneys for the waste of time and money necessitated in responding to these groundless and frivolous allegations.

Issue No. 2: Whether Contestant should be required to file a more definite statement with respect to the allegations set forth in the Notice of Contest?

Conclusion: Contestant's Notice of Election Contest states allegations of fact with sufficient particularity so as to satisfy the requirements of 2 U.S.C. §382(b) such that no further statement of Notice of Contest is required, but, in the alternative, should the Committee deem such an augmentation necessary, said particularity is now more than amply provided by virtue of the evidentiary appendix that is presented herein and filed concurrently with this Opposition.

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2. **STATEMENT OF FACTS**:

Contestant's Notice of Contest arises out of the November 5, 1996 general election in which Contestant and Contestee were respectively, the Republican and Democratic Party nominees for the Congress in the 46th Congressional District of California. The 46th Congressional District is located within the County of Orange, State of California.

On November 26, 1996, Rosalyn Lever, Registrar of Voters of Orange County, certified the above-referenced election in favor of Contestee by 984 votes, 47,964 to 46,980.

On December 2, 1996, Contestant requested a formal recount of votes cast in the 46th Congressional District election. The recount commenced on December 10, 1996 and continued until December 21, 1996. The recount of actual ballots cast resulted in a reduction of the differential by 5 votes to 979.

Contestant's investigation in connection with the recount (supported and corroborated by the California Secretary of State and the Orange County District Attorney) has now developed information establishing voter fraud, irregularities and malconduct as follows:

(1) **Hermandad Mexicana Nationale Apparently Engaged in Plan to Register and Encourage Non-Citizens to Vote**.

Hermandad Mexicana Nationale (the National Mexican Brotherhood) (hereinafter referred to as "Hermandad") has been engaged for a number of years in the business of assisting non-citizens in their effort to become United States citizens. Hermandad is a tax-payer funded organization. Attached hereto are tax returns filed by Hermandad demonstrating that in the six (6) years, between 1988 and

1993, Hermandad reported receipt of over $35 million ($35,000,000.00) in tax-payer funds (local, state and federal grants) to subsidize their operation. Attached hereto as Dornan Exhibit No. "1" is the Hermandad Federal Tax Form 990 for the years 1992 (includes income from 1988 through 1992) and the 1993 Schedule A to Form 990.

Hermandad has admitted in interviews with the Los Angeles Times that their organization processed about 13,000 "clients" in 1996, and of that total, 10,000 "clients" attended classes in Hermandad's Santa Ana offices alone. See Dornan Exhibit No. "2". The overwhelming body of evidence suggests that Hermandad was instrumental in registering and encouraging to vote all of its "clients" that it processed through its offices. This suggests that Hermandad was instrumental in assisting 10,000 to 13,000 individual "clients" with the registration process in 1996 alone!

The admission by Hermandad that they have processed some 10,000 "clients" in the past year is significant because of the statements provided by three (3) out of the five (5) confidential informants contained within the search warrant affidavit obtained by the District Attorney.

Three (3) of the five (5) confidential informants were non-citizens when they began the Hermandad educational process as much as one and one-half years prior to the November 1996 election. Those confidential informants admit that as of the November 1996 elections, they still had not yet completed the educational process or become citizens through Hermandad. The significance of this is that it places the entire 10,000 "clients" list in question and suggests that a large percentage of same may yet not be citizens

even though they were registered and possibly voted in the November 1996 elections. (See Dornan Exhibit No. "3" at pages 8, 18, 19 and 21.)

In a Dornan phone bank investigation derived from a list of Hermandad registered voters, we quickly identified 17 individuals who admitted over the telephone that they were assisted both in the application for and completion of their absentee ballot prior to the November 5, 1996, election. It is illegal in the State of California for an organization such as Hermandad to actively engage in the "assistance" of private citizens in their completion of their absentee ballot. See Dornan Exhibit No. "4".

The evidence accumulated to date makes clear that the District Attorney, the Secretary of State and the Dornan investigation has identified a publicly funded, supposedly non-partisan, organization that has been engaged in the systematic registration and encouragement of non-citizen voting in the 46th Congressional District.

(2) Widespread Non-Citizen Registration and Voting in the 46th District

To date, Dornan investigators, together with the Orange County District Attorney and the California Secretary State's investigation have uncovered widespread evidence non-citizen voting and what appears to be a concerted plan on the part of Hermandad to illegally register and encourage non-citizens to vote in the 46th District.

On January 14, 1997, the Orange County District Attorney and Secretary of State served upon Hermandad a search warrant allowing them to confiscate all of Hermandad's files, computers and other

relevant material consistent with their ongoing investigation of voter fraud in Orange County, California. The search warrant was supported by an affidavit attesting to the fact that 227 non-citizens registered by Hermandad voted illegally. See Dornan Exhibit No. "3".

Our investigation has uncovered the names of 431 active files of Hermandad "students" who were apparently in the process of becoming naturalized United States citizens. By definition, these individuals are not yet United States citizens. This is only a list of the current active student files in January 1997. It does not yet include the list of thousands of Hermandad "students" who were registered by Hermandad over the past months and years and thereafter voted.

Of the 431 current active Hermandad "students", the Los Angeles Times reported on February 1, 1997, that their investigation revealed that 374 "students" had been illegally registered by Hermandad and of that group, at least 220 "students" actually illegally voted. From this small sample of "current students", it appears that 87% of the current Hermandad "students" were registered illegally and 59% of those illegally registered voters actually voted!! See Dornan Exhibit Nos. "5" and "15".

Following close examination of Dornan Exhibit No. "22", which consists of a Orange County Registrar list of voters which, in turn, has been edited by the Department of Justice and the INS, our investigation reveals that in the 46th District, 148 non-citizens who are still not United States citizens voted. This is out of a total of 227 such non-citizen voters in Orange County. Further, 102 non-citizens voted who admit that they were foreign born and

for whom the INS has no record of them ever being a United States citizen. Each of these voters voted illegally and their vote may not be counted in the general election in the 46th District.

On February 5, 1997, the Los Angeles Times in their ongoing investigative report revealed that at least five (5) informants have provided information to the District Attorney and the Secretary of State revealing evidence of a systematic effort by Hermandad and their agents to register and cause to vote all of the Hermandad students over many years even though those "students" were, by definition, not yet citizens. See Dornan Exhibit No. "6".

The current Los Angeles Times investigation has uncovered evidence that a total of 4,897 voter registration applications were checked out by Hermandad or its agents or affiliates since 1994. Many of these applications are unaccounted for or were not processed in accordance with California law.

(3) Affidavits Attest to Potential Voter Fraud and Malconduct by the Orange County Registrar's Office.

Attached hereto as Exhibits "7", "8" and "9" are affidavits of witnesses attesting to their first hand accounts of possible fraud and irregularities occurring before and on November 5, 1996.

Dornan Exhibit No. "7" attests to a conversation between Loretta Sanchez and others wherein Sanchez actually refers to "helping" a voter fill out their absentee ballot prior to the election.

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Dornan Exhibit No. "8" refers to voters in the 46th District who were approached by a Sanchez campaign worker and public official actually soliciting from a non-citizen an illegal vote and urging his wife to vote twice for Loretta Sanchez in the 46th District.

Dornan Exhibit No. "9" attests to an Orange County resident observing the Orange County Registrar's Office providing an individual with two (2) absentee ballots (one for him and one for his girlfriend) which the voter then filled out and voted all in violation of California law.

(4) Notice to the Orange County Registrar of Voting Irregularities in the 46th District.

On December 18, 1996, Congressman Dornan's representatives made the Orange County Registrar preliminarily aware of various voting irregularities that became apparent at the outset of the investigation. A copy of that letter is attached as Dornan Exhibit No. "10".

After "investigating" these concerns, the Orange County Registrar responded one month later on January 17, 1997, by letter attached as Dornan Exhibit No. "11". Congressman Dornan's representatives then responded on January 23, 1997, with the letter attached as Dornan Exhibit No. "12".

The Committee will note that as a direct result of the initial preliminary alert to the Orange County Registrar's Office in December 1996, the commission of numerous felonies were apparently uncovered by the Registrar's Office.

The Committee will note that the Registrar admits that there were numerous instances of felony double voting; instances of

illegal voting from commercial addresses; instances of 127 single-family residential addresses from which six (6) to twelve (12) persons actually voted; numerous instances where voter affidavits were illegally held for more than three (3) days as prescribed by California law.

The most interesting response by the Orange County Registrar refers to the apparent discrepancy of 1,985 votes that exists when one compares the official "as voted" computer tape and the actual number of ballots counted in the 46th District. Of the 1,985 vote discrepancy, the Registrar identifies "464 cancelled records not included on the voter tape". No evidence is offered to explain which records were cancelled or why. Congressman Dornan's representatives have specifically requested evidence from the Registrar's office supporting the claim that 464 cancelled records were not included on the voter tape and were told by Rosalyn Lever, the Registrar of Voters, that they did not have any evidence to support the 464 cancelled records.

However, according to the District Attorney's affidavit in support of the search warrant upon Hermandad the confidential informant number 3 was a non-citizen who voted in the November 5, 1996, election and then had her registration cancelled by the Orange County Registrar's Office because confidential informant number 3 told the Registrar that she was not a citizen when she registered and voted. See Dornan Exhibit No. "3".
This clearly suggests that all or a substantial portion of the 464 cancelled records are a result of non-citizens voting whose registrations were later cancelled after the election.

Ms. Lever then referred Dornan's representatives to an outside

consultant called DFM Associates. In discussions with DFM Associates, it was apparent that they were also unable to provide independent documented evidence supporting the 464 cancelled records. Congressman Dornan wants to know whether or not these 464 records were cancelled because it became known to the Registrar that they represented illegal votes. Bear in mind, these are 464 records that represent actual ballots counted in the 46th District election which have subsequently been cancelled without explanation by the Registrar.

Further, the Registrar identifies an additional 460 vote differential for which there is no explanation supported by evidence. The claim is made that this may be "data entry error" on the part of functionaries at the Registrar's office. No evidence is offered for this proposition.

The unexplained, indeed bazaar, discrepancy between the "as voted" tape and the actual number of ballots counted of 924 votes represents almost the entire voting differential in this election. Literally hundreds of federal and state elections over the years have been decided by far less than this discrepancy alone!

(5) Hermandad and Its Executive Director, Nativo Lopez, Engaged in Possible Illegal Partisan Political Activities Affecting the Vote in the 46th District.

In the District Attorney's search warrant, the District Attorney uncovered evidence that Nativo Lopez ("Lopez"), Hermandad's executive director and successful candidate for the Santa Ana School Board in this same election, participated in the organization of a "lottery" for a 1996 Chevrolet Camaro as an incentive to register to vote through Hermandad in Orange County,

California. It has been reported that when Lopez was advised that such a "lottery" was illegal under state and federal law, the "lottery" was discontinued.

However, the Los Angeles Times reported on February 5, 1997, that the "lottery" was not discontinued after notice that it was illegal and, in fact, a non-citizen "won" the "lottery" and received Twelve Thousand Dollars ($12,000.00) in cash from Hermandad! The Los Angeles Times reports that apparently a photograph was staged where the registered non-citizen was photographed with his family in front of a Chevrolet dealership displaying a 1996 Chevrolet Camaro but, in fact, the non-citizen did not receive what was promised by Hermandad in the "lottery". See Dornan Exhibit No. "13". The District Attorney's search warrant affidavit states "by running the raffle as a group, Hermandad Mexicana Nationale personnel appeared to have conspired together to conduct an illegal lottery". See Dornan Exhibit No. "3".

(6) Hermandad Illegally Registered Non-Citizens Who Subsequently Became Citizens and Voted.

According to the California Secretary of State, a non-citizen may not register illegally--then become a citizen--then vote, because their original registration was processed illegally. On January 14, 1997, the Secretary of State reported in a legal analysis, that "it is not his opinion that the legislature intended to create a classification allowing non-citizens to register to vote." See Dornan Exhibit No. "14".

In documents obtained by Congressman Dornan's investigators, the United States Department of Justice, in cooperation with the

District Attorney's office, has identified 152 individuals who were registered by Hermandad in the 46th District while they were non-citizens, who later became citizens and then voted in the November 5, 1996, election. See Dornan Exhibit No. "22". California State law requires that these 152 votes be voided because in each case, the registration was processed illegally. We are sure that the Committee will bear in mind the fact that each prospective voter "declares under penalty of perjury that they are United States citizen" at the time that they registered to vote.

(7) Defective Absentee Voter Records.

To date, we have identified a list of 128 absentee ballot (AB) envelopes that were clearly defective on their face based upon a review of the envelopes in question. The AB envelopes examined were only those that were delivered by hand to a polling place on November 5, 1996. A true and correct copy of the list of defective AB envelopes is included in the accompanying Evidentiary Appendix and marked Dornan Exhibit No. "16". The discrepancy column refers to what appears to be an inadequately completed delivery information from third parties who delivered these absentee ballots. Pursuant to California Elections Code §3017, absentee ballots may only be delivered by immediate blood relatives, not including nieces, nephews, aunts, uncles, friends, roommates, godfathers, etc. Dornan Exhibit No. "16", contains only a partial list in that some 11,000 AB envelopes remained unexamined at this time.

(8) Illegal Voting From Business Addresses

Substantial numbers of voters who participated in the election held in the 46th Congressional District were improperly registered

and voted from business addresses rather than residential addresses as required by California law. Investigators actually visiting the business addresses in question have identified at least 22 solely commercial addresses from which 39 registered voters voted. Examples included: Ace Muffler Shop; Surgard Storage; Burger King; Fifth Avenue Florist; Payless Shoe Source; and San Antonio Bakery. See Exhibit "17" attached hereto. This investigation is continuing on a door-to-door basis.

(9) Illegal Double Voting

To date, our investigation has uncovered 38 cases of apparent double voting by comparing confirmed double registrations with matching signatures and then comparing them to the "as voted list". See Dornan Exhibit No. "18". Of these 38 instances of apparent double voting (total of 76 votes), the Orange County Registrar has turned over eleven (11) to the District Attorney for prosecution.

(10) Six to Twelve Voters Living at a Single Residential Address.

To date, our investigation has disclosed, and the Registrar's office has acknowledged, 127 individual, single family residences (we excluded rest homes and apartments) with six (6) to twelve (12) registered voters in residence who actually voted in the 46th District election!! As many as twelve registered voters actually voted from some of these residential addresses!! This category alone represents over 700 votes in the 46th Congressional District. This is a suspect category of the vote that must be thoroughly investigated. A partial list is attached as Dornan Exhibit No. "19".

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(11) Affidavits Potentially Held for More Than Three Days Before Submittal to The Registrar of Voters.

The investigation has developed a list of hundreds of voters in the 46th District who were registered by Hermandad in the months prior to the election. Hundreds of these affidavits were held days and weeks longer than the three-day maximum provided by the California Elections Code §3008. Over Four hundred of these registration affidavits were turned in *en masse* by Hermandad and their agents before this election on the last day (October 7, 1996) allowed by law.

To summarize, Contestant has identified the following instances of voter fraud and irregularities occurring in the 46th District on or before November 5, 1996: (1) a total of 924 unexplained and unaccounted for ballots counted in the 46th District; (2) an illegal lottery sponsored by Hermandad to encourage non-citizen registration, the winner of which was a non-citizen who received Twelve Thousand Dollars ($12,000.00); (3) 374 illegally registered Hermandad "students" in January 1997; (4) 220 Hermandad "students" actually illegally voted; (5) of the small sample of 431 current, active Hermandad "students", 87% were illegally registered and 59% of those actually voted illegally; (6) 152 illegally registered citizen voters; (7) 148 INS verified non-citizen voters (documented); (8) 102 INS verified non-citizen voters (no record); (9) sworn affidavits attesting to the overall plan to encourage persons to vote illegally and/or vote twice; (10) 128 persons illegally delivering absentee ballots; (11) 39 persons illegally voting from 22 business addresses; (12) 38 persons illegally voting twice representing 76 votes; (13) 127 instances of 6 to 12

registered voters voting from the same single-family residential address representing over 700 votes; (14) hundreds of voter affidavits being held by Hermandad longer than the legally prescribed three (3) days; (15) over 400 Hermandad registrations turned in by Hermandad on the last possible day (October 7, 1996).

3. **DISCUSSION**

On December 26, 1996, Contestant filed with the House Oversight Committee and served on Contestee his Notice of Contest. A true and correct copy of the Notice of Contest is included in the Evidentiary Appendix and marked Dornan Exhibit "20". The salient allegations from the Notice of Contest with respect to Contestee's Motion are as follows:

> ¶1 "You are hereby notified that the undersigned, defeated candidate for the Office Congressperson of the House of Representatives to the United States Congress, 46th Congressional District Seat in the general election held on November 5, 1996, hereby files a contest of that election, this notice being served on you as the successful candidate."
>
> ¶5 "You are further notified that this contest relates to Contestee's right to hold and fill the Office of House Representative to the United States Congress, 46th Congressional District Seat."
>
> ¶6 "You are further notified that the following are the grounds on which this contest is based:
>
> (A) That the precinct board or a member thereof was guilty of malconduct. The Precinct Board and members thereof and the Orange County Registrars

Office failed to properly and accurately account for the registered voters who actually voted and reconcile that total with the number of ballots cast in the election. There is a differential of approximately 1,985 more ballots that were counted then voters voting who were accounted for. These irregularities were sufficient to change the election result.

(B) That illegal votes were cast. Illegal votes were cast in that multiple voters voted two and/or three times; voters voted from commercial business addresses instead of residential addresses; ballots were counted from absentee envelopes that were delivered by unauthorized third parties to the Precinct; under age voters voted; non-citizens of the United States voted; and convicted felons may have voted. These irregularities were sufficient to change the election result.

(C) That the Precinct Board in conducting the election or in canvassing the returns, made errors sufficient to change the result of the election. The Precinct Board counted ballots for which there was no voter accounted for; the Precinct Board counted ballots from non-citizens and persons otherwise not allowed to vote; The Precinct Board counted ballots voted by persons who were not registered to vote. The total number of errors exceeded the vote differential in the election. These irregularities were sufficient

to change the election result.

(D) That there was an error in the vote-counting programs or summation of ballot counts. There was an error in the vote counting programs and/or summation of the ballot counts in that the official election total was not consistent with the actual ballots cast with each candidate; and the Registrar of Voters own reports do not reconcile between the number of ballots cast and the number of voters who voted. These irregularities were sufficient to change the election result."

Prior to the inception of formal discovery contemplated by 2 U.S.C.S. §386, Contestant through the recount process and by means of his own investigation and the investigation of others, including the Orange County District Attorney's office and the California Secretary of State's office, has adduced and is in the process of uncovering substantial evidence of voter fraud, illegalities, irregularities, malconduct and errors of such a magnitude that it is beyond question that the integrity of the electoral process with respect to this race was irrevocably tainted in that the illegalities and irregularities were sufficient to change the election result. It is irrefutable that the Notice of Contest and the evidence and charges that have surfaced contemporaneously provide the Contestee with ample basis for filing an answer and undisputably elevate and distinguish this Contest from the arena of the frivolous to a contest that questions the very integrity of the election process both in the 46th District and throughout California.

4. CONTESTEE'S MOTION TO DISMISS OR, IN THE ALTERNATIVE, FOR A MORE DEFINITE STATEMENT IS MERITLESS AND CONTESTEE SHOULD BE ORDERED TO ANSWER THE NOTICE OF ELECTION CONTEST WITHIN TEN DAYS.

(A) **No statutory basis exists for the dismissal of Contestant's Notice of Contest.**

Contestee brings her motion to dismiss pursuant to 2 USCS §383(b) entitled, "Defenses by motion prior to answer", which provides as follows:

> "At the option of contestee, the following defenses may be made by motion served upon contestant prior to contestee's answer:
>
> (1) Insufficiency of service of notice of contest.
>
> (2) Lack of standing of contestant.
>
> (3) Failure of notice of contests to state grounds sufficient to change result of election.
>
> (4) Failure of contestant to claim right to contestee's seat."

As set forth herein, none of the grounds set forth in 2 USCS §383(b) are available by way of a successful challenge to Contestant's Notice of Contest.

As opposed to the grounds set forth in the statute, Contestee predicates her motion on the grounds that Contestant allegedly: (1) failed to exhaust state remedies; (2) presented a claim with insufficient particularity; (3) failed to make a claim for the contested seat; and (4) failed to file a timely Notice of Contest with the House. None of these grounds are well taken in that they are meritless, frivolous and/or procedurally under the statute not

available to Contestee.

(B) **The House has Jurisdiction Over This Election Contest and There is no Requirement That Contestant Exhaust State Remedies.**

(1) House Jurisdiction and Powers.

The Constitution authorizes each House to be the judge of the elections, returns, and qualifications of its Members. See, U.S. Const. Article I Section 5. Thus, the House is entitled to judge contested elections involving its seats, and is not bound by agreement of the parties or decisions of state tribunals. See, 6 Cannon §90-92. The determination by the House as to the right to the seat is final, this being considered a non-justiciable political question. See, Roudebush v. Hartke (1972) 405 U.S. 15. See also, House Practice, a Guide to the Rules, Precedence and Procedures of the House, William Holmes Brown, 104th Congress, Second Session, Page 460.

The House acquires jurisdiction of an election contest upon the filing of a Notice of Contest by a defeated candidate. See, Deschler's Precedents of the United States House of Representatives, Volume II, Chp. 9, Section 4.1. Congress has always regarded itself as the final judge of elections. For example, the Committee on House Administration in a report dated May 24, 1972 (H. Rept. No. 92-1090), stated:

> "It is the Committee's feeling that once the final returns in any election have been ascertained, the determination of the right of an individual to a seat in the House of Representatives is in the sole and exclusive jurisdiction of the House of

Representatives under [Section 5 of Article I, Constitution of United States]."

Jurisdiction over contested elections is given to the Committee on House Administration (now House Oversight Committee) by the House Rules; and the responsibility for hearing contested election cases falls on the Committee on House Administration. (Now, House Oversight Committee). See, Rule XI, Clause 9(k), House Rules and Manuals §693 (1973); 2 USCS §392(a).

The courts of a state have no direct power to judge the elections, returns and qualifications of representatives in Congress; the House of Representatives is not required to follow state law in determining which ballots count. See, House Administration Committee Report No. 91-569 (91st Cong., First Session, 1969); McIntyre v. Morgan (1985, SD Ind.) 624 Fed. Supp. 658.

An examination of the act discloses that there is no condition precedent imposed on contestants to exhaust state remedies.

2 USCS, §382 entitled, "Notice of contest" provides in part:

> "(a) Filing of notice. Whoever, having been a candidate for election to the House of Representatives in the last preceding election claiming a right to such office, intends to contest the election of a Member of the House of Representatives, shall, within 30 days after the result of such election shall have been declared by the officer or Board of Canvassers authorized by law to declare such result, file with the Clerk and serve upon the contestee written notice of his

intention to contest such election." (Emphasis added.)

An examination of the above quoted section indicates that filing a notice of election contest with the Clerk of the House of Representatives of the United States is mandatory in that the statute utilizes the word "shall". There is absolutely no indication in Section 382 that contestant is required prior to filing his Notice of Contest with the clerk of the House of Representatives to file a state action. In fact, given the conflicting time constraints under both the federal statute, 2 USCS §382, and state statute, California Elections Code §§16400, 16401 and 16500, it would be virtually impossible to fully litigate and consummate a state action prior to the deadlines set up in the Act for filing a notice of contest. Under the Act a contestant must initiate an election contest by filing the Notice of Contest within thirty (30) days after the result of the election has been certified.

Additionally, an examination of the Act clearly discloses that pursuant to its provisions, the House is analogous to a trial court conducting many of the same functions, including: law and motion practice; discovery; receipt, consideration, and adjudication of evidence.

Finally, on the issue of jurisdiction and House powers, it is important to note that notwithstanding the availability of the statutory election contest procedures set forth in the Act, some election disputes have been presented directly to the House for consideration and Committee investigation. See, for example, H. Rept. No. 99-58 (1985). An investigation of a challenged election

has been initiated pursuant to:

- Action by the House in directly referring the question of a member - elects right to a seat to the Committee on house oversight (Deschler Ch. 2 Section 6).
- A protest filed by an elector of the district concerned (Deschler Ch. 9 Section 17.1).
- A memorial filed by another person challenging the qualifications of the member-elect (Deschler Ch. 9 Section 17.3).

2. **Contestee's Reliance on an Exhaustion of State Remedies Theory is Particularly Misplaced in That Said Theory Appears to Apply to Pre-Election Irregularities or Recounts.**

Contestee asserts that House of Representative Precedence require Contestant to have exhausted all available state election remedies prior to availing himself of the procedure of the Act. In support of this position, Contestee cites several House precedents, including Swanson v. Harrington (Deschler's Precedence Section 50.4) and Carter v. LeCompte (Deschler's Precedence Section 57.1).

In Swanson, the contestant alleged various counts of fraud and illegality in connection with the number of votes cast at the Congressional election in question. The Committee dismissed the contestant's challenge, finding that the votes allegedly illegally cast were not a sufficient number to have affected the outcome of the election. In response, the contestant requested that the House order a recount of the total vote. The Committee then rejected this belated request of contest, finding that the contestant had not exhausted the remedy of a recount through the state courts, as

permitted by state law, prior to filing the election contest with the House. The Committee however, notwithstanding its ruling, recognized that it had the discretionary power to order a recount without reference to state proceedings if it so desired. See, Deschler's Precedence, Section 54.0 at 523-524.

In Carter v. Lecompte (Deschler's Precedence Section 57.1) it appears that part of the contestant's complaint concerned irregularities that appeared on the face of absentee ballots distributed before the election. Deschler's Precedence, Section 57.1 at 578. In dismissing the contestant's challenge, the majority determined that the contestant had not properly objected to the errors in the absentee ballots prior to the election, as permitted by state law. Consequently, the Committee determined that the results of the election could not be "overturned because of some pre-election irregularity" Id. at 598 (emphasis added).

The irregularities with the absentee ballots in this case did not appear on their face prior to the election, and the contestant has already proceeded through a recount process at the state level.

(C) **As Stated in Contestant's Notice of Election Contest, the Irregularities Alleged (i.e., Voting Fraud, Illegalities and Malconduct) Are Sufficient To Change the Election Result.**

Although formal discovery has not yet even begun in this case, Contestant's investigation, the state recount process, and the investigations of the Orange County District Attorney's Office and the Secretary of State's office have resulted in uncovering evidence at this early juncture sufficient to change the election result.

Voter fraud is often alleged in connection with elections and rarely proven. In most cases, charges of "thousands" of cases of voter fraud, distill, in the end, to smaller numbers in various fraud categories when hard evidence emerges, if in fact it ever does. What makes this case different is that, just with contestant's preliminary investigation and examination, and the preliminary investigation and examination of the Orange County District Attorney's Office and the California Secretary of State's Office, the quantity of documented specific instances of voting fraud, illegalities and malconduct is far greater by a verifiable and quantifiable number than any other case ever presented to this Committee.

In summary, investigation to date has identified 1,789 instances of either actual or apparent illegal votes being cast in this election. The actual figures from a complete investigation will undoubtedly be higher, probably much higher.

In Oliver v. Hale (Deschler's Precedence Section 57.3, 12.7) statutory violations by voters in failing to comply with state absentee voter laws were held sufficient to invalidate the ballots cast.

In the 1958 Maine contested election case of Oliver v. Hale arising from the September 10, 1956, election, the report of the Committee on House Administration listed nine areas stressed by the contestant in which there had been a failure on the part of the voter to comply with the absentee voting laws of Maine: application for absentee or physical incapacity ballot not signed by the voter; application for physical incapacity ballot not certified by physician; envelope not notarized; no signature of voter on

envelope; jurat not in form as prescribed by statute; name of voter and official giving the oath are the same; variance in writing between signature on application and signature on envelope; failure of voter to specify on envelope his reason for absentee voting; and voter not properly registered or qualified to vote.

The Committee concluded that there were 109 instances where the voter failed to substantially comply with the election laws, leading to rejection of ballots as compliance was mandatory.

The evidence to date in the instant case, even without the assistance of formal discovery as provided for in the Act, is establishing that the illegal votes were cast overwhelmingly in Contestee's favor. Therefore, establishing any kind of a proportion or relationship between the illegal ballots and the parceling out of those illegal ballots to the two candidates is inherently unfair. This case presents an egregious example of where more ballots were improperly cast than the margin of victory. The irregularities are more than sufficient to change the result of the election.

5. **CONTESTANT'S NOTICE OF ELECTION CONTEST WAS FILED TIMELY WITH THE HOUSE.**

The Act at 2 USC §382(a) provides that within 30 days after the results of the election the "Notice of Contest" shall be filed with the Clerk of the House of Representatives of the United States and served upon the Contestee.

2 USC §382(c) entitled, "Service of Notice; Proof of Service" provides the procedure by which the Contestee is to be served with the Notice of Contest.

Contestant's Notice of Contest was personally filed with the

Committee and served by mail on Contestee at both her Washington and California offices on December 26, 1996. Given the election was certified on November 26, 1996 the Notice of Contest was both timely filed and served. Included in the Evidentiary Appendix as Dornan Exhibit Nos. "20" and "21", are Robin H. Carle's January 6, 1997, letter to the Honorable William M. Thomas and a conformed copy of Contestant's Notice of Election Contest, all evidencing that the Notice of Contest was timely filed on December 26, 1996.

6. **CONCLUSION**.

Contestee's Motion to Dismiss or, in the Alternative, for a More Definite Statement should be denied and Contestee should be required to respond to the Notice of Election Contest within 10 days following said order of denial.

The election fraud and irregularities in the 46th District that have surfaced since the November 1996 represent a landmark opportunity for the House to correct voter fraud and injustice, return integrity to the California electoral process, and send an unmistakable message to election officials, candidates, voters, and voter assistance organizations that voter fraud will simply not be tolerated in the United States.

Dated: February 7, 1997

HART, KING & COLDREN

By: _____
William R. Hart
Attorneys for Contestant, Robert K. Dornan

71362.001/157332

PROOF OF SERVICE
Section 1013A (3)

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the county of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 200 East Sandpointe, Fourth Floor, Santa Ana, California 92707-0507.

On February 7, 1997, I caused the foregoing document described as **OPPOSITION TO MOTION TO DISMISS NOTICE OF ELECTION CONTEST OR, IN THE ALTERNATIVE, FOR A MORE DEFINITE STATEMENT** to be served on the interested parties in this action by placing ( ) the original; **(X)** a true copy thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST.

____ **BY MAIL** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Santa Ana, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing in the affidavit.

____ **BY FACSIMILE TRANSMISSION** On February 7, 1997, in addition to service by mail, I served the above-referenced documents by facsimile transmission to _____.

_XX_ **BY FEDERAL EXPRESS** I caused such envelope to be placed for collection and delivery on this date in accordance with standard Federal Express overnight delivery procedures.

____ **BY PERSONAL SERVICE** I caused such envelope to be delivered by hand to the offices of the addressee.

Executed on February 7, 1997, at Santa Ana, California.

____ **STATE** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

_XX_ **FEDERAL** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Chae C. Ianni

SERVICE LIST

Counsel for Contestee, Loretta Sanchez

Stanley M. Brand
David E. Frulla
BRAND, LOWELL & RYAN
923 15th Street, N.W.
Washington, DC 20005

Fredric D. Woocher
Michael J. Strumwasser
STRUMWASSER & WOOCHER
100 Wilshire Blvd., Suite 1900
Santa Monica, CA 90401

Robin H. Carle
Clerk

Linda G. Nave
Deputy Clerk

Office of the Clerk
U.S. House of Representatives
Washington, DC 20515–6601

March 12, 1997

BY HAND-DELIVERY

Honorable William M. Thomas, Chairman
Committee on House Oversight
U.S. House of Representatives
1309 Longworth House Office Bldg.
Washington, D.C. 20515

Re: Robert K. Dornan v. Loretta Sanchez

Dear Chairman Thomas:

Pursuant to 2 U.S.C. § 393(b), I hereby transmit the originals of the following pleadings which were filed in this office:

- The Honorable Loretta Sanchez's Renewed Motion to Dismiss the Above-Captioned Notice of Contest
- Notice of Ruling, including transmittal letter

If you have any questions concerning this matter, please do not hesitate to contact Geraldine R. Gennet, the Acting General Counsel, at 225-9700.

With warm regards,

Sincerely,

Robin H. Carle

Robin H. Carle, Clerk
U.S. House of Representatives

Enclosures

BEFORE THE COMMITTEE ON HOUSE OVERSIGHT
UNITED STATES HOUSE OF REPRESENTATIVES

ROBERT K. DORNAN,	)
Contestant	)
v.	)
THE HONORABLE LORETTA SANCHEZ,	)
Contestee.	)

THE HONORABLE LORETTA SANCHEZ'S RENEWED MOTION TO DISMISS THE ABOVE-CAPTIONED NOTICE OF CONTEST

For the reasons set forth below, Congresswoman Loretta Sanchez hereby respectfully renews her Motion to Dismiss the Notice of Election Contest filed by Mr. Robert K. Dornan. She submits the following new information and evidence demonstrating why the Task Force should grant her renewed Motion to Dismiss:[1]

[1] On February 26, 1997, the Task Force assigned by the Committee on House Oversight to review Mr. Dornan's claims voted, by a 2-1 party line vote, to postpone disposition of Congresswoman Sanchez's original motion to dismiss, filed on January 23, 1997, pending a hearing now scheduled to be held in Orange County in late April or May. The Federal Contested Election Act ("FCEA") states that, upon postponement of such a motion until a hearing on the merits, "the answer shall be served within ten days . . . ." 2 U.S.C. § 383(d). However, that Act also provides that, "*[a]t the option of contestee,*" a contestee may move to dismiss a notice of election contest instead of filing an answer. 2 U.S.C. § 383(b) (emphasis added). Congresswoman Sanchez is opting, pursuant to Section 383(b), to renew and supplement her motion to dismiss in lieu of answering. Likewise, dispositive motions made in Federal district courts pursuant to the Federal Rules of Civil Procedure may be renewed and supplemented, based upon new evidence and information. Indeed, the Committee on House Oversight itself concluded last Congress that an FCEA motion to dismiss is a blend of a Rule 12(b)(6) motion to dismiss and a Rule 56 motion for summary judgment. *Anderson v. Rose*, House of Reps. Comm. on House Oversight, H. Rep. No. 104-852, 104th Cong., 2d Sess. (Sep. 26, 1996), at 8-10. Both of these motions, and particularly a

(continued...)

I. CONGRESSWOMAN SANCHEZ'S RENEWED MOTION TO DISMISS NOTICE OF ELECTION CONTEST

Subsequent developments relating to Mr. Dornan's claims reveal that he will never be able to carry forward any credible claim to Congresswoman Sanchez's seat. Indeed, Mr. Dornan's own counsel, Mr. Schroeder, now claims that there are only potentially 1,072 allegedly fraudulent ballots, down from the 1,789 ballots that Mr. Dornan had questioned little more than a month ago in his February 7 submission to this Committee. *See* "Judge squelches Dornan subpoenas, at least for now," Associated Press (March 7, 1997)(attached as Exhibit A hereto).

For its part, the *Los Angeles Times* and *Orange County Register*, whose investigative reporting has helped fuel this election contest, have not been able to identify anywhere near the number of illegal votes necessary to call this election into question. Indeed, just yesterday, a Los Angeles Times editorial concluded:

> . . . Republican Dornan has also asked the House of Representatives to rule that he was defeated by Democrat Loretta Sanchez due to voting by noncitizens. A federal magistrate initially gave him the right to subpoena information in an effort to support his claims, but a federal judge Friday blocked enforcement of subpoenas issued by Dornan. It was difficult to see the relevance of the information Dornan sought to allegations of voter fraud. *It appears that Dornan, four months after losing at the polls, is grasping at straws, unable to come to grips with the fact that*

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[1](...continued)
summary judgment motion, are renewable and often renewed pursuant to the Federal Rules of Civil Procedure.

> *voters in his 46th Congressional District decided they liked Sanchez better than him.*

"Dornan's Subpoenas Cast Doubt on His True Intent," *Los Angeles Times* (Orange County ed.), at B1 (March 9, 1997) (emphasis added) (attached hereto as Exhibit B).[2]

It is time for the Task Force to call a halt to Mr. Dornan's incredible shrinking election contest. As the Task Force has acknowledged, the proper state and local authorities are already investigating these allegations of potentially improper voting in Orange County that do not rise to the level of affecting the outcome of the 46th District election, which Congresswoman Sanchez won by 979 votes.

II. STANDARD OF REVIEW

No one disputes that the Task Force's inquiry into this election contest has two prongs: (1) were there improper or illegal votes?; and (2) were any such improprieties sufficient in number to, in words of Task Force Chairman Ehlers, "affect the

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[2] The *Los Angeles Times*'s allegations were deemed pivotal to the Task Force members' voting not to dismiss the notice of election contest on February 26, 1997. Congressman Ney stated, "And also, according to the *Los Angeles Times* in interviews, 19 acknowledgments that some people had not met naturalization requirements and voted. That's 19. Are there more? I mean, I don't know -- are there -- what the situation is. But there are some situations that, just by media reports, information that has come in, it makes you -- you look at it and wonder what the whole situation is in the election." For his part, Task Force Chairman Ehlers also credited articles from the *Los Angeles Times* and the *Orange County Register* is deciding to postpone disposition of Congresswoman Sanchez's original Motion to Dismiss. Mr. Dornan himself attached no fewer than four *Los Angeles Times* newsclips to his February 7 opposition to the Congresswoman's Motion to Dismiss.

result of the election"? Chairman Ehlers explained at the Task Force's February 26 meeting that:

> And so this is a double test that we must address in this Task Force, not simply a matter of looking at the legality or illegality of various aspects of the election or mistakes, honest or otherwise.

In order to survive a Motion to Dismiss, the Contestant must provide "credible evidence" of a sufficient number of illegal and improper votes to change the results of the election. *Anderson v. Rose, supra*. In that decision, the Committee on House Oversight explained:

> A key word in this test is "credible." A Task Force should not allow a losing candidate to contest an election based on general or disproven claims of fraud or irregularity.

Anderson v. Rose, supra, at 7.

The burden remains on the contestant to carry forward with his or her claims at *all* stages of the election contest. If a contestant does not make such a showing, his or her notice of election contest is subject to dismissal pursuant to 2 U.S.C. §§ 383(b)(3) & (4) ("[f]ailure of notice of contestant to state grounds sufficient to change the results of the election" and [f]ailure of contestant to claim right to contestee's seat", respectively).

Contestant Dornan's allegations do not meet this threshold. As we explain herein, any claim that he has made that has not already been disproven or is not general, is not sufficient in magnitude to call Congresswoman Sanchez's 979-vote victory into reasonable question.

III. THE REGISTRAR'S CONCLUSION IS BEING INDEPENDENTLY CONFIRMED THAT ONLY A VERY SMALL NUMBER OF THE VOTES THAT MR. DORNAN IDENTIFIED IN HIS ORIGINAL NOTICE OF ELECTION CONTEST AND AGAIN IN HIS FEBRUARY 7 SUBMISSION WERE ACTUALLY IMPROPER

On January 17, 1997, the Orange County Registrar transmitted a letter to counsel for Mr. Dornan demonstrating that he had identified, at most, a handful of actually illegal ballots and that nothing Mr. Dornan had identified would have changed the outcome of the election.[3]

We now have independent confirmation that the Registrar has been right all along. The *Los Angeles Times* reported on Friday, March 7, 1997, that many of these voters were not only real voters, but many of them supported Mr. Dornan. For instance:

- 17 of the questioned voters were Marines stationed at the Tustin Air Base. Not a single one of these Marines was a registered Democrat.
- 18 of the questioned voters were Catholic nuns, living at a board and care facility for the elderly. They would be likely to support Mr. Dornan's conservative position on certain social issues of the day.
- Many of the questioned voters are staunchly anti-Communist South Vietnamese immigrants. The *Los Angeles Times* identified one home with 10 Vietnamese-American voters -- all of whom properly voted and some of whom admitted on the record that they voted for Mr. Dornan.
- Certain of the questioned voters, such as the predominantly Republican Georgieff family of six

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[3] On December 18, 1996, Mr. Dornan had submitted a letter to the Registrar asserting that potentially thousands of 46th District votes were illegal because certain voters were registered at business addresses, because certain voters were under age, because absentee ballots were not properly handled, because certain addresses had more than six registered voters, because certain voter registration affidavits may have been held longer than three days, and because the Statement of Votes and the so-called "voted tape" did not match.

voters, were simply extended families living under the same roof.

- The Zamora family also had six perfectly legal voters under one roof.

See "Many Dornan 'Suspects' Prove Legitimate Voters," *Los Angeles Times* (Orange County ed.), at A1 (March 7, 1997) (attached hereto as Exhibit C). In fact, the *Los Angeles Times* investigated a full 60 of Mr. Dornan's questioned residences. Each contained the requisite legal voters. *Ibid.*

This one newsclip demonstrates two pivotal points:

(1) The Task Force should credit the conclusions set forth in the Orange County Registrar's January 17 letter to Mr. Dornan, and reject Mr. Dornan's on-going efforts to allege that this long-serving Republican public servant engaged in "malconduct" that resulted in changing the election's outcome;

(2) Mr. Dornan (and the Task Force) cannot simply assume that every vote that he questioned would have voted for his opponent. The House's traditional rules of proportional deduction should apply with full force to Mr. Dornan's claims at this and every stage of these election contest proceedings.

Mr. Dornan should not, therefore, be heard to stubbornly persist, as his February 7 submission to the Task Force does, in questioning the votes involved in his December 17, 1996 letter to the Registrar. There is no evidence that the long-serving Registrar engaged in "malconduct" to deny Mr. Dornan, a fellow Republican, his re-election. The duly qualified voters of the 46th congressional district denied Mr. Dornan re-election.

V. MR. DORNAN'S CLAIMS OF MASSIVE ILLEGAL VOTING BY NON-CITIZENS ARE BEING QUICKLY WHITTLED AWAY TO LEVELS THAT ARE NOT MATERIAL TO THIS ELECTION CONTEST

Mr. Dornan's claims of massive illegal voting sufficient to change the outcome of his defeat are not being borne out as independent investigations of his claims mature.

As the Task Force well knows, it was the *Los Angeles Times* that first provided some level of public corroboration of Mr. Dornan's claims of non-citizens voting. That publication had originally determined there may have been 19 such illegal voters.

After aggressively continuing its investigation, by yesterday, the *Los Angeles Times* was still defining the potential universe of illegal votes as the 227 identified by the Orange County D.A. for the *entire* County of Orange. *See* "Dornan's Subpoenas Cast Doubt on His True Intent," *supra*. When the D.A.'s allegations are narrowed to the 46th District, that number shrinks to not more than 152.[4]

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[4] Mr. Dornan alleges in his February 7 submission that Hermandad Mexicana Nacional helped some number of non-citizens to register and vote in Orange County in 1996. Mr. Dornan alleges that some sub-set of this number resided in the 46th District, and that some smaller sub-set of the preceding sub-set actually voted in the 1996 election. Presumably, some even smaller sub-set actually voted in the congressional election. Not all persons who cast a ballot actually voted in the U.S. House election. Mr. Dornan appears to have relied on the *Los Angeles Times* to claim that the relevant sub-sub-set (if not the sub-sub-sub-set) of allegedly Hermandad-assisted illegal 46th District voters was actually 220. *See* Dornan February 7 submission, at 7 & Exh. 5. The *Los Angeles Times*'s sub-sub-set, credited by Mr. Dornan, appears to have been shrunk even further to 152, as a result of the District Attorney's investigation. *See* Dornan February 7 submission, at 12-13. Whichever sub-sub-set might be reliable (assuming either one is reliable), it must stand in contrast to the hyperbole that has attended Mr. Dornan's claims

(continued...)

The *Los Angeles Times'* conclusions are being independently confirmed by the *Orange County Register*. On February 20, 1997, that publication reported that its independent investigation revealed there were 63 voters who awaiting naturalization when they voted a ballot containing the 46th District race, while there were another 66 who were citizens on Election Day when they cast a ballot in the 46th District, but had not completed the naturalization process when they registered to vote. "At Least 184 immigrants cast illegal votes, analysis shows," *Orange County Register* (Feb. 20, 1997), at B6 (attached hereto as Exhibit D). This makes a total of 129 potentially illegal votes. This estimate is roughly consistent with the conclusions of the Orange County D.A.

Indeed, now even Mr. Dornan's counsel is begrudgingly conceding that, at most, there were 1,072 potential illegal votes. Even if this number could be credited,[5] it is far too

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[4](...continued)
about the impact that Hermandad might have had in the 46th District race.

[5] Nor is there any reliable indication that Mr. Dornan is not engaging in *double -- or even triple, or more -- counting of his own*. Do the 152 voters apparently identified by the D.A. overlap with the individuals identified on the Immigration and Naturalization Service records that Mr. Dornan attached to his February 7 submission? Are any of these 152 individuals also included in Mr. Dornan's count of registrants that were purportedly illegal because their forms were allegedly hand-delivered by Hermandad to the Registrar on the last possible day or were allegedly held too long by Hermandad? Were some of these individuals among those whose registrations the Registrar cancelled following the election? And, equally importantly, as was revealed by the *Los Angeles Times'* March 7 story (Exhibit C), how many of the allegedly illegal voters that Mr. Dornan identified *actually voted for Mr. Dornan*?

close to Congresswoman Sanchez's 979-vote margin of victory to ever form a basis for setting aside this election, particularly now that the record reveals that Mr. Dornan is questioning the credentials of many of his own voters. In order for such a number of allegedly illegal votes to affect the outcome of the election, the Committee would have to assume that nearly 95% of all these ballots contained Sanchez votes -- a facially improbable conclusion in light of the latest revelations that Mr. Dornan is questioning his own supporters.

V. CONCLUSION

Election contests involve the use of substantial public resources. The Committee's contested election budget is $320,000. *See* "Court Nixes Subpoena from 'Deputy Dornan,'" *Roll Call* (March 10, 1997), at 1.

Judicial resources, not to mention the resources of a host of private litigants (not limited to the Contestee), were consumed because Mr. Dornan failed to comply with the law in issuing nearly 40 subpoenas, purportedly in support of his election contest. Mr. Dornan's actions necessitated a federal judge's intervention to order all the subpoenas recalled.

Assuming that Mr. Dornan could permissibly re-serve these subpoenas, the *Los Angeles Times* -- clearly an unbiased viewpoint -- has already concluded that the original subpoenas Mr. Dornan previously issued (and may be contemplating serving again), "appear[] to be less concerned with protecting the rights of legitimate voters by making sure their votes are not diluted by

those ineligible to vote . . . [and] more concerned with making political capital." "Dornan's Subpoenas Cast Doubt on His True Intent," *supra*.

In fact, Mr. Dornan is so fixated on revenge that he even served a subpoena on Congresswoman Sanchez's defeated primary opponent -- Dornan's long-time rival Michael Farber. He served other subpoenas on groups as diverse as Catholic Charities and a local community college. He attempted to compel production of private individuals' welfare and immigration records from Orange County and the INS, respectively. He even served a subpoena seeking over 40 categories of documents from the Congresswoman's husband, while seeking records of every communication from the Congresswoman's campaign committee and Democratic party organizations. Mr. Dornan should not be using this election contest to seek information that would enable him to hone his strategy for a 1998 re-election bid, if that eventuates. In the event Mr. Dornan does serve his subpoenas again, private and public costs to address them will most likely only mount.

The pendency of this election contest is, moreover, diverting energy and resources that Congresswoman Sanchez could better use to serve her not only her constituents, but people nationwide.

Set against these costs, it is important to weigh any potential benefit that might be derived from continuing this election contest. As explained at the outset, this case has become the incredible shrinking election contest. In no time at

all, it has already shrunk so much that there is no conceivable way that Mr. Dornan will adduce the necessary number of illegal votes to call Congresswoman Sanchez's election into reasonable doubt.

At this juncture, pursuant to the undisturbed precedent of both Republican and Democratic committees, this election contest should end. Any allegations of illegal voting can be investigated and remedied by the state and local authorities, who are diligently conducting ongoing investigations.

Respectfully submitted this 10th day of March, 1997.

BRAND, LOWELL & RYAN, P.C.

Stanley M. Brand
David E. Frulla
923 Fifteenth Street, N.W.
Washington, DC 20005

STRUMWASSER & WOOCHER

Fredric D. Woocher
Michael J. Strumwasser
100 Wilshire Blvd., Ste. 1900
Santa Monica, CA 90401

LAW OFFICES OF WYLIE A. AITKEN

Wylie A. Aitken, P.C.
One Imperial Promenade
Suite 800
Santa Ana, CA 92707-0555

KOPENY & POWELL, P.C.

William J. Kopeny
John W. Powell
8001 Irvine Center Drive
Irvine, CA 92618-2933

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the enclosed Renewed Motion to Dismiss Notice of Election Contest was sent in the following manner on this 10th day of March, 1997 to:

VIA HAND-DELIVERY:

William R. Hart, Esq.
Hart, King & Coldren
200 East Sandpointe, Fourth Floor
Santa Ana, California 92707

The Honorable Robin H. Carle
Clerk of the House of Representatives
H-154, United States Capitol
Washington, D.C. 20515

James S. Portnoy, Esq.
General Counsel to the Minority
Committee on House Oversight
1339 Longworth House Office Building
Washington, D.C. 20515

Roman Buhler, Esq.
General Counsel to the Committee on
House Oversight
1309 Longworth House Office Building
Washington, D.C. 20515

David E. Frulla

APPENDIX L: THE FEDERAL CONTESTED ELECTION ACT

CHAPTER 12. CONTESTED ELECTIONS

Section
381. Definitions
382. Notice of contest
(a) Filing of notice.
(b) Contents and form of notice.
(c) Service of notice; proof of service.
383. Response of contestee
(a) Answer.
(b) Defenses by motion prior to answer.
(c) Motion for more definite statement.
(d) Time for serving answer after service of motion.
384. Service and filing of papers other than notice of contest
(a) Modes of service.
(b) Filing of papers with clerk.
(c) Proof of service.
385. Default of contestee
386. Deposition
(a) Oral examination.
(b) Scope of examination.
(c) Order and time of taking testimony.
(d) Officer before whom testimony may be taken.
(e) Subpena.
(f) Taking of testimony by party or his agent.
(g) Conduct of examination; recordation of testimony; notation of objections; interrogatories.
(h) Examination of deposition by witness; signature of witness or officer; use of deposition.
387. Notice of depositions
(a) Time for service; forms.
(b) Testimony by stipulation.
(c) Testimony by affidavit: time for filing.
388. Subpoena for attendance at deposition
(a) Issuance.
(b) Time, method and proof of service.
(c) Place of examination.
(d) Form.
(e) Production of documents.
389. Officer and witness fees
390. Penalty for failure to appear, testify, or produce documents
391. Certification and filing of depositions
(a) Sealing of papers; deposit with clerk.
(b) Notification of filing.
(c) Copy of deposition to parties or deponents.
392. Record
(a) Hearing on papers, depositions and exhibits.
(b) Appendix to contestant's brief.
(c) Appendix to contestee's brief.
(d) Contestant's brief; service on contestee.

(e) Contestee's brief; service on contestant.
(f) Reply brief of contestant.
(g) Form of briefs; number of copies served and filed.
393. Filing of pleadings, motions, depositions, appendixes, briefs and other papers
394. Computation of time
(a) Method of computing time.
(b) Service by mail.
(c) Enlargement of time.
395. Death of contestant
396. Allowance of party's expenses

CROSS REFERENCES

This chapter is referred to in 2 USCS § 25b.

Auto-Cite®: Cases and annotations referred to herein can be further researched through the Auto-Cite® computer-assisted research service. Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references.

§ 381. Definitions

For purposes of this Act—

(a) The term "election" means an official general or special election to choose a Representative in or Resident Commissioner to the Congress of the United States, but does not include a primary election, or a caucus or convention of a political party.

(b) The term "candidate" means an individual (1) whose name is printed on the official ballot for election to the House of Representatives of the United States, or (2) notwithstanding his name is not printed on such ballot, who seeks election to the House of Representatives by write-in votes, provided that he is qualified for such office and that, under the law of the State in which the congressional district is located, write-in voting for such office is permitted and he is eligible to receive write-in votes in such election.

(c) The term "contestant" means an individual who contests the election of a Member of the House of Representatives of the United States under this Act.

(d) The term "contestee" means a Member of the House of Representatives of the United States whose election is contested under this Act.

(e) The term "Member" means an incumbent Representative in or Resident Commissioner to the Congress of the United States, or an individual who has been elected to either of such offices but has not taken the oath of office.

(f) The term "Clerk" means the Clerk of the House of Representatives of the United States.

(g) The term "committee" means the Committee on House Administration of the House of Representatives of the United States.

(h) The term "State" includes territory and possession of the United States.

(i) The term "write-in vote" means a vote cast for a person whose name does not appear on the official ballot by writing in the name of such person on such ballot or by any other method prescribed by the law of the State in which the election is held.

(Dec. 5, 1969, P. L. 91-138, § 2, 83 Stat. 284.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act Dec. 5, 1969, P. L. 91-138, 83 Stat. 284, commonly known as the Federal Contested Election Act, which appears generally as 2 USCS §§ 381 et seq. For full classification of this Act, consult USCS Tables volumes.

Short title:

Act Dec. 5, 1969, P. L. 91-138, § 1, 83 Stat. 284, provided: "This Act [2 USCS §§ 381 et seq.] may be cited as the 'Federal Contested Election Act'."

Other provisions:

Application of Act Dec. 5, 1969. Act Dec. 5, 1969, P. L. 91-138, § 19, 83 Stat. 291, provided: "The provisions of, and the repeals made by, this Act [which appears generally as 2 USCS §§ 381 et seq., for full classification consult USCS Tables Volumes] shall apply with respect to any general or special election for Representative in, or Resident Commissioner to, the Congress of the United States occurring after the date of enactment of this Act [enacted Dec. 5, 1969].

RESEARCH GUIDE

Federal Procedure L Ed:

10A Fed Proc L Ed, Elections and Elective Franchise §§ 28:310-312, 315.

Forms:

9 Am Jur Pl & Pr Forms (Rev ed), Elections, Forms 105, 106.

INTERPRETIVE NOTES AND DECISIONS

House of Representatives has conclusive authority to determine whether ballot should or should not be counted, and decisions about count are not reviewable in any court; house is not required to follow state law in determining which ballots to count; mere fact that candidate has instituted action does not vest court with jurisdiction to entertain request for relief which might aid candidate in pursuit or maintenance of action. McIntyre v Morgan (1985, SD Ind) 624 F Supp 658.

§ 382. Notice of contest

(a) Filing of notice. Whoever, having been a candidate for election to the House of Representatives in the last preceding election claiming a right to such office, intends to contest the election of a Member of the House of Representatives, shall, within thirty days after the result of such election shall have been declared by the officer or Board of Canvassers authorized by law to declare such result, file with the Clerk and serve upon the contestee written notice of his intention to contest such election.

(b) Contents and form of notice. Such notice shall state with particularity the grounds upon which contestant contests the election and shall state that an answer thereto must be served upon contestant under section 4 of this Act [2 USCS § 383] within thirty days after service of such notice. Such notice shall be signed by contestant and verified by his oath or affirmation.

(c) Service of notice; proof of service. Service of the notice of contest upon contestee shall be made as follows:

(1) by delivering a copy to him personally;

(2) by leaving a copy at his dwelling house or usual place of abode with a person of discretion not less than sixteen years of age then residing therein;

(3) by leaving a copy at his principal office or place of business with some person then in charge thereof;

(4) by delivering a copy to an agent authorized by appointment to receive service of such notice; [or]

(5) by mailing a copy by registered or certified mail addressed to contestee at his residence or principal office or place of business. Service by mail is complete upon mailing; [or]

(6) the verified return by the person so serving such notice, setting forth the time and manner of such service shall be proof of same, and the return post office receipt shall be proof of the service of said notice mailed by registered or certified mail as aforesaid. Proof of service shall be made to the Clerk promptly and in any event within the time during which the contestee must answer the notice of contest. Failure to make proof of service does not affect the validity of the service.

(Dec. 5, 1969, P. L. 91-138, § 3, 83 Stat. 284.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

The word "or" was enclosed in brackets in para. (5) of subsec. (c) and the bracketed word "or" was inserted in para. (6) of the subsec. to indicate the wording probably intended by Congress.

CROSS REFERENCES

This section is referred to in 2 USCS §§ 383, 394.

RESEARCH GUIDE

Federal Procedure L Ed:

10A Fed Proc L Ed, Elections and Elective Franchise §§ 28:310-313, 328.

Forms:

9 Am Jur Pl & Pr Forms (Rev ed), Elections, Forms 105, 106.

§ 383. Response of contestee

(a) Answer. Any contestee upon whom a notice of contest as described in section 3 [2 USCS § 382] shall be served, shall, within thirty days after the service thereof, serve upon contestant a written answer to such notice, admitting or denying the averments upon which contestant relies. If contestee is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this shall have the effect of a denial. Such answer shall set forth affirmatively any other defenses, in law or fact, on which contestee relies. Contestee shall sign and verify such answer by oath or affirmation.

(b) Defenses by motion prior to answer. At the option of contestee, the following defenses may be made by motion served upon contestant prior to contestee's answer:

(1) Insufficiency of service of notice of contest.

(2) Lack of standing of contestant.

(3) Failure of notice of contest to state grounds sufficient to change result of election.

(4) Failure of contestant to claim right to contestee's seat.

(c) Motion for more definite statement. If a notice of contest to which an answer is required is so vague or ambiguous that the contestee cannot reasonably be required to frame a responsive answer, he may move for a more definite statement before interposing his answer. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the committee is not obeyed within ten days after notice of the order or within such other time as the committee may fix, the committee may dismiss the action, or make such order as it deems just.

(d) Time for serving answer after service of motion. Service of a motion permitted under this section alters the time for serving the answer as follows, unless a different time is fixed by order of the committee: If the committee denies the motion or postpones its disposition until the hearing on the merits, the answer shall be served within ten days after notice of such action. If the committee grants a motion for a more definite statement the answer shall be served within ten days after service of the more definite statement.

(Dec. 5, 1969, P. L. 91-138, § 4, 83 Stat. 285.)

CROSS REFERENCES

This section is referred to in 2 USCS §§ 382, 386.

RESEARCH GUIDE

Federal Procedure L Ed:

10A Fed Proc L Ed, Elections and Elective Franchise §§ 28:310, 314-317.

§ 384. Service and filing of papers other than notice of contest

(a) Modes of service. Except for the notice of contest, every paper required to be served shall be served upon the attorney representing the party, or, if he is not represented by an attorney, upon the party himself. Service upon the attorney or upon a party shall be made:

(1) by delivering a copy to him personally;

(2) by leaving it at his principal office with some person then in charge thereof; or if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with a person of discretion not less than sixteen years of age then residing therein; or

(3) by mailing it addressed to the person to be served at his residence or principal office. Service by mail is complete upon mailing.

(b) Filing of papers with clerk. All papers subsequent to the notice of contest required to be served upon the opposing party shall be filed with the Clerk either before service or within a reasonable time thereafter.

(c) Proof of service. Papers filed subsequent to the notice of contest shall be accompanied by proof of service showing the time and manner of service, made by affidavit of the person making service or by certificate of an attorney representing the party in whose behalf service is made. Failure to make proof of service does not affect the validity of such service.
(Dec. 5, 1969, P. L. 91-138, § 5, 83 Stat. 286.)

CROSS REFERENCES

This section is referred to in 2 USCS § 387.

RESEARCH GUIDE

Federal Procedure L Ed:
10A Fed Proc L Ed, Elections and Elective Franchise §§ 28:310, 319.

§ 385. Default of contestee

The failure of contestee to answer the notice of contest or to otherwise defend as provided by this Act shall not be deemed an admission of the truth of the averments in the notice of contest. Notwithstanding such failure, the burden is upon contestant to prove that the election results entitle him to contestee's seat.
(Dec. 5, 1969, P. L. 91-138, § 6, 83 Stat. 286.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:
"This Act", referred to in this section, is Act Dec. 5, 1969, P. L. 91-138, 83 Stat. 284, commonly known as the Federal Contested Election Act, which appears generally as 2 USCS §§ 381 et seq. For full classification of this Act, consult USCS Tables volumes.

RESEARCH GUIDE

Federal Procedure L Ed:
10A Fed Proc, L Ed, Elections and Elective Franchise §§ 28:310, 318.

§ 386. Deposition

(a) Oral examination. Either party may take the testimony of any person, including the opposing party, by deposition upon oral examination for the purpose of discovery or for use as evidence in the contested election case, or for both purposes. Depositions shall be taken only within the time for the taking of testimony prescribed in this section.

(b) Scope of examination. Witnesses may be examined regarding any matter, not privileged, which is relevant to the subject matter involved in the pending contested election case, whether it relates to the claim or defense of the examining party or the claim or defense of the opposing party, including the

existence, description, nature, custody, condition and location of any books, papers, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts. After the examining party has examined the witness the opposing party may cross examine.

(c) Order and time of taking testimony. The order in which the parties may take testimony shall be as follows:

(1) Contestant may take testimony within thirty days after service of the answer, or, if no answer is served within the time provided in section 4 [2 USCS § 383], within thirty days after the time for answer has expired.

(2) Contestee may take testimony within thirty days after contestant's time for taking testimony has expired.

(3) If contestee has taken any testimony or has filed testimonial affidavits or stipulations under section 8(c) [2 USCS § 387(c)], contestant may take rebuttal testimony within ten days after contestee's time for taking testimony has expired.

(d) Officer before whom testimony may be taken. Testimony shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held.

(e) Subpena. Attendance of witnesses may be compelled by subpena as provided in section 9 [2 USCS § 388].

(f) Taking of testimony by party or his agent. At the taking of testimony, a party may appear and act in person, or by his agent or attorney.

(g) Conduct of examination; recordation of testimony; notation of objections; interrogatories. The officer before whom testimony is to be taken shall put the witness under oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically and transcribed. All objections made at the time of examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, a party served with a notice of deposition may transmit written interrogatories to the officer, who shall propound them to the witness and record the answers verbatim.

(h) Examination of deposition by witness; signature of witness or officer; use of deposition. When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and the parties. Any changes in the form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness, the officer shall sign it and note on the deposition

the fact of the waiver or of the illness or the absence of the witness or the fact of refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless on a motion to suppress, the committee rules that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.
(Dec. 5, 1969, P. L. 91-138, § 7, 83 Stat. 286.)

RESEARCH GUIDE

Federal Procedure L Ed:
10A Fed Proc L Ed, Elections and Elective Franchise §§ 28:310, 322-325.

§ 387. Notice of depositions

(a) Time for service; forms. A party desiring to take the deposition of any person upon oral examination shall serve written notice on the opposing party not later than two days before the date of the examination. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined. A copy of such notice, together with proof of such service thereof, shall be attached to the deposition when it is filed with the Clerk.

(b) Testimony by stipulation. By written stipulation of the parties, the deposition of a witness may be taken without notice. A copy of such stipulation shall be attached to the deposition when it is filed with the Clerk.

(c) Testimony by affidavit: time for filing. By written stipulation of the parties, the testimony of any witness of either party may be filed in the form of an affidavit by such witness or the parties may agree what a particular witness would testify to if his deposition were taken. Such testimonial affidavits or stipulations shall be filed within the time limits prescribed for the taking of testimony in section 7 [2 USCS § 386].
(Dec. 5, 1969, P. L. 91-138, § 8, 83 Stat. 287.)

CROSS REFERENCES

This section is referred to in 2 USCS § 386.

RESEARCH GUIDE

Federal Procedure L Ed:
10A Fed Proc L Ed, Elections and Elective Franchise §§ 28:310, 323, 325.

§ 388. Subpoena for attendance at deposition

(a) Issuance. Upon application of any party, a subpena for attendance at a deposition shall be issued by:

(1) a judge or clerk of the United States district court for the district in which the place of examination is located;

(2) a judge or clerk of any court of record of the State in which the place of examination is located; or

(3) a judge or clerk of any court of record of the county in which the place of examination is located.

(b) Time, method and proof of service. Service of the subpena shall be made upon the witness no later than three days before the day on which his attendance is directed. A subpena may be served by any person who is not a party to the contested election case and is not less than eighteen years of age. Service of a subpena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering to him the fee for one day's attendance and the mileage allowed by section 10 [2 USCS § 389]. Written proof of service shall be made under oath by the person making same and shall be filed with the Clerk.

(c) Place of examination. A witness may be required to attend an examination only in the county wherein he resides or is employed, or transacts his business in person, or is served with a subpena, or within forty miles of the place of service.

(d) Form. Every subpena shall state the name and title of the officer issuing same and the title of the contested election case, and shall command each person to whom it is directed to attend and give testimony at a time and place and before an officer specified therein.

(e) Production of documents. A subpena may also command the person to whom it is directed to produce the books, papers, documents, or other tangible things designated therein, but the committee, upon motion promptly made and in any event at or before the time specified in the subpena for compliance therewith, may (1) quash or modify the subpena if it is unreasonable or oppressive, or (2) condition denial of the motion upon the advancement by the party in whose behalf the subpena is issued of the reasonable cost of producing the books, papers, documents, or tangible things. In the case of public records or documents, copies thereof, certified by the person having official custody thereof, may be produced in lieu of the originals.

(Dec. 5, 1969, P. L. 91-138, § 9, 83 Stat. 288.)

CROSS REFERENCES

This section is referred to in 2 USCS § 386.

RESEARCH GUIDE

Federal Procedure L Ed:

10A Fed Proc L Ed, Elections and Elective Franchise §§ 28:310, 324.

INTERPRETIVE NOTES AND DECISIONS

Power of federal courts to issue and enforce subpoenas for deposition cannot be construed in vacuum but must be construed in conjunction with provisions providing contestant limited discovery rights during regulated time frame; court lacks jurisidiction to aid contestant with discovery of uncounted absentee ballots in absence of case or controversy. McIntyre v Morgan (1985, SD Ind) 624 F Supp 658.

§ 389. Officer and witness fees

(a) Each judge, clerk of court, or other officer who issues any subpena or takes a deposition and each person who serves any subpena or other paper herein authorized shall be entitled to receive from the party at whose instance the service shall have been performed such fees as are allowed for similar services in the district courts of the United States.

(b) Witnesses whose depositions are taken shall be entitled to receive from the party at whose instance the witness appeared the same fees and travel allowance paid to witnesses subpenaed to appear before the House of Representatives or its committees.

(Dec. 5, 1969, P. L. 91-138, § 10, 83 Stat. 288.)

CROSS REFERENCES

This section is referred to in 2 USCS § 388.

RESEARCH GUIDE

Federal Procedure L Ed:

10A Fed Proc L Ed, Elections and Elective Franchise §§ 28:310, 324.

§ 390. Penalty for failure to appear, testify, or produce documents

Every person who, having been subpenaed as a witness under this Act to give testimony or to produce documents, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the contested election case, shall be deemed guilty of a misdemeanor punishable by fine of not more than $1,000 nor less than $100 or imprisonment for not less than one month nor more than twelve months, or both.

(Dec. 5, 1969, P. L. 91-138, § 11, 83 Stat. 288.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act Dec. 5, 1969, P. L. 91-138, 83 Stat. 284, commonly known as the Federal Contested Election Act, which appears generally as 2 USCS §§ 381 et seq. For full classification of this Act, consult USCS Tables volumes.

RESEARCH GUIDE

Federal Procedure L Ed:

10A Fed Proc L Ed, Elections and Elective Franchise §§ 28:310, 324.

§ 391. Certification and filing of depositions

(a) Sealing of papers; deposit with clerk. The officer before whom any deposition is taken shall certify thereon that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition, together with any papers produced by the witness and the notice of deposition or stipulation, if the deposition was taken without notice, in an envelope endorsed with the title of the

contested election case and marked "Deposition of (here insert name of witness)" and shall within thirty days after completion of the witness' testimony, file it with the Clerk.

(b) Notification of filing. After filing the deposition, the officer shall promptly notify the parties of its filing.

(c) Copy of deposition to parties or deponents. Upon payment of reasonable charges therefor, not to exceed the charges allowed in the district court of the United States for the district wherein the place of examination is located, the officer shall furnish a copy of deposition to any party or the deponent.
(Dec. 5, 1969, P. L. 91-138, § 12, 83 Stat. 289.)

RESEARCH GUIDE

Federal Procedure L Ed:
10A Fed Proc L Ed, Elections and Elective Franchise §§ 28:310, 326.

§ 392. Record

(a) Hearing on papers, depositions and exhibits. Contested election cases shall be heard by the committee on the papers, depositions, and exhibits filed with the Clerk. Such papers, depositions, and exhibits shall constitute the record of the case.

(b) Appendix to contestant's brief. Contestant shall print as an appendix to his brief those portions of the record which he desires the committee to consider in order to decide the case and such other portions of the record as may be prescribed by the rules of the committee.

(c) Appendix to contestee's brief. Contestee shall print as an appendix to his brief those portions of the record not printed by contestant which contestee desires the committee to consider in order to decide the case.

(d) Contestant's brief; service on contestee. Within forty-five days after the time for both parties to take testimony has expired, contestant shall serve on contestee his printed brief of the facts and authorities relied on to establish his case together with his appendix.

(e) Contestee's brief; service on contestant. Within thirty days of service of contestant's brief and appendix, contestee shall serve on contestant his printed brief of the facts and authorities relied on to establish his case together with his appendix.

(f) Reply brief of contestant. Within ten days after service of contestee's brief and appendix, contestant may serve on contestee a printed reply brief.

(g) Form of briefs; number of copies served and filed. The form and length of the briefs, the form of the appendixes, and the number of copies to be served and filed shall be in accordance with such rules as the committee may prescribe.
(Dec. 5, 1969, P. L. 91-138, § 13, 83 Stat. 289.)

RESEARCH GUIDE

Federal Procedure L Ed:
10A Fed Proc L Ed, Elections and Elective Franchise §§ 28:310, 320, 326, 327.

§ 393. Filing of pleadings, motions, depositions, appendixes, briefs and other papers

(a) Filings of pleadings, motions, depositions, appendixes, briefs, and other papers shall be accomplished by:

(1) delivering a copy thereof to the Clerk of the House of Representatives at his office in Washington District of Columbia, or to a member of his staff at such office; or

(2) mailing a copy thereof, by registered or certified mail, addressed to the Clerk at the House of Representatives, Washington, District of Columbia: Provided, That if such copy is not actually received, another copy shall be filed within a reasonable time; and

(3) delivering or mailing, simultaneously with the delivery or mailing of a copy thereof under paragraphs (1) and (2) of this subsection, such additional copies as the committee may by rule prescribe.

(b) All papers filed with the Clerk pursuant to this Act shall be promptly transmitted by him to the committee.

(Dec. 5, 1969, P. L. 91-138, § 14, 83 Stat. 289.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in subsec. (b), is Act Dec. 5, 1969, P. L. 91-138, 83 Stat. 284, commonly known as the Federal Contested Election Act, which appears generally as 2 USCS §§ 381 et seq. For full classification of this Act, consult USCS Tables volumes.

RESEARCH GUIDE

Federal Procedure L Ed:

10A Fed Proc L Ed, Elections and Elective Franchise §§ 28:310, 321.

§ 394. Computation of time

(a) Method of computing time. In computing any period of time prescribed or allowed by this Act or by the rules or any order of the committee, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, a Sunday, nor a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. For the purposes of this Act, "legal holiday" shall mean New Years Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States.

(b) Service by mail. Whenever a party has the right or is required to do some act or take some proceeding within a prescribed period after the service of a pleading, motion, notice, brief, or other paper upon him, which is served upon him by mail, three days shall be added to the prescribed period.

(c) Enlargement of time. When by this Act or by the rules or any order of the committee an act is required or allowed to be done at or within a specified time, the committee, for good cause shown, may at any time in its discretion (1) with or without motion or notice, order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect, but it shall not extend the time for serving and filing the notice of contest under section 3 [2 USCS § 382].

(Dec. 5, 1969, P. L. 91-138, § 15, 83 Stat. 290.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in subsec. (a) and (c), is Act Dec. 5, 1969, P. L. 91-138, 83 Stat. 284, commonly known as the Federal Contested Election Act, which appears generally as 2 USCS §§ 381 et seq. For full classification of this Act, consult USCS Tables volumes.

RESEARCH GUIDE

Federal Procedure L Ed:

10A Fed Proc L Ed, Elections and Elective Franchise §§ 28:310, 328.

§ 395. Death of contestant

In the event of the death of the contestant, the contested election case shall abate.

(Dec. 5, 1969, P. L. 91-138, § 16, 83 Stat. 290.)

RESEARCH GUIDE

Federal Procedure L Ed:

10A Fed Proc L Ed, Elections and Elective Franchise §§ 28:310, 311.

§ 396. Allowance of party's expenses

The committee may allow any party reimbursement from the contingent fund of the House of Representatives of his reasonable expenses of the contested election case, including reasonable attorneys fees, upon the verified

application of such party accompanied by a complete and detailed account of his expenses and supporting vouchers and receipts.
(Dec. 5, 1969, P. L. 91-138, § 17, 83 Stat. 290.)

RESEARCH GUIDE

Federal Procedure L Ed:

10A Fed Proc L Ed, Elections and Elective Franchise §§ 28:310, 329.

Mr. GOODLING. I think we should get rid of the original law and avoid some of the complications we are having here today.

Mr. O'NEAL of Georgia. Mr. Speaker, will the gentleman yield?

Mr. GOODLING. I yield to the gentleman from Georgia.

Mr. O'NEAL of Georgia. If the gentleman will inquire, he will find that peanuts held by the CCC are crushed into oil.

Mr. GOODLING. I am sorry; I did not hear the gentleman.

Mr. O'NEAL of Georgia. I said I believe if the gentleman will make the proper inquiry, he will find that all the peanuts held by CCC are crushed for oil and for no other purpose. It goes into oil for export. I do not think it is possible under the law for any of it to go into peanut butter.

Mr. GOODLING. You will probably agree that when CCC peanuts were sold to crushers, the crushers in turn resold their surplus to the Government; is that correct?

Mr. O'NEAL of Georgia. I suppose what you are saying is that there might be some cheating somewhere. Is that what you are saying?

Mr. GOODLING. I beg your pardon?

Mr. O'NEAL of Georgia. I suppose what you are really saying is that there might be some cheating somewhere?

Mr. GOODLING. No; I do not think there is any cheating. I think it is all legitimate.

Mr. POAGE. Mr. Speaker, will the gentleman yield?

Mr. GOODLING. I yield to the gentleman from Texas.

Mr. POAGE. I think it should be understood that all peanuts are divided into either edible peanuts or peanuts for oil purposes. The Government does not sell anybody edible oil peanuts, and let them then turn them into edible peanuts and crush them into peanut butter. It allows them only to crush the peanuts into oil and that oil is sold into industry. The edible peanuts are a completely different commodity from oil peanuts. A man cannot legally buy that. The gentleman suggested a point, probably thinking of somebody doing something against the law—I know that is not the gentleman's intention—but if a man obeying the law buys oil peanuts, all he can do is take them to an oil mill where they are crushed into oil and for stock food. If he buys edible peanuts and pays the edible price for them, it is a great deal higher than the oil price.

Mr. GOODLING. The letter I have states that 8.1 cents a pound was the selling price at this particular time.

Mr. POAGE. For oil purposes, not for edible peanuts.

Mr. GOODLING. It does not change the fact that we are losing millions of dollars every year in selling surplus peanuts.

Mr. O'NEAL of Georgia. Mr. Speaker, will the gentleman yield further?

Mr. GOODLING. I yield to the gentleman from Georgia.

Mr. O'NEAL of Georgia. What you are saying is that the peanut program is costing money. But will you agree that it is costing far less money in proportion to other agricultural commodity programs?

Mr. GOODLING. I think you are absolutely correct.

Mr. O'NEAL of Georgia. I thank the gentleman.

Mr. GOODLING. We are doing the same thing with too many farm commodities, in my opinion.

The SPEAKER pro tempore. The gentleman from Oklahoma is recognized.

Mr. BELCHER. Mr. Speaker, I yield myself 1 minute.

Regardless of what we may think of the peanut program or any other farm program, as far as that is concerned, this bill itself is a good bill and should be passed. This bill will not cost the Government. It has been successful. As I have said, regardless of what you think of farm programs or what you think of the peanut program or anything else, this a good bill and should be passed.

Mr. Speaker, I have no further requests for time.

Mr. O'NEAL of Georgia. Mr. Speaker, I yield whatever time he may consume to the gentleman from North Carolina (Mr. FOUNTAIN).

Mr. FOUNTAIN. Mr. Speaker, I support this legislation. Many of the peanut growers in my area are among our poorest farmers. In the event of a bad year due to unfavorable weather conditions, many of our smaller growers are forced to seek help from the welfare department.

Passage of H.R. 14030, transfer of peanut acreage allotments, is therefore of vital concern to the peanut growers of North Carolina and especialy in my congressional district.

This bill is simply a 1-year extension of an act which passed 2 years ago by a vote of 256 to 57.

In the past 2 years the act has proved highly beneficial in allowing the consolidation of small allotments into larger and more economical groupings.

Under the act producers have been able to acquire enough peanut acreage to grow this important crop on a sounder economic basis. It has benefited both the lessee and lessor of peanut allotments. Most peanut growers are very small producers. Some grow nothing else of any consequence. Peanuts are their only source of livelihood.

The act has enabled those peanut growers who wanted to go out of peanut production to do so, yet to retain some benefit. Thus, all sides have been able to have opportunity for profit, however small.

The act has put peanut production into the hands of those who want to grow peanuts, yet at the same time has prevented allotments from leaving the county of origin.

The present law has met with almost unanimous approval and the new bill, which simply extends the act for another year, is a wise and proper measure.

Mr. Speaker, I am in favor of this legislation and urge its passage. I hope it will pass the House unanimously.

Mr. O'NEAL of Georgia. Mr. Speaker, I yield to the gentleman from Ohio (Mr. MILLER).

Mr. MILLER of Ohio. Mr. Speaker, I rise in support of the bill.

Mr. BURLESON of Texas. Mr. Speaker, on March 19, 1969, I introduced legislation for the purpose embodied in the bill now before us.

Several speakers have mentioned that this is a measure which will benefit the very small farmer most. In some instances the producer can do better by leasing or selling his allotment to a neighbor under circumstances which make it most difficult for him to operate a very small unit. Those who want to establish a larger operation must necessarily have more acreage. The price of machinery which now goes into peanut farming has, as everyone knows, increased tremendously in price, which makes farming a tremendously expensive undertaking.

There is good reason to provide the transfer of acreage within the county lines for the reasons pointed out by our able colleague the gentleman from Georgia (Mr. O'NEAL). I hope we may have your support for this bill which can mean a great deal to many of our peanut farmers.

The SPEAKER. The question is on the motion of the gentleman from Georgia that the House suspend the rules and pass the bill H.R. 14030.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE TO EXTEND

Mr. O'NEAL of Georgia. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to extend their remarks on the bill (H.R. 14030) just passed.

The SPEAKER. Is there objection to the request of the gentleman from Georgia?

There was no objection.

FEDERAL CONTESTED ELECTION ACT

Mr. ABBITT. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 14195), to revise the law governing contests of elections of Members of the House of Representatives, and for other purposes, as amended.

The Clerk read as follows:

H.R. 14195

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Federal Contested Election Act".

DEFINITIONS

SEC. 2. For purposes of this Act—

(a) The term "election" means an official general or special election to choose a Representative in or Resident Commissioner to the Congress of the United States, but does not include a primary election, or a caucus or convention of a political party.

(b) The term "candidate" means an individual (1) whose name is printed on the official ballot for election to the House of Representatives of the United States, or (2)

notwithstanding his name is not printed on such ballot, who seeks election to the House of Representatives by write-in votes, provided that he is qualified for such office and that, under the law of the State in which the congressional district is located, write-in voting for such office is permitted and he is eligible to receive write-in votes in such election.

(c) The term "contestant" means an individual who contests the election of a Member of the House of Representatives of the United States under this Act.

(d) The term "contestee" means a Member of the House of Representatives of the United States whose election is contested under this Act.

(e) The term "Member" means an incumbent Representative in or Resident Commissioner to the Congress of the United States, or an individual who has been elected to either of such offices but has not taken the oath of office.

(f) The term "Clerk" means the Clerk of the House of Representatives of the United States.

(g) The term "committee" means the Committee on House Administration of the House of Representatives of the United States.

(h) The term "State" includes territory and possession of the United States.

(i) The term "write-in vote" means a vote cast for a person whose name does not appear on the official ballot by writing in the name of such person on such ballot or by any other method prescribed by the law of the State in which the election is held.

NOTICE OF CONTEST

SEC. 3. (a) Whoever, having been a candidate for election to the House of Representatives in the last preceding election and claiming a right to such office, intends to contest the election of a Member of the House of Representatives, shall, within thirty days after the result of such election shall have been declared by the officer or Board of Canvassers authorized by law to declare such result, file with the Clerk and serve upon the contestee written notice of his intention to contest such election.

(b) Such notice shall state with particularity the grounds upon which contestant contests the election and shall state that an answer thereto must be served upon contestant under section 4 of this Act within thirty days after service of such notice. Such notice shall be signed by contestant and verified by his oath or affirmation.

(c) Service of the notice of contest upon contestee shall be made as follows:

(1) by delivering a copy to him personally;

(2) by leaving a copy at his dwelling house or usual place of abode with a person of discretion not less than sixteen years of age then residing therein;

(3) by leaving a copy at his principal office or place of business with some person then in charge thereof;

(4) by delivering a copy to an agent authorized by appointment to receive service of such notice; or

(5) by mailing a copy by registered or certified mail addressed to contestee at his residence or principal office or place of business. Service by mail is complete upon mailing;

(6) the verified return by the person so serving such notice, setting forth the time and manner of such service shall be proof of same, and the return post office receipt shall be proof of the service of said notice mailed by registered or certified mail as aforesaid. Proof of service shall be made to the Clerk promptly and in any event within the time during which the contestee must answer the notice of contest. Failure to make proof of service does not affect the validity of the service.

ANSWER; DEFENSES MADE BY MOTION

SEC. 4. (a) Any contestee upon whom a notice of contest as described in section 3 shall be served, shall, within thirty days after the service thereof, serve upon contestant a written answer to such notice, admitting or denying the averments upon which contestant relies. If contestee is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this shall have the effect of a denial. Such answer shall set forth affirmatively any other defenses, in law or fact, on which contestee relies. Contestee shall sign and verify such answer by oath or affirmation.

(b) At the option of contestee, the following defenses may be made by motion served upon contestant prior to contestee's answer:

(1) Insufficiency of service of notice of contest.

(2) Lack of standing of contestant.

(3) Failure of notice of contest to state grounds sufficient to change result of election.

(4) Failure of contestant to claim right to contestee's seat.

(c) If a notice of contest to which an answer is required is so vague or ambiguous that the contestee cannot reasonably be required to frame a responsive answer, he may move for a more definite statement before interposing his answer. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the committee is not obeyed within ten days after notice of the order or within such other time as the committee may fix, the committee may dismiss the action, or make such order as it deems just.

(d) Service of a motion permitted under this section alters the time for serving the answer as follows, unless a different time is fixed by order of the committee: If the committee denies the motion or postpones its disposition until the hearing on the merits, the answer shall be served within ten days after notice of such action. If the committee grants a motion for a more definite statement the answer shall be served within ten days after service of the more definite statement.

SERVICE AND FILING OF PAPERS OTHER THAN NOTICE OF CONTEST; HOW MADE; PROOF OF SERVICE

SEC. 5. (a) Except for the notice of contest, every paper required to be served shall be served upon the attorney representing the party, or, if he is not represented by an attorney, upon the party himself. Service upon the attorney or upon a party shall be made:

(1) by delivering a copy to him personally;

(2) by leaving it at his principal office with some person then in charge thereof; or if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with a person of discretion not less than sixteen years of age then residing therein; or

(3) by mailing it addressed to the person to be served at his residence or principal office. Service by mail is complete upon mailing.

(b) All papers subsequent to the notice of contest required to be served upon the opposing party shall be filed with the Clerk either before service or within a reasonable time thereafter.

(c) Papers filed subsequent to the notice of contest shall be accompanied by proof of service showing the time and manner of service, made by affidavit of the person making service or by certificate of an attorney representing the party in whose behalf service is made. Failure to make proof of service does not affect the validity of such service.

DEFAULT OF CONTESTEE

SEC. 6. The failure of contestee to answer the notice of contest or to otherwise defend as provided by this Act shall not be deemed an admission of the truth of the averments in the notice of contest. Notwithstanding such failure, the burden is upon contestant to prove that the election results entitle him to contestee's seat.

TAKING TESTIMONY BY DEPOSITION

SEC. 7. (a) Either party may take the testimony of any person, including the opposing party, by deposition upon oral examination for the purpose of discovery or for use as evidence in the contested election case, or for both purposes. Depositions shall be taken only within the time for the taking of testimony prescribed in this section.

(b) Witnesses may be examined regarding any matter, not privileged, which is relevant to the subject matter involved in the pending contested election case, whether it relates to the claim or defense of the examining party or the claim or defense of the opposing party, including the existence, description, nature, custody, condition and location of any books, papers, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts. After the examining party has examined the witness the opposing party may cross examine.

(c) The order in which the parties may take testimony shall be as follows:

(1) Contestant may take testimony within thirty days after service of the answer, or, if no answer is served within the time provided in section 4, within thirty days after the time for answer has expired.

(2) Contestee may take testimony within thirty days after contestant's time for taking testimony has expired.

(3) If contestee has taken any testimony or has filed testimonial affidavits or stipulations under section 8(c), contestant may take rebuttal testimony within ten days after contestee's time for taking testimony has expired.

(d) Testimony shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held.

(e) Attendance of witnesses may be compelled by subpena as provided in section 9.

(f) At the taking of testimony, a party may appear and act in person, or by his agent or attorney.

(g) The officer before whom testimony is to be taken shall put the witness under oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically and transcribed. All objections made at the time of examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, a party served with a notice of deposition may transmit written interrogatories to the officer, who shall propound them to the witness and record the answers verbatim.

(h) When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and the parties. Any changes in the form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall be signed by the witness, unless the parties by stipulation waive the

signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness, the officer shall sign it and note on the deposition the fact of the waiver or of the illness or the absence of the witness or the fact of refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless on a motion to suppress, the committee rules that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

NOTICE OF DEPOSITIONS; TESTIMONY BY AFFIDAVIT OR STIPULATION

SEC. 8. (a) A party desiring to take the deposition of any person upon oral examination shall serve written notice on the opposing party not later than two days before the date of the examination. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined. A copy of such notice, together with proof of such service thereof, shall be attached to the deposition when it is filed with the Clerk.

(b) By written stipulation of the parties, the deposition of a witness may be taken without notice. A copy of such stipulation shall be attached to the deposition when it is filed with the Clerk.

(c) By written stipulation of the parties, the testimony of any witness of either party may be filed in the form of an affidavit by such witness or the parties may agree what a particular witness would testify to if his deposition were taken. Such testimonial affidavits or stipulations shall be filed within the time limits prescribed for the taking of testimony in section 7.

SUBPENAS; PRODUCTION OF DOCUMENTS

SEC. 9. (a) Upon application of any party, a subpena for attendance at a deposition shall be issued by:

(1) a judge or clerk of the United States district court for the district in which the place of examination is located;

(2) a judge or clerk of any court of record of the State in which the place of examination is located; or

(3) a judge or clerk of any court of record of the county in which the place of examination is located.

(b) Service of the subpena shall be made upon the witness no later than three days before the day on which his attendance is directed. A subpena may be served by any person who is not a party to the contested election case and is not less than eighteen years of age. Service of a subpena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering to him the fee for one day's attendance and the mileage allowed by section 10. Written proof of service shall be made under oath by the person making same and shall be filed with the Clerk.

(c) A witness may be required to attend an examination only in the county wherein he resides or is employed, or transacts his business in person, or is served with a subpena, or within forty miles of the place of service.

(d) Every subpena shall state the name and title of the officer issuing same and the title of the contested election case, and shall command each person to whom it is directed to attend and give testimony at a time and place and before an officer specified therein.

(e) A subpena may also command the person to whom it is directed to produce the books, papers, documents, or other tangible things designated therein, but the committee, upon motion promptly made and in any event at or before the time specified in the subpena for compliance therewith, may (1) quash or modify the subpena if it is unreasonable or oppressive, or (2) condition denial of the motion upon the advancement by the party in whose behalf the subpena is issued of the reasonable cost of producing the books, papers, documents, or tangible things. In the case of public records or documents, copies thereof, certified by the person having official custody thereof, may be produced in lieu of the originals.

OFFICER AND WITNESS FEES

SEC. 10. (a) Each judge, clerk of court, or other officer who issues any subpena or takes a deposition and each person who serves any subpena or other paper herein authorized shall be entitled to receive from the party at whose instance the service shall have been performed such fees as are allowed for similar services in the district courts of the United States.

(b) Witnesses whose depositions are taken shall be entitled to receive from the party at whose instance the witness appeared the same fees and travel allowance paid to witnesses subpenaed to appear before the House of Representatives or its committees.

PENALTY FOR FAILURE TO APPEAR, TESTIFY, OR PRODUCE DOCUMENTS

SEC. 11. Every person who, having been subpenaed as a witness under this Act to give testimony or to produce documents, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the contested election case, shall be deemed guilty of a misdemeanor punishable by fine of not more than $1,000 nor less than $100 or imprisonment for not less than one month nor more than twelve months, or both.

CERTIFICATION AND FILING OF DEPOSITIONS

SEC. 12. (a) The officer before whom any deposition is taken shall certify thereon that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition, together with any papers produced by the witness and the notice of deposition or stipulation, if the deposition was taken without notice, in an envelope endorsed with the title of the contested election case and marked "Deposition of (here insert name of witness)" and shall within thirty days after completion of the witness' testimony, file it with the Clerk.

(b) After filing the deposition, the officer shall promptly notify the parties of its filing.

(c) Upon payment of reasonable charges therefor, not to exceed the charges allowed in the district court of the United States for the district wherein the place of examination is located, the officer shall furnish a copy of deposition to any party or the deponent.

RECORD; PRINTING AND FILING OF BRIEFS AND APPENDIXES

SEC. 13. (a) Contested election cases shall be heard by the committee on the papers, depositions, and exhibits filed with the Clerk. Such papers, depositions, and exhibits shall constitute the record of the case.

(b) Contestants shall print as an appendix to his brief those portions of the record which he desires the committee to consider in order to decide the case and such other portions of the record as may be prescribed by the rules of the committee.

(c) Contestee shall print as an appendix to his brief those portions of the record not printed by contestant which contestee desires the committee to consider in order to decide the case.

(d) Within forty-five days after the time for both parties to take testimony has expired, contestant shall serve on contestee his printed brief of the facts and authorities relied on to establish his case together with his appendix.

(e) Within thirty days of service of contestant's brief and appendix, contestee shall serve on contestant his printed brief of the facts and authorities relied on to establish his case together with his appendix.

(f) Within ten days after service of contestee's brief and appendix, contestant may serve on contestee a printed reply brief.

(g) The form and length of the briefs, the form of the appendixes, and the number of copies to be served and filed shall be in accordance with such rules as the committee may prescribe.

FILINGS OF PLEADINGS, MOTIONS, DEPOSITIONS, APPENDIXES, BRIEFS, AND OTHER PAPERS

SEC. 14. (a) Filings of pleadings, motions, depositions, appendixes, briefs, and other papers shall be accomplished by:

(1) delivering a copy thereof to the Clerk of the House of Representatives at his office in Washington, District of Columbia, or to a member of his staff at such office; or

(2) mailing a copy thereof, by registered or certified mail, addressed to the Clerk at the House of Representatives, Washington, District of Columbia: *Provided*, That if such copy is not actually received, another copy shall be filed within a reasonable time; and

(3) delivery or mailing, simultaneously with the delivery or mailing of a copy thereof under paragraphs (1) and (2) of this subsection, such additional copies as the committee may by rule prescribe.

(b) All papers filed with the Clerk pursuant to this Act shall be promptly transmitted by him to the committee.

TIME; COMPUTATION AND ENLARGEMENT

SEC. 15. (a) In computing any period of time prescribed or allowed by this Act or by the rules or any order of the committee, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, a Sunday, nor a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. For the purposes of this Act, "legal holiday" shall mean New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States.

(b) Whenever a party has the right or is required to do some act or take some proceeding within a prescribed period after the service of a pleading, motion, notice, brief, or other paper upon him, which is served upon him by mail, three days shall be added to the prescribed period.

(c) When by this Act or by the rules of any order of the committee an act is required or allowed to be done at or within a specified time, the committee, for good cause shown, may at any time in its discretion (1) with or without motion or notice, order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect, but it shall not extend the time for serving and filing the notice of contest under section 3.

DEATH OF CONTESTANT

SEC. 16. In the event of the death of the contestant, the contested election case shall abate.

ALLOWANCE OF PARTY'S EXPENSES

SEC. 17. The committee may allow any party reimbursement from the contingent fund of the House of Representatives of his reasonable expenses of the contested election case, including reasonable attorneys fees, upon the verified application of such party accompanied by a complete and detailed account of his expenses and supporting vouchers and receipts.

REPEALS

SEC. 18. The following provisions of law are repealed:

(a) Sections 105 through 129 of the Revised Statutes of the United States (2 U.S.C. 201-225).

(b) The second paragraph under the center heading "House of Representatives" in the first section of the Act of March 3, 1879 (2 U.S.C. 226).

(c) Section 2 of the Act entitled "An Act further supplemental to the various Acts prescribing the mode of obtaining evidence in cases of contested elections", approved March 2, 1875 (2 U.S.C. 203).

EFFECTIVE DATE

SEC. 19. The provisions of, and the repeals made by, this Act shall apply with respect to any general or special election for Representative in, or Resident Commissioner to, the Congress of the United States occurring after the date of enactment of this Act.

The SPEAKER pro tempore. Is a second demanded?

Mr. KYL. Mr. Speaker, I demand a second.

Mr. RYAN. Mr. Speaker, is the gentleman from Iowa opposed to the bill?

Mr. KYL. Mr. Speaker, I am not opposed to the bill.

The SPEAKER pro tempore. The gentleman cannot demand a second.

Mr. RYAN. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Is the gentleman from New York opposed to the bill?

Mr. RYAN. I am opposed to the bill, Mr. Speaker.

The SPEAKER pro tempore. The gentleman from New York qualifies.

Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Virginia (Mr. ABBITT) will be recognized for 20 minutes, and the gentleman from New York (Mr. RYAN) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Virginia (Mr. ABBITT).

Mr. ABBITT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 14195 would completely revise the existing law governing contests of elections of Members of the House of Representatives, which was passed in 1851 in a form substantially identical to the contested-election law enacted in 1798 by the fifth Congress. The 1851 law prescribes antiquated and cumbersome procedures which are unsuitable for the changed conditions of our time. H.R. 14195 would provide modern procedures for a contested election case to be heard in the House, permitting a more efficient and expeditious processing of the case than does existing law.

It should be noted that this bill does not set out any substantive grounds for upsetting an election, such as fraud or other irregularities. It is strictly limited to prescribing a procedural framework for the prosecution, defense, and disposition of contested-election cases patterned upon the Federal rules of civil procedure used for more than 20 years in our U.S. district courts. It should also be noted that the bill does not affect other methods of challenging an election, such as a protest or memorial filed in the House by a citizen or a motion made by a Member of the House.

Briefly, the bill would permit any candidate in the general election for a House seat to challenge the election of the candidate declared to be the winner. "Candidate" is defined to include a bona fide write-in candidate. The contest would be initiated by a sworn notice of contest describing the grounds of the contest with particularity, filed with the Clerk of the House and served upon the contestee within 30 days after the official declaration of the election results. The contestee has 30 days within which to answer or to file a motion challenging the legal sufficiency of the notice or the service of the notice or to move for a more detailed statement of the grounds. Each party is allowed a specified time for taking testimony of witnesses by deposition—the total time for taking testimony by both parties is 70 days. Attendance of witnesses and production of documents and papers including ballots can be compelled by subpena. Once the testimony is completed, briefs would be filed by the parties under much the same procedure as followed in the Federal appellate courts. The Committee on House Administration would consider the case on the entire record of depositions, papers, and exhibits filed with the Clerk and the briefs and oral arguments of the parties. The decision of the committee, as in the past, would be reported to the House in the form of a resolution.

Mr. Speaker, H.R. 14195 will accomplish a much needed and long overdue reform of our contested election procedures. I urge its passage.

Mr. BLACKBURN. Mr. Speaker, will the gentleman yield?

Mr. ABBITT. I yield to the gentleman from Georgia.

Mr. BLACKBURN. As the gentleman in the well is aware, I am very familiar with election contests.

A question occurs to me as to whether the committee has dealt with the question of whether or not the certified winner of a general election would be seated pending the outcome of the contest. Has the committee given this attention?

Mr. ABBITT. The committee gave it no attention whatever. We did not intend to change any basic rule of law. This is purely and simply a procedural matter, so as to expedite the hearings and to bring the contest to a head, to help the parties. It spells out for the contestant how he can act. It spells out for the contestee what he can do. It provides for a decision in a more expeditious manner.

Mr. BLACKBURN. Just for the purpose of clarifying the record, this deals with the mechanics of an election contest and not the substance.

Mr. ABBITT. Purely and simply the mechanics.

Mr. BLACKBURN. This action would not be construed as changing the present precedents, which are to the effect that the certified winner will take his seat pending the outcome of the contest?

Mr. ABBITT. So far as I can ascertain, it does not affect the basic law one iota. It is merely intended to expedite the hearings, so that the matter can be brought to a decision as quickly as possible.

Mr. BLACKBURN. I thank the gentleman and the members of the committee for the work they have done on this. I have read it over. It is a tremendous piece of work I am happy to support.

Mr. ABBITT. I thank the gentleman.

Mr. KYL. Mr. Speaker, will the gentleman yield?

Mr. ABBITT. I yield to the gentleman from Iowa.

Mr. KYL. Mr. Speaker, the bill before the House of Representatives today, H.R. 14195, is to modernize the outdated statutory procedures relating to contested elections of Members of the House of Representatives.

The House Administration Committee has referred to the present contested election law as a "relic of a bygone era." This is literally the case since the present law was passed in 1851 and at that time was patterned substantially after a contested election law passed in 1798.

Revision is long overdue. Though some election contests generally occur each new Congress, under present conditions they must be adjudicated under cumbersome, antiquated procedures. Some of the inadequacies of the present statute are listed in the report. They are:

1. The question of who has standing to initiate a contest has been made unclear by the House's conflicting interpretation of the law over the past century.

2. There being no requirement for filing contest papers with the Clerk until testimony has been taken, the House is usually not officially cognizant of the case until several months after its inception.

3. Given the speed of modern communication and transportation, the 90 days allowed for taking testimony by deposition is too long.

4. There is no clear authority for contestant to take testimony if contestee fails to answer the notice of contest.

5. There is no procedure for challenging the legal sufficiency of the notice of contest by a motion in the nature of a demurrer.

6. Existing law does not provide contestee with any means of compelling contestant to furnish a more definite statement of the grounds of the contest in the event the notice of contest is vague or ambiguious.

7. The Clerk is required to decide which portions of testimony are to be printed if the parties fail to agree.

8. Witnesses who testify on deposition must sign the transcript of deposition. There is no provision for waiver of signature.

9. The 75-cent-per-day witness fee is insufficient by contemporary standards.

10. The penalty for failure of a witness to appear and testify at a deposition is outdated ($20 forfeiture plus suit costs to be recovered by party, at whose instance witness was called, in an action for debt in Federal court; also liable to indictment for misdemeanor and punishment by fine and imprisonment of an unspecified amount and duration.)

It is essential that we provide a means not only to help decide election cases in a fair manner but also to do this as efficiently and quickly as possible. This is the purpose of H.R. 14195.

The procedures it contains for pleading, taking testimony and briefing a case are patterned roughly after the Federal Rules of Civil Procedure. The bill deals only with procedures, not substantive grounds for dealing with House election contests.

It is in the interest of the House of Representatives and the public to have efficient, up-to-date procedures to handle contested election cases. I urge passage of H.R. 14195.

In further response to the question which was directed to the gentleman, going back to 1941 we have had seven cases.

The recent precedents involving contests brought against Members-elect by persons who were not candidates in the general election show that the House of Representatives regards such persons as lacking standing to bring an election contest under the statute. In dismissing each of the following contested election cases, brought by a contestant who was not a candidate, the House cited contestant's lack of standing under the statute as a ground for dismissal:

Miller v. *Kirwan* (77th Congress, 19th District, Ohio), dismissed on January 10, 1941, by House Resolution 54, volume 87, CONGRESSIONAL RECORD, page 101; *McEvoy* v. *Peterson* (78th Congress, First District, Georgia), dismissed on May 5, 1944, by House Resolution 534, volume 90, CONGRESSIONAL RECORD, pages 4074, 4078; *Woodward* v. *O'Brien* (80th Congress, Sixth District, Illinois), dismissed on July 26, 1947, by House Resolution 345, volume 93, CONGRESSIONAL RECORD, page 10445; *Lowe* v. *Davis* (82d Congress, Fifth District, Georgia), dismissed by House Resolution 398 on August 31, 1951, volume 97, CONGRESSIONAL RECORD, page 10479; *Frankenberry* v. *Ottinger* (89th Congress, 25th District, New York), dismissed on January 19, 1965, by House Resolution 126, CONGRESSIONAL RECORD, volume 111, part 1, page 951; *Five Mississippi Election Contests* (89th Congress, First, Second, Third, Fourth, and Fifth Districts, Mississippi), dismissed September 17, 1965, by House Resolution 585, CONGRESSIONAL RECORD, volume 111, part 18, page 24263; *Lowe* v. *Thompson* (90th Congress, Fifth District, Georgia), dismissed on July 11, 1967, by House Resolution 541, CONGRESSIONAL RECORD, volume 113, part 14, page 18290.

In each of those cases the precedent was held in the case of a contest brought by an individual who was not actually a candidate. The House of Representatives regarded such persons as lacking in standing to bring an election contest under the statute.

As the gentleman has said so ably, this bill does not attempt to change substantive law. It is merely for procedural purposes entirely. If someone wants to change the law to permit someone other than a candidate to bring a contest this should be done in a separate piece of legislation which looks to changing the basic law rather than changing the procedures under which contests are held.

Mr. ABBITT. The gentleman is eminently correct. I thank him for his contribution.

The SPEAKER pro tempore. The gentleman has consumed 8 minutes.

Mr. ABBITT. Mr. Speaker, I reserve the balance of my time.

Mr. RYAN. Mr. Speaker, I demanded a second because, in reviewing the legislation before us I recalled the situation which confronted the House in 1965 when we had before us the question of the contested elections in the five congressional districts in the State of Mississippi. Although those election contests were dismissed by the House on September 17, 1965, by a vote of 228 to 143, at least the statutory machinery was made available to the contestants, depositions were taken and evidence presented. H.R. 14195 would preclude similar contests.

I am concerned about the failure of this bill to protect one who is a candidate but who is unable to obtain a position on the ballot because of discriminatory action of State officials.

In the 1965 Mississippi contested election case, I believe that three of the contestants had attempted to become independent candidates on the ballot in the State of Mississippi. They obtained the required number of signatures, but were denied a place on the ballot through discriminatory rulings. They were Mrs. Fannie Lou Hamer, Mrs. Annie Devine, and Mrs. Victoria Gray.

The bill before us makes it very clear that the term "candidate" means an individual whose name is printed on the official ballot or one whose name is not printed on the official ballot but who is a write-in candidate in a State where write-in voting is permitted. This leaves no recourse to the individual who is denied a place on the ballot in a particular State, either the officially printed ballot or through a write-in. I believe it is unwise to prevent an individual in that situation from contesting an election.

Mr. KYL. Mr. Speaker, will the gentleman yield?

Mr. RYAN. In just a moment.

To be sure the House has held, through its action on contested elections in recent years, that the statute requires a contestant to be a candidate on the ballot. Nevertheless, the present statute itself does, despite the actions of the House, refer to "any person." Section 105 of the Revised Statutes states, "Whenever any person intends to contest an election of any Member of the House of Representatives," he shall follow certain procedures. My concern is that under the proposed bill there is no statutory protection available to the person whose name either does not appear on the officially printed ballot or as a write-in candidate.

I am now glad to yield to the gentleman from Iowa.

Mr. KYL. I thank the gentleman for yielding to me.

In order to clarify this a bit, under the prevailing statutes, rules, and precedents of the House, today the House may adjudicate the question of the right to a seat in any of the following cases, and I will start with the second: "A protest or memorial filed in the House by an elector of the district involved; or, third, a protest or memorial filed by any other person; or, a motion made by a Member of the House."

None of these three matters are changed a bit by this bill.

Mr. RYAN. I understand that. However, only through a contest instituted in accordance with the contested election law, does a person have the right to initiate a contest, with the power of subpena, which may result in a full investigation. As I understand it, under a protest or memorial filed by an elector or by any other person, it is discretionary with the House as to whether an investigation shall go forward; and the person filing the protest or memorial has no right to subpena witnesses or take depositions or otherwise initiate an action.

What I am trying to do is to suggest that there should be protection for the individual who through discrimination or otherwise is denied a place on the ballot in a particular State.

Mr. KYL. Mr. Speaker, if the gentleman will yield further, since this bill does deal with procedures rather than substantive law, assuming that the gentleman in the well is absolutely correct in his desire and in his purpose here, he would agree, would he not, that the correct place to make the alteration he desires would be in a separate bill dealing with the substantive law rather than through this mechanism now pending here on the floor today, which is procedural in nature?

Mr. RYAN. I must disagree with the gentleman because I view the bill as one dealing in substance. It repeals existing law and provides a new statute under which an election may be contested. It goes beyond a procedural matter in providing who may contest an election. Unfortunately, the bill is before us under suspension of the rules—a procedure which prevents any amendments being offered and limits discussion of it. If the bill were open for amendment, in my opinion it would be entirely proper to amend the definition of the term "candidate" under section 2(b) in order to include the person with whom I am concerned.

Mr. KYL. Mr. Speaker, if the gentleman will yield further, there is another matter which complicates all these things that the gentleman from New York is speaking of, and that is the fact that most election laws are State election laws where we have no jurisdiction. But in this instance it simply is trying to put into law what the House of Representatives since 1941 has decided is the proper approach to the entire problem. In other words, it is not only the attitude of the committee today but is in accordance with precedents established by the Congress at an earlier date.

I thank the gentleman for his concern about this matter but I, personally, think that this bill is about the most perfect piece of legislation with which to accomplish the purpose which the committee set out to correct.

Mr. RYAN. Mr. Speaker, I would like to quote from the minority views of report No. 1008 which accompanied House Resolution 585 in the 89th Congress, wherein the writers of the minority views stated as follows:

It must be obvious to everyone that to require an individual to be a candidate before he can contest an election in a jurisdiction where it is impossible for him or her to register and vote, let alone get his or her name on the ballot, makes a contest impossible and deprives the Constitution, statutes, and rules of all meaning in this regard.

I do not believe we can ignore those views as expressed in 1965 at the time the Mississippi contests were before the House.

Now, if I may, I should like also to refer to another section of the same report, and that is the majority part of the report which states—and this was in connection with the dismissal of the Mississippi contests in September 1965—and I quote from that report:

The committee recommends as follows:

(1) That the House Administration Committee, because of its concern over present House procedures governing election contests, undertake a thorough review of such procedures in the light of this case and make recommendations for improving and clarifying them so as to deal more expeditiously with such cases in the future, particularly those involving violations of the Voting Rights Act of 1965.

Mr. Speaker, I stress and emphasize the words "particularly those involving violations of the Voting Rights Act of 1965."

I should like to ask the distinguished gentleman from Virginia, the soonsor of the bill, what recommendations the committee has made to deal with violations of the Voting Rights Act of 1965?

Mr. ABBITT. Insofar as I know the committee has taken no action in that field.

Mr. RYAN. I appreciate the gentleman's answer, and I think it points up again the need to take a very careful look at this legislation. Discriminatory exclusion from the ballot should be grounds for a statutory contest. May I remind the House that the Voting Rights Act of 1965 expires next year and so far the Rules Committee has not granted a rule to bring to the floor the 5-year extension bill reported by the Judiciary Committee.

It is essential that the Voting Rights Act of 1965 be extended. But if by any chance it is not extended, then I think all of us can anticipate a variety of obstacles not only to registration and voting but to the efforts of candidates to have their names placed on the ballot. Thus, it is all the more important to provide recourse and protection to a candidate who under the proposed bill would be denied an opportunity to contest an election.

Mr. FARBSTEIN. Mr. Speaker, will the gentleman yield?

Mr. RYAN. I yield to the gentleman.

Mr. FARBSTEIN. Presumably this applies solely to election contests on election day. I understand, of course, that the State rules and State laws govern elections within the State, particularly the primaries. I do not think this bill has anything in it dealing with primaries. But nevertheless since it has become very stylish for individuals of great substance to run for Congress, and the expenditure of tremendous sums of money in order to obtain nominations has become the vogue of late, it appears to me that perhaps there should be something in this legislation dealing with that subject.

I admit that the primaries, of course, are a function within the State laws, but nevertheless a primary deals with the office of a Member of the House of Representatives. In view of the failure of this legislation to make any mention of that fact, perhaps this may raise a question as to its desirability. Would the gentleman care to comment on that?

Mr. RYAN. Yes. I would say that the gentleman has touched upon a very significant problem, that is, the need to control the cost of elections. The House should be concerned not only with contested general elections, but with primaries, because, as we all know, in many areas of the country there are one-party districts where a primary victory is tantamount to election, and at the present time there is no regulation by the Federal Government of primary elections as to finance or otherwise.

Mr. KYL. Mr. Speaker, will the gentleman yield?

Mr. RYAN. I am glad to yield to the gentleman.

Mr. KYL. The matter of primary elections, of course, is a matter that belongs to the State. As a matter of fact, the House Administration Committee has always taken into consideration what happens in primary elections. But always those cases have come to us after the contest in the primary has gone through all of the legal procedures of the State.

For instance, in the last case which was brought, there was a decision rendered by the Supreme Court of the State regarding the primary election. So the House Administration Committee, which knows that the House is not bound by this under Hinds' Precedents has accepted the Supreme Court's word in the State as the final word so far as the primary election is concerned.

Mr. RYAN. I think the gentleman from New York is concerned about the fact, that the House itself, although it attempts to regulate the general elections, does not do so with respect to primary elections.

Mr. FARBSTEIN. Mr. Speaker, will the gentleman yield?

Mr. RYAN. I yield to the gentleman.

Mr. FARBSTEIN. There is no question but what the House in a general election will recognize the expenditure of vast sums of money in order to take office as a Member of the House of Representatives as being a basis for denying that seat. Nevertheless, by indirection one can evade that precedent by spending money in the primaries. The question of expenditures in a primary cannot be brought up in the determination of the right to contest an election under this law.

Am I correct in that?

Mr. KYL. Mr. Speaker, will the gentleman yield?

Mr. RYAN. I yield to the gentleman.

Mr. KYL. I would like to make two observations as a result of the questions raised by the gentleman from New York.

Number one, if he is earnestly interested in getting a good Corrupt Practices Act out of the House Administration Committee, I hope he will put enough pressure on certain Members, and will visit them privately, so that they can get that bill out and control the matter of which he speaks.

The other matter which I would just like to mention in passing, is this: With reference to a voting rights act here, all contested elections in the United States are not going to occur in the Southern States. I cannot understand how we have people objecting to the extension of the Voting Rights Act to apply to the 50 States at the present time, and yet we have this objection.

Mr. FARBSTEIN. I do not propose at this moment to go into the question raised by the gentleman from New York (Mr. RYAN) in connection with primaries in those States where the primary election is, in reality, a general election. I am directing my attention to those areas where there is both a primary and a general election. So I do not know that I can take that into consideration.

Mr. KYL. Mr. Speaker, will the gentleman yield further?

Mr. RYAN. I yield to the gentleman from Iowa.

Mr. KYL. I thank the gentleman for yielding.

If the gentleman would compare Federal statutes covering expenditures for campaigns with State laws at this time, he would find that most State laws are infinitely tougher than those of the Federal Government.

Mr. FARBSTEIN. Most, perhaps, but not all of them. I think we should not make fish of one and fowl of another.

Mr. RYAN. Mr. Speaker, in conclusion, let me point out that my opposition to this bill rests on the fact that it is before us under a procedure which denies us an opportunity to offer amendments. I am particularly concerned, as far as this particular piece of legislation is concerned, H.R. 14195, with its failure to protect an individual who seeks to be a candidate and who is denied an opportunity to appear on the ballot through discriminatory action on the part of the State. Under the proposed statute he would not be in a position to contest an election in the House of Representatives, nor would he have available to him the subpena power which the proposed statute would give to a person it defines as a candidate—and the definition is more narrow than the statute which it seeks to replace.

Mr. THOMPSON of Georgia. Mr. Speaker, will the gentleman yield?

Mr. RYAN. I yield to the gentleman from Georgia.

Mr. THOMPSON of Georgia. I would like to ask a question which perhaps the gentleman from Virginia would have to answer. I have had the experience of having elections contested a couple of times. The first time it occurred the notice that was given to me I did not recognize as being a legal notice. There was no statement on the document that it had to be answered within a specific period of time. I did not answer that notice that was given by my opponent, and I was not quite sure whether it constituted notice or whether it demanded notice. Is there anything in this legislation which would require a statement to be placed somewhere on the notice that is filed by the contestant with the successful candidate that an answer is required and, if so, by what authority?

Mr. ABBITT. Mr. Speaker, will the gentleman yield?

Mr. RYAN. I yield to the gentleman from Virginia.

Mr. ABBITT. I refer the gentleman to

page 3 of the bill, section 3(b), which covers the notice to which the gentleman has referred:

(b) Such notice shall state with particularity the grounds upon which contestant contests the election and shall state that an answer thereto must be served upon contestant under section 4 of this Act within thirty days after service of such notice. Such notice shall be signed by contestant and verified by his oath or affirmation.

If the gentleman will yield further, what we have tried to do is to spell out some things that we think would help the parties get to the issue expeditiously.

Mr. THOMPSON of Georgia. I would like to say this: I think that certainly improves the current law—the fact that he would have to specify that an answer was required. It would give personal notice that an answer is required.

I thank the gentleman.

Mr. RYAN. Mr. Speaker, I simply wish again to express my concern with the narrowing of the definition of "candidate." Although recent House actions have held that, in order to have a standing, a contestant should have been a candidate on the ballot; nevertheless, the report on this bill, H.R. 14195, states on page 3—

The question of who has standing to initiate a contest has been made unclear by the House's conflicting interpretation of the law over the past century.

I would agree that the question of standing should be clarified—but not as the proposed bill does. This bill would prevent candidates who are denied a place on the ballot through discriminatory action from contesting an election. Had it been in effect in 1965, the five Mississippi contests would not have been brought before the House.

Mr. ABBITT. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, I would like to say, with reference to the points raised by the gentleman from New York, this bill just simply spells out in plain language what the House Administration Committee and this House have decided on numerous occasions, that no one has any standing to contest except a person who was a candidate. We go even further in this bill and say a person could contest if he is a bona fide write-in candidate. He can contest.

Now, as to the right of the contestant, to subpena that is true, but that really can also be abused, as was done in a number of cases, as some of the Members know. If everybody has a right to contest and subpena witnesses, he can run a House Member up and down the State, and no one knows how long it would take to settle it.

As to the primary, this bill makes no change. Under the present law, we have no jurisdiction over the primary.

(Mr. CLEVELAND (at the request of Mr. KYL) was granted permission to extend his remarks at this point in the RECORD.)

Mr. CLEVELAND. Mr. Speaker, although I favor most of H.R. 14195, the Federal Contested Election Act, I shall be constrained to vote against it for one reason. My objection is that this measure expressly confines the right to contest an election to candidates, and thus excludes the general public. Once before, I protested this matter—see CONGRESSIONAL RECORD for the first session, 89th Congress, January 4, 1965, pages 39 et seq. I believe that any citizen should have the right to contest an election to the House of Representatives under the provisions of our contested election law. The House did not sustain my position in 1965—see CONGRESSIONAL RECORD for 89th Congress, January 19, 1965, page 929 et seq.

The question then before the House was whether the law permitted anyone but a defeated candidate for the House to bring a contest under the provisions of the contested elections laws. I cited numerous precedents, which I still believe should control in these cases. They support my position that any elector is qualified to bring election contests.

As I noted, the House voted down this position and, in effect, ruled that only candidates were qualified to contest elections.

It is with a certain wry interest, therefore, that I find the following language in the report on H.R. 14195—page 3:

(1) The question of who has standing to initiate a contest has been made unclear by the House's conflicting interpretation of the law over the past century.

My efforts 4 years ago, had they been successful, would have eliminated much of that confusion. H.R. 14195 would eliminate confusion, also, but I believe it goes in the wrong direction in this respect.

There are many reasons why the right to contest a congressional election should not be confined only to the defeated candidate.

Illness might prevent his pressing a contest. Lack of personal financial resources might do so. A reluctance to be thought a poor loser, thereby possibly clouding his appeal as a future candidate, might do so. Perhaps the candidate could be persuaded by the winning side in some manner not to make a contest.

There are innumerable possibilities.

I doubt very much if it is sound public policy to preclude the right of any American to come before the House and proceed under our contested election law to question the propriety of an election to this body.

That is what H.R. 14195 would do and therefore, in spite of the improvements and clarification which it contains, I shall vote against it.

I shall do so in full recognition of the fact that the bill would leave untouched certain other remedies by which citizens may challenge the outcomes of elections to the House. A motion of contest could still be made by a Member of the House; and the public at large would still be entitled to file protests and memorials to the House.

I feel, however, that the public should have the full range of remedies available to it and that this measure would substantially curtail the general public's rights.

The SPEAKER pro tempore. The question is on the motion of the gentleman from Virginia that the House suspend the rules and pass the bill H.R. 14195, as amended.

The question was taken.

Mr. RYAN. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Doorkeeper will close the doors, the Sergeant at Arms will notify absent Members, and the Clerk will call the roll.

The question was taken; and there were—yeas 311, nays 12, not voting 108, as follows:

[Roll No. 235]

YEAS—311

Abbitt	Evins, Tenn.	McDonald, Mich.
Abernethy	Feighan	McEwen
Adair	Fish	McFall
Adams	Flood	McKneally
Albert	Flowers	McMillan
Alexander	Foley	Macdonald, Mass.
Anderson, Calif.	Ford, Gerald R.	MacGregor
Anderson, Tenn.	Ford, William D.	Madden
Andrews, Ala.	Foreman	Mahon
Annunzio	Fraser	Mann
Ashley	Frey	Marsh
Aspinall	Friedel	Matsunaga
Ayres	Fulton, Pa.	May
Barrett	Fulton, Tenn.	Mayne
Belcher	Fuqua	Meeds
Bell, Calif.	Gallifianakis	Melcher
Bennett	Gallagher	Meskill
Berry	Gaydos	Michel
Betts	Gettys	Mikva
Bevill	Giaimo	Miller, Calif.
Biaggi	Gilbert	Miller, Ohio
Biester	Gonzalez	Minish
Blackburn	Goodling	Mink
Blanton	Gray	Minshall
Blatnik	Green, Oreg.	Mize
Boggs	Green, Pa.	Mizell
Boland	Gross	Mollohan
Bow	Grover	Montgomery
Bray	Gude	Morgan
Brinkley	Hagan	Morton
Broomfield	Haley	Moshar
Brotzman	Hall	Moss
Brown, Mich.	Hamilton	Murphy, Ill.
Broyhill, N.C.	Hammer-schmidt	Myers
Buchanan	Hanley	Natcher
Burke, Fla.	Hanna	Nedzi
Burke, Mass.	Hansen, Idaho	Nelsen
Burleson, Tex.	Hansen, Wash.	Nichols
Burlison, Mo.	Harvey	Nix
Button	Hastings	Obey
Byrne, Pa.	Hathaway	O'Hara
Byrnes, Wis.	Hawkins	Olsen
Cabell	Hebert	O'Neal, Ga.
Caffery	Hechler, W. Va.	O'Neill, Mass.
Carter	Heckler, Mass.	Ottinger
Casey	Henderson	Patman
Cederberg	Hicks	Patten
Celler	Holifield	Pelly
Chamberlain	Horton	Perkins
Chappell	Hosmer	Pettis
Clancy	Hull	Pickle
Collier	Hungate	Pike
Collins	Hunt	Pirnie
Colmer	Hutchinson	Poage
Conable	Ichord	Podell
Corbett	Jacobs	Poff
Coughlin	Jarman	Preyer, N.C.
Cunningham	Johnson, Calif.	Price, Ill.
Daniel, Va.	Johnson, Pa.	Price, Tex.
Daniels, N.J.	Jones, Ala.	Pryor, Ark.
Davis, Ga.	Karth	Pucinski
Davis, Wis.	Kastenmeier	Purcell
de la Garza	Kazen	Quillen
Delaney	Kee	Railsback
Dellenback	Keith	Randall
Denney	King	Rarick
Dennis	Kleppe	Reed
Devinski	Kuykendall	Reid, Ill.
Dickinson	Kyl	Reuss
Dowdy	Kyros	Rhodes
Duiski	Langen	Riegle
Duncan	Latta	Roberts
Dwyer	Leggett	Robison
Edmondson	Lennon	Rogers, Colo.
Edwards, La.	Lloyd	Rogers, Fla.
Eilberg	Long, Md.	Rooney, N.Y.
Erlenborn	Lujan	Rooney, Pa.
Esch	McClory	Roth
Eshleman	McCloskey	Roybal
Evans, Colo.	McDade	Ruppe

Ruth	Stanton	Watson
St Germain	Steed	Watts
St. Onge	Steiger, Ariz.	Weicker
Sandman	Steiger, Wis.	Whalen
Satterfield	Stephens	White
Saylor	Stratton	Whitehurst
Schadeberg	Stuckey	Whitten
Schade	Sullivan	Widnall
Scheuer	Symington	Williams
Schneebeli	Talcott	Wilson, Bob
Schwengel	Taylor	Winn
Scott	Teague, Calif.	Wolff
Sebelius	Thompson, Ga.	Wright
Shipley	Thompson, N.J.	Wyatt
Shriver	Tiernan	Wydler
Sisk	Tunney	Wylie
Skubitz	Udall	Wyman
Slack	Van Deerlin	Yates
Smith, Calif.	Vander Jagt	Yatron
Smith, N.Y.	Vanik	Young
Snyder	Vigorito	Zablocki
Springer	Waggonner	Zion
Stafford	Waldie	Zwach
Staggers	Wampler	

NAYS—12

Bingham	Cohelan	Hawkins
Burton, Calif.	Conyers	Hechler
Clay	Edwards, Calif.	Ryan
Cleveland	Farbstein	Stokes

NOT VOTING—108

Addabbo	Donohue	McCulloch
Anderson, Ill.	Dorn	Mailliard
Andrews, N. Dak.	Downing	Martin
Arends	Eckhardt	Mathias
Ashbrook	Edwards, Ala.	Mills
Baring	Fallon	Monagan
Beall, Md.	Fascell	Moorhead
Bolling	Findley	Morse
Brademas	Fisher	Murphy, N.Y.
Brasco	Flynt	O'Konski
Brock	Frelinghuysen	Passman
Brooks	Garmatz	Pepper
Brown, Calif.	Gibbons	Philbin
Brown, Ohio	Goldwater	Pollock
Broyhill, Va.	Griffin	Powell
Burton, Utah	Griffiths	Quie
Bush	Gubser	Reid, N.Y.
Cahill	Halpern	Reifel
Camp	Harrington	Rivers
Carey	Harsha	Rodino
Chisholm	Hays	Rosenthal
Clark	Hogan	Rostenkowski
Clausen, Don H.	Howard	Roudebush
Clawson, Del	Jonas	Sikes
Conte	Jones, N.C.	Smith, Iowa
Corman	Jones, Tenn.	Stubblefield
Cowger	Kirwan	Taft
Cramer	Kluczynski	Teague, Tex.
Culver	Koch	Thomson, Wis.
Daddario	Landgrebe	Ullman
Dawson	Landrum	Utt
Dent	Lipscomb	Watkins
Devine	Long, La.	Whalley
Diggs	Lowenstein	Wiggins
Dingell	Lukens	Wilson, Charles H.
	McClure	Wold

So (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

The Clerk announced the following pairs:

Mr. Hayes with Mr. Arends.
Mr. Addabbo with Mr. Conte.
Mr. Rostenkowski with Mr. Anderson of Illinois.
Mr. Garmatz with Mr. McCulloch.
Mr. Passman with Mr. Ashbrook.
Mr. Dent with Mr. Mailliard.
Mr. Mills with Mr. Morse.
Mr. Monagan with Mr. Lukens.
Mr. Teague of Texas with Mr. Andrews of North Dakota.
Mr. Howard with Mr. Del Clawson.
Mr. Brasco with Mr. Halpern.
Mr. Brooks with Mr. Devine.
Mr. Carey with Mr. Cahill.
Mr. Daddario with Mr. Gubser.
Mr. Donohue with Mr. Beall of Maryland.
Mr. Philbin with Mr. Wiggins.
Mr. Fascell with Mr. Broyhill of Virginia.
Mr. Murphy of New York with Mr. Frelinghuysen.
Mr. Clark with Mr. Harsha.
Mr. Rivers with Mr. Hogan.
Mr. Rodino with Mr. Mathias.
Mr. Charles H. Wilson with Don H. Clausen.
Mr. Kluczynski with Mr. Martin.
Mr. Fallon with Mr. Utt.
Mr. Kirwan with Mr. Cramer.
Mr. Jones of North Carolina with Mr. Jonas.
Mr. Brademas with Mr. Cowger.
Mr. Long of Louisiana with Mr. Camp.
Mr. Moorhead with Mr. Brown of Ohio.
Mr. Rosenthal with Mr. Findley.
Mr. Griffin with Mr. Edwards of Alabama.
Mr. Flynt with Mr. Burton of Utah.
Mr. Dingell with Mr. Whalley.
Mrs. Griffiths with Mr. Bush.
Mr. Jones of Tennessee with Mr. Brock.
Mr. Landrum with Mr. Goldwater.
Mr. Corman with Mr. Lipscomb.
Mr. Culver with Mr. Taft.
Mr. Gibbons with Mr. O'Konski.
Mr. Baring with Mr. Reifel.
Mr. Sikes with Mr. Thomson of Wisconsin.
Mr. Fisher with Mr. Roudebush.
Mr. Downing with Mr. McClure.
Mr. Dorn with Mr. Landgrebe.
Mr. Smith of Iowa with Mr. Pollock.
Mr. Pepper with Mr. Watkins.
Mr. Ullman with Mr. Quie.
Mr. Stubblefield with Mr. Wold.
Mr. McCarthy with Mr. Reid of New York.
Mr. Brown of California with Mr. Diggs.
Mr. Harrington with Mr. Powell.
Mr. Lowenstein with Mrs. Chisholm.
Mr. Koch with Mr. Eckhardt.

The result of the vote was announced as above recorded.

The doors were opened.

A motion to reconsider was laid on the table.

LET'S BE VIGILANT NOT TO HURT THE HELPLESS IN OUR FIGHT AGAINST INFLATION

(Mr. MELCHER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MELCHER. Mr. Speaker, fighting inflation by trimming the Federal budget does not necessarily trim just "fat." Two recent events bring this into focus for me. The Washington Post Saturday reported the three Nobel Prize winners in medicine have had their Federal research grants cut for this year.

The grants are true partnership where States, business, charities, or other private sources or private universities and colleges contribute in facilities, equipment, or salaries to further basic research.

In Great Falls High School, in another partnership between Federal and local government, seven teenage boys on work-study as a part of their special education have had the Federal contribution terminated to "fight inflation." Seven exceptional boys, mentally retarded, not capable of keeping up with normal academic studies but performing successfully in a combined work-study program, are the victims of the search to cut fat from the Fedgral budget to help control inflation. Their pay was $1.60 per hour, for 16 hours each per week.

In neither case are the cuts justified. In fact the long-range effect will be to hinder our national progress toward goals that are in the best interests of mankind's unceasing and noble efforts to heal the sick.

Speaking of "national priorities" rings hollow when these two related examples are weighed against the billions of Federal dollars casually spent for destructive weapons which we desperately hope will never be needed nor put to use.

President Nixon is doing well by withdrawing our men from South Vietnam and his policy offers us hope for peace and stability in Southeast Asia.

I do not believe, however, his fiscal advisers are providing him with a sound plan for handling domestic spending.

The two examples of cutting basic medical research and a training program for retarded teenagers are truly "penny wise and pound foolish." In neither case will the tax money be saved, because costs in both cases are the best buys the taxpayers can get. To delay in these areas is the real waste.

I call on the President to reverse his administration's policy in these two areas and review many other similar basic research and medical cuts that are not savings but cruel and unnecessary interruptions in our drive toward the goal of relieving misery, suffering and hopelessness.

The drop in the level of fighting and the withdrawal of our troops from Vietnam means instant savings in lives and materials. Part of the savings in the reduced expenditures from Vietnam should be devoted to the most pressing and worthy of our national efforts to combat disease and mental retardation.

I call on the Congress to form a committee of vigilance to perform its function in citing the needs of the Nation's ills, in citing the needs of this generation and the generations to follow where hopelessness can be helped and where disease can be defeated. Being the watch dog of the Treasury brings no honor when we snuff out tiny candles of hope. I shall try to help the seven boys in Great Falls and others who may have become the victims of the search for trimming fat. I ask you to also be vigilant for worthy causes that our compassion guides us to maintain.

PEACE WITHOUT VICTORY—THE ROAD TO SLAVERY

(Mr. RARICK asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RARICK. Mr. Speaker, 25 years ago today, General of the Army Douglas MacArthur led American troops ashore at Leyte, in the Philippines. Keeping our pledge to our Asian allies, Americans pressed forward to victory in the Pacific. We liberated those held prisoner by the Japanese—Americans as well as others. Literally millions are free today because we achieved an honorable victory. This great American had stated a simple truth:

In war there is no substitute for victory.

By contrast, in 1951, politicians had decided not to win the war in Korea—a war into which we were drawn because of diplomatic blundering. And General MacArthur was relieved of his command.

After countless unnecessary casualties, another general became the first American general to sign a ceasefire without victory. The politicians had won out, and secured a peace claiming the bloodshed in Korea was over. But the unfolding of history belies the claim.

Mr. Speaker, over 400 American fighting men—men who fulfilled their duty to

APPENDIX M: CRITIQUE OF PROPORTIONAL REDUCTION

TOM CAMPBELL
15TH DISTRICT, CALIFORNIA
COMMITTEE ON BANKING AND FINANCIAL SERVICES
SUBCOMMITTEES:
FINANCIAL INSTITUTIONS AND CONSUMER CREDIT
CAPITAL MARKETS, SECURITIES AND GOVERNMENT SPONSORED ENTERPRISES
COMMITTEE ON INTERNATIONAL RELATIONS
SUBCOMMITTEES:
INTERNATIONAL ECONOMIC POLICY AND TRADE
AFRICA

Congress of the United States
House of Representatives

WASHINGTON OFFICE:
2442 RAYBURN BUILDING
WASHINGTON, DC 20515
PHONE: (202) 225-2631
FAX: (202) 225-6718
E-MAIL: CAMPBELL@HR.HOUSE.G
DISTRICT OFFICE:
910 CAMPISI WAY, SUITE 1C
CAMPBELL, CA 95008
PHONE: (408) 371-7337
FAX: (408) 371-7925
KARIN MIRANDA PIPKIN
CHIEF OF STAFF

If House Can't Call The Winner, New Election Is Remedy November 20, 1997

Nine hundred seventy-nine votes separated Rep. Loretta Sanchez (D) and former Rep. Robert Dornan (R) in California's 46th district last November, according to the House Oversight Committee.

Assume each vote is on a single piece of paper, folded over. All of the pieces of paper, about 104,000 of them, are put in a large barrel. Of those pieces of paper, 48,880 have Sanchez on them, while 47,901 have Dornan on them. (The remainder have the names of three minor party candidates.) Who is the winner? Sanchez, 47 to 46 percent.

Put on a blindfold. Pull 1,000 ballots out of the barrel and burn them. You are not permitted to go back and count the ballots left in the barrel. Now tell me the winner. You can't.

If the House of Representatives cannot say who won an election, a new election should be ordered. If the House can say that a candidate other than the declared winner actually won, then that other candidate should be seated without a new election. In those two simple, declarative sentences lies the entirety of the issue with which the minority counsel for the House Oversight Committee, Roger Ballentine, deals in his Nov. 17 Guest Observer (Dornan v. Sanchez Can Be Decided by Proportional Reduction").

However, Ballentine never identified the difference between those two standards. Ballentine leaves the impression that the House must prove that Dornan won to order a new election in California's 46th district. But if the House can prove that, it should seat Dornan.

If the House cannot prove that, it may still be able to prove the outcome of the election is in doubt. In that case, a new election is the remedy.

To order a new election requires meeting a very high standard -- one that will very seldom be met: that more votes be disqualified that the margin of victory. To disqualify improper votes, the House Oversight Committee is scrupulously searching to match the first name, last name, date of birth , and address of someone known not to be a citizen and someone who actually voted last year in the 46th district.

It is appropriate that a high level of proof be required to disqualify a vote. That t process takes time. It takes cooperation. Cooperation has not always been forthcoming. Despite this, if the House is able to pint to 979 votes illegally cast, it must conclude that the outcome of the election is in doubt.

Ballentine, the counsel for the House Oversight Democrats, disagrees. He would, instead, require that each disqualified voter be associated with a specific precinct. He would then apply the Sanchez-Dornan percentage from that precinct to the illegal votes from that precinct. He would then *presume* that the illegal votes were in the same percentage.

In heavens' name, why? What conceivable relevance does the percentage split of legal votes have to an inference as to the percentage split of tainted votes? If the illegal voters were

part of a criminal enterprise to affect the outcome of the election, it's highly unlikely that their percentage distribution would mimic the rest. And if the illegal voters were randomly illegal, there is still a problem with Ballentine's suggestion.

To illustrate that problem, let's go back to the barrel. Pull out ten ballots at a time, one thousand times. On each pull, put nine ballots in one pile, the tenth in another. Does the Sanchez-Dornan split in the first pile tell us anything about the Sanchez-Dornan split in the second pile? If it does, it is only because the pile with the nine is a large enough sample of the entire barrel.

But if that's so, we might as well use the percentage of the entire barrel. It's more reliable than a sub-sample. But under that method, we would never order a new election. The overall barrel percentage was 47 to 46 to 3 to 2 to 2 percent. If we apply a ratio of 47 to 46 to 3 to 2 to 2 to all the votes we toss out, we will show enough ballots to affect the outcome only if we toss out all the ballots! That is an arithmetic truth.

Prove it for yourself. Suppose we had 50,000 illegal ballots out of the 104,000 cast. We would "assume" that 23,500 of them were for Sanchez and 23,000 were for Dornan (the rest for the three other candidates). That's only a difference of 500. The actual Sanchez margin was 979. Not enough!

Suppose we had 75,000 illegal ballots. We would assume 35,250 Sanchez ballots and 34,500 ballots for Dornan. That's a difference of 750. Not enough!

Yet, would anyone in the House feel confident in the results of an election where 50% of the votes cast were illegal?

Not all election contests are like this one. Some concern ballot-box stuffing; and sometimes you can catch the perpetrators and find out how many they put in and for whom. In that kind of a case, since you know they were stuffing for a particular candidate, the two standards become one.

But where, as in the Sanchez-Dornan case, we do not know for whom the illegal voters cast their votes, the two standards point in very different directions. To prove Dornan won is impossible. To prove the election is unascertainable is not. The latter should be the standard; and that is met when 979 illegal votes have been identified.

Rep. Tom Campbell (R-CA) is a professor of law at Stanford University. A Ph.D. in economics, Campbell wrote his dissertation on the use of statistics to infer discrimination in federal government employment. Campbell is the author of two law review articles on the use of statistics in legal cases.

MINORITY VIEWS

I. INTRODUCTION

For the 30th time since the passing of the Federal Contested Election Act ("FCEA" or "Act")[1] nearly three decades ago, the House of Representatives was asked to exercise the authority vested in it by the United States Constitution[2] and make the final decision as to a disputed election for one of its seats. No committee of the House[3] faced with such an election contest, even those where the margin of victory was as small as twenty-one votes,[4] had ever denied a contestee's motion to dismiss, until this contest. And in nearly three decades, no committee hearing a challenge brought under the FCEA had ever failed ultimately to find for the candidate certified by their state as the winner of the election.

There are several reasons for this overwhelmingly consistent precedent, including: the deference that the House has shown to state election challenge procedures; the fact that the FCEA places high burdens on contestants seeking to overturn elections; and the clear requirement that the contestant do more than make allegations of misconduct, but instead show "credible" evidence that the election result was erroneous and that the state was wrong in certifying the winner. But perhaps the most compelling reason why no challenge had ever proceeded past the motion to dismiss phase had been the respect that the House had shown for the democratic electoral processes administered under constitutional authority[5] vested in the states, and the recognition that only with great hesitancy and compelling need should a small number of elected federal officials eviscerate the voices of hundreds of thousands of people expressed through the democratic process.

The American electoral process is not perfect, and this election was no exception. But it is not its perfection that makes our democratic system the envy of the world, it is instead the fundamentally human—and thus sometimes imperfect—nature of the process whereby citizens express their will, through a system administered by citizens, whereby we choose individuals who will govern us. In many ways this system is no more perfect than the people who make it up at every stage, but it is nevertheless the core of self governance.

There may have been mistakes, problems, or even illegalities in the election in the 46th District of California, as in many other

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[1] 2 U.S.C. § 281 *et seq.,* P.L. 91–138 (1969).

[2] U.S. Const. Art. 1, § 5 ("Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members * * *").

[3] Challenges were previously heard in the former House Administration Committee and/or a task force or ad hoc committee appointed by the House.

[4] *Munster* v. *Gejdenson,* (104th Cong.).

[5] Art. 1, § 4 ("The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof * * *")

elections. But our system provides many ways of dealing with such problems without having a few elected federal officials in Washington invalidate the people's process. In this case, the District Attorney, the Secretary of State, and the Immigration and Naturalization Service undertook inquiries into allegations of misconduct or irregularities. This is precisely where such inquiries should have properly lay. Indeed, the Contestant in this case made no showing which called for any appropriate action other than that undertaken by these authorities.

While the Minority agrees with the result in this election contest, we believe that the Majority failed to follow established processes. As set forth below, the Majority improperly calculated the number of allegedly "illegal" votes cast in the election. They retained whole categories of votes in their final number of disputed votes for which they could not establish any "illegalities." The Majority ignored Committee precedent by failing to dismiss Contestant's notice of election contest when he did not show any "credible" evidence that the outcome of the election should have been different. Similarly, they disregarded precedent in refusing to proportionally reduce their total number of disputed votes to account for the inability to know for which candidate voters cast the disputed votes.

II. Unfairness of Process/Procedural History

A. From the outset the Majority disregarded Minority rights

Before and during the first Task Force meeting on February 26, 1997, the Majority misled the Minority and improperly limited Minority participation in the investigation.

Prior to the February 26th Task Force meeting, Majority staff advised Minority staff that the Task Force would grant Mrs. Sanchez' Motion for a Definite Statement of Contestant Dornan's claims. However, at the Task Force meeting, the Majority resolved to postpone disposition of Mrs. Sanchez' motion to dismiss until a hearing on the merits. This triggered the FCEA's discovery provisions. In addition, the Majority circulated an inaccurate agenda for the meeting. The agenda reflected the staff discussions, but not the actions of the Task Force. At that Task Force meeting, Chairman Ehlers inappropriately ruled out of order Mr. Hoyer's amendment to delete the phrase "until a hearing on the merits" and insert "field hearing"—which would have achieved precisely the result the Majority sought. Chairman Ehlers also denied Mr. Hoyer's request to include Minority Counsel Roger Ballentine's written recommendation in the record.

B. The Majority did not provide official Committee documents to the Minority

On March 3, 1997, the Minority learned from press accounts that the Majority had not provided it with copies of official documents filed with the Committee, including motions to quash subpoenas. When confronted, the Majority apologized and promised to promptly provide the Minority all documents filed with the Committee. However, problems persisted. For example, the Majority received the INS' motion to quash Contestant Dornan's subpoena on April 15, 1997. On April 16, 1997, the Committee met to consider pend-

ing subpoenas with the Minority under the mistaken impression that the INS had not responded. On April 19, 1997, the Task Force held its field hearing and heard testimony from INS witnesses, with the Minority still under the impression that the INS had not responded to the subpoena. In fact, the Minority did not receive the motion until April 22, 1997—a week after the Majority received it.

In addition, the Minority was refused access to materials on the basis that confidentiality agreements were not signed by Minority staff. However, on numerous occasions when this requirement was asserted, the Majority staff themselves had not signed such agreements.

Finally, the Majority withheld the receipt of Mr. Dornan's final filings from the Minority even in the face of direct Minority Member query.

C. THE MAJORITY VIOLATED HOUSE RULES BY DENYING THE MINORITY THE RIGHT TO CALL WITNESSES AT THE APRIL 19, 1997 FIELD HEARING

House Rule XI states in pertinent part:

* * * * * * *

Calling and interrogation of witnesses

> (j)(1) Whenever any hearing is conducted by any committee upon any measure or matter, the minority party members on the committee shall be entitled, upon request to the chairman by a majority of them before the completion of the hearing, to call witnesses selected by the minority to testify with respect to that measure or matter during at least one day of hearing thereon.
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> * * * * * * *

The Minority has the right to call witnesses at any Committee hearing, or to have a day of witnesses reasonably contemporaneously with the hearing. The Minority's request to call witnesses at the April 19th field hearing was refused by the Majority, and no Minority witness day was provided, in violation of the Rule.

D. THE MAJORITY DENIED THE MINORITY ACCESS TO MATERIALS PROVIDED BY INS AND THE ORANGE COUNTY REGISTRAR

On June 17, 1997, the Minority staff asked the Majority staff for access to various Orange County ("Orange County" or "OC") and INS computer tapes provided to the Committee. The Majority staff consulted internally, then advised Minority staff that access would be granted. On June 18th, the Majority staff e-mailed House Information Resources (HIR), instructing them to make the Orange County and INS computer tapes available to the Minority (a copy of the e-mail is sent to Minority staff.) The next day, on June 19th, Majority staff countermanded its instructions to HIR to make the Orange County and INS computer tapes available to the Minority. Minority staff was *not* informed.

On June 23rd, Minority staff contacted HIR to arrange access to the Orange County and INS computer tapes. At that time, HIR advised Minority staff that the Majority had given instructions *not* to give the tapes to the Minority. That same day, the Majority staff director confirmed that the Minority could not have access to the

data unless the Ranking Minority Member signed a confidentiality pledge on behalf of himself and his staff.

E. THE MAJORITY REVIEWED MATERIALS PROVIDED TO THE COMMITTEE UNDER SEAL WITHOUT NOTIFYING THE MINORITY

The Committee received sealed materials from the organizations Dump Dornan and Naturalization Assistance Services (NAS) pursuant to Contestant's subpoena. The Majority reviewed those materials without providing notice to the Minority.

F. THE DISCOVERY PROCESS HAS BEEN UNFAIR TO CONGRESSWOMAN SANCHEZ

The Majority permitted Contestant Dornan to issue subpoenas for more than two months after his discovery period expired, then cut off discovery for Mrs. Sanchez without having notified her that her discovery ever began.

Specifically, Contestant Dornan's discovery period expired on April 9, 1997—30 days after the Majority required Mrs. Sanchez to answer Contestant Dornan's Notice of Contest. Despite several motions to quash asserting that Contestant Dornan's discovery period had expired, the Majority remained silent, and permitted Contestant Dornan to issue subpoenas for two more months. Finally, on June 12th, Chairman Thomas and Chairman Ehlers wrote to Mr. Gejdenson and Mr. Hoyer stating that Contestant Dornan's discovery ran from March 10th, to April 9th, and that Sanchez" discovery ran from April 10th to May 10th.

Therefore, the Majority extended Contestant Dornan's discovery period two months beyond the appropriate end date, but ended Mrs. Sanchez" discovery period before it ever began.

G. THE MAJORITY PROVIDED INFORMATION TO THE INS, BUT CONCEALED IT FROM THE MINORITY

Eleven of the Majority's information requests included materials for INS to review. None of those materials were provided to the Minority. In fact, the requests often were crafted to prevent the Minority from determining what the Majority wanted INS to look at.

At the Committee meeting on September 24th, Chairman Thomas agreed to give the Minority the materials he gave the INS. As of the date this report was filed, the Minority still has not received the materials, or been apprised when the Minority would receive them.

H. THE MAJORITY MADE SECRET ARRANGEMENTS WITH THE CALIFORNIA SECRETARY OF STATE

Chairman Thomas asked California Secretary of State Bill Jones to verify the Majority's preliminary findings regarding the citizenship status of registered voters in the 46 th Congressional District. The Minority was not advised of the request until Secretary Jones insisted the Minority be given notice and an opportunity to participate.

On September 15th, Chairman Thomas asked Jones to "verify" the citizenship status of certain registered voters in the

4th Congressional District. The Minority was not notified of the request or provided with the list of registered voters.

On September 18th, Secretary Jones advised Mr. Thomas that he would assist the Committee only if: (1) the Minority were advised of the request and kept informed of the results of his efforts; and (2) the Privacy Act permitted him to do so.

On September 22nd, Mr. Thomas provided Secretary Jones with an opinion from the House General Counsel concluding that the Privacy Act did not apply to information provided to Secretary Jones by Congress. The Minority received a copy of the letter—"the Minority's first notice that Mr. Thomas had requested Secretary Jones" help.

The Majority negotiated a Memorandum of Understanding with Secretary Jones concerning his handling of the Committee's information without consulting the Minority or providing the Minority a copy.

Majority staff scheduled a meeting with Secretary Jones and INS to finalize arrangements for Secretary Jones to verify the Majority's analysis. The Majority did not invite the Minority, and canceled the meeting when the Minority demanded to attend.

I. THE MAJORITY FAILED TO CONSULT THE MINORITY BEFORE ISSUING INTERROGATORIES

On September 24th, the Committee resolved to permit the Chairman to issue interrogatories in consultation with the Ranking Member. On October 1, the Majority issued interrogatories without any prior consultation with the Minority regarding Majority interrogatories.

III. THE MAJORITY HAS CONSISTENTLY MISAPPLIED THE FCEA

The Federal Contested Election Act[6] provides a procedural framework the Committee must follow in its consideration of an election contest. In several instances in the course of this contest, the Committee deviated from the requirements of the Act.

On February 26, 1997 the Task Force met to consider the Contestee's Motion to Dismiss. By a vote of two to one, the Task Force adopted a resolution: "Resolved, the Committee will postpone the disposition of Contestee's Motion to Dismiss until a hearing on the merits." The event that the Majority referred to as a "hearing on the merits" was a field hearing which the Committee set for April in Orange County, California.

Under the FCEA, the Contestant may seek discovery for a period of thirty days after the time for the filing of the answer by the Contestee has expired.[7] If the Committee postpones the disposition of a Motion to Dismiss "until the hearing on the merits", the Contestee's answer is due within ten days of notice of such action.[8] Therefore, by the Majority's interpretation, the discovery period for Mr. Dornan began ten days from this February 26th hearing.

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[6] 2 U.S.C. § 381 et seq.
[7] 2 U.S.C. § 386(c)(1).
[8] 2 U.S.C. § 384(d).

This action constituted a misapplication of the statute. The statute provides that the parties' discovery period is triggered if a Motion to Dismiss is postponed "until the hearing on the merits."[9] However, the term "hearing on the merits" refers to the hearing described in section 392 of the Act, which states that "contested election cases shall be heard by the Committee on the papers, depositions, and exhibits filed with the Clerk. * * *"[10] The Section 392 hearing is the final hearing "on the merits" of the contest heard after all evidence is gathered. The "field hearing", in contrast, does not trigger any other actions under the Act and therefore the Committee deviated from the Act by allowing discovery to begin at this point.

The Committee also acted improperly after Contestee Sanchez filed a Second Motion to Dismiss in response to a modified Notice of Election Contest filed by Contestant Dornan. The Committee did not meet and dispose of this second motion. Instead, the Task Force Chairman unilaterally dictated that the second motion also be postponed until the "hearing on the merits". This action was improper because it was not the "Committee" taking action on the Motion, as required by the Act.

The procedures for resolving a contest other than by granting a motion to dismiss are laid in section 392 of the Act and set forth the requirements for each side to present its evidence before the Committee. The Committee must hear the contest on the "record" of the case.[11] The record includes the "papers, depositions, and exhibits that have been filed with the Clerk.[12] The "papers" shall include the Contestant's brief, along with appendix; the Contestee's brief, with appendix, and the reply brief of the Contestant.[13] These briefs and appendices are to be produced according to a strict time frame laid out in the Act. The Contestant's brief is due 45 days after the discovery period for both parties has ended.[14] The Contestee's brief is due 30 days after the service of the Contestant's brief.[15] The Contestant's reply brief is due within ten days of service of the Contestee's brief.[16] In deciding the case, the Committee must consider portions of the record presented to the Committee and included in the appendices to each parties' brief.[17] These steps are not discretionary under the Act, although the Contestant may waive his right to a reply brief, and the Committee must consider these materials after giving the parties' the opportunity to produce such materials.

Any disposition of an election contest other than in accordance with the above schedule and process would be contrary to the Act.[18] Yet, the Majority appeared to be contemplating a process of disposing of this contest that would have been contrary to these re-

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[9] 2 U.S.C. § 384(d).
[10] 2 U.S.C. § 392(a).
[11] 2 U.S.C. § 392(a).
[12] *Id.*
[13] 2 U.S.C. § 392.
[14] 2 U.S.C. § 392(b).
[15] 2 U.S.C. § 392(e).
[16] 2 U.S.C. § 392(f).
[17] 2 U.S.C. § 392(b), (c).
[18] Section 394(c) the Act grants the Committee the power to extend time limitations. Thus, the Committee can call for the beginning of the briefing schedule at any time, but it cannot shorten the time period for providing such briefs and cannot deny the other party the right to present briefs as called for in the Act.

quirements. The Majority failed to compel the Contestant to submit a brief within the statutory time limits. Although they were clearly short of what is required by the Act, Contestant referred to his disparate submissions in the aggregate as a "brief". The Majority accepted this description and essentially waived the requirement that Contestant submit a formal brief with appendices. The Committee then required Contestee Sanchez to file a brief in response to Contestant's bald allegations, as if Contestant had filed a "brief". Thus, the Committee never afforded her the opportunity to examine the evidence of the charges against her.

IV. MAJORITY'S MISINTERPRETATION OF EVIDENCE

The goal of determining whether non-citizens voted is, of course, laudable and important. What is not justified, however, is undertaking a faulty process using inadequate data, and then grossly mischaracterizing the result. As explained below, the Majority conducted an analysis that was faulty and that led them to a number of votes that they characterized as "illegal non-citizen voters." Yet this number unquestionably contains hundreds of voters who were clearly citizens at the time they voted. The Majority would not deny this " but they are willing to obfuscate it. In addition, the Majority is at best sloppy and at worse slanderous when it claims that "two-thirds" of Ms. Sanchez's victory margin was due to illegal non-citizen voters. Putting aside that many of the voters in this group were citizens, we do not know, and never will know for whom they voted. They did not come out of the margin of victory; these votes can only fairly be apportioned against both candidates.

A. THE MAJORITY'S OWN ANALYSIS SHOWS BETWEEN A QUARTER AND A HALF OF THE 624 INDIVIDUALS DESIGNATED "DOCUMENTED EVIDENCE OF ILLEGAL NON-CITIZEN VOTING" WERE IN FACT U.S. CITIZENS AT THE TIME THEY VOTED

The Majority stated that its analysis generated 624 cases of "Documented Evidence of illegal non-citizen voting." To be charitable, this is a gross mischaracterization. Many individuals in this category were U.S. citizens at the time they voted in the 1996 election, although they registered to vote in advance of being sworn in as U.S. Citizens. Some of these "non-citizens" became naturalized citizens more than 20 years ago. Nonetheless, the Majority included both newly and long-time naturalized U.S. citizens in the category "illegal non-citizen voting."

B. THE MAJORITY'S PROCESS OF ASSEMBLING AND ANALYZING EVIDENCE WAS FUNDAMENTALLY FLAWED FROM THE BEGINNING

The Majority analysis began with a shotgun approach, sweeping into its "suspect voter" category over 500,000 registrant name matches. The Majority attempted to refine the number by including only 46th Congressional District registrant names to be matched with INS files. This resulted in 136,000 matching names, which is more "suspect voters" than actual voters in the 46th Congressional election in 1996. This again suggests that the foundation upon which the Majority analysis proceeded was fundamentally flawed.

INS data provided to the Committee came in two forms—the electronic results of 20 separate requested database searches, and the paper results of manual searches of over 8,000 INS files in dozens of INS offices throughout the country. The INS provided summary worksheets as well as 3,700 signature sheets for the Committee. The Committee used these sheets to compare to Orange County information and registration affidavit signatures, as well as to other lists received by the Committee.

The INS informed the Committee of the difficulty of using INS data to prove citizenship status. For example, in a May 1, 1997 letter to Chairman Thomas, the INS stated:

> INS databases are not organized for this purpose and there are inherent limitations on their use to match against lists of registered voters. For example, with only two common identifiers—name and date of birth—there is a potential for false 'matches' and duplicate matches for a single registered voter. Also the INS does not typically update files of individuals after they are naturalized. In addition, automated databases do not necessarily contain records pertaining to individuals who naturalized prior to 1973. Therefore, records of long-time naturalized citizens would not necessarily be easily retrievable from INS databases. Finally, the INS does not, of course, maintain records on native-born United States citizens.

In its May 21, 1997 letter to Chairman Thomas, the INS stated:

> We emphasize to the Committee that, in light of the methodology employed—conducting matches based only on name and date of birth—and the organization of INS's databases, the data on these tapes do not represent the number of illegal voters or registrants in Orange County, nor should it be inferred that any particular named individual on this tape has voted or registered to vote illegally. In fact, matches may occur with individuals who reside outside the county or the state of California. Since INS data have been assembled in many places over many years in different formats, a simple electronic match will not produce completely reliable data.
>
> * * * * * * *
>
> For example, as you know, native-born U.S. citizens do not appear in INS records. Any such citizens, however, who have registered to vote in Orange County may be placed on the "match" list if they share a surname and date of birth with a non-citizen whose records appear in CIS or NACS.

Throughout the remainder of its correspondence, the INS stated:

> While the INS review of its paper files increases the reliability and usefulness of the immigration and citizenship status information being provided, paper file review alone cannot establish whether an apparent match between California and INS records does indeed relate to the same individual.

As demonstrated above, INS cautioned the Committee from the outset, and throughout the Committee investigation, that INS records (both electronic and paper files) were not set up or maintained in a way that the records could be effectively used to confirm the naturalization status of voter registration applicants in Orange County (or anywhere else), and in many cases such records were out of date, incomplete, or no longer available. Ignoring that

caveat, the Majority proceeded to analyze the information provided by the INS, which resulted in the Majority's claim that it can document 624 instances of "illegal non-citizen voting."

Other material analyzed by the Majority (so far as the Minority has been made aware) falls into a number of categories: (1) the Lever list of names; (2) the Committee lists of names; and (3) other lists of names.

Rosalyn Lever is the Registrar of Voters for Orange County, California. The "Lever List" represents 124 U.S. citizens who cast ballots in the 1996 election. These ballots consist of 98 absentee ballots, 22 double voted ballots, and 4 ballots from improper addresses. These ballots were then delivered to the Registrar of Voters by various individuals in the normal course of the election. However, California law requires that absentee ballot delivery may be effectuated only by certain means or persons. In the case of 90 of the absentee ballots, it appears that delivery was made by the wrong person. When an absentee ballot is delivered by the wrong person, the Registrar can remedy the non-compliant delivery by disallowing the absentee ballot. Registrar Lever testified at the Committee field hearing in California, however, that delivery would ordinarily be treated as a procedural deficiency (as opposed to a substantive violation), and in the absence of any other extenuating circumstances, she would count such absentee ballots to recognize voter intent. However, given the circumstances attendant to this contested election, she indicated that she would disallow such absentee ballots, if called upon to do so.

The Committee lists represent numerous INS responses to Majority requests for data matches using Orange County *registrants' names,* and in some cases data matches using names from other lists. The underlying premise of the Committee lists is that everyone swept onto the list is a "*suspect illegal non-citizen voter*" until proven otherwise to the satisfaction of the Majority.

Other lists included: 19,000 alien registration numbers obtained by the Committee from the Naturalization Services Corporation, for which the INS provided matching information from its database; individuals who claimed a non-citizenship exemption from jury duty from the Orange County Superior Court; names provided by the Contestant's attorney; and persons who voted in the 46th Congressional District from Secretary of State Bill Jones. The Minority was not made aware of the existence of any other lists or information used in the Majority analysis.

C. A "GUILTY UNTIL PROVEN INNOCENT" METHODOLOGY GOVERNED THE MAJORITY'S ANALYSIS OF THE EVIDENCE

Starting from the assumption that anyone who had a name and date of birth match with an INS record was a "suspect voter," the Majority proceeded to weed out only those registrants whose citizenship status the Majority could verify. This resulted in an inflated pool of "suspect voters", largely consisting of persons for whom incomplete or inaccurate INS data could not confirm their citizenship status. *Hence the Majority premise was "guilty until proven innocent".* This, of course, left anyone for whom the Majority did not have proof of citizenship in the "suspect voter" category, unless some other obvious factor provided a basis for elimination (e.g.,

death). The INS data, which the INS indicated were not set up to be used for such comparisons, were not up to the task carried out by the Majority. Still the Majority continued the sorting process on the presumption that even a flawed match meant that the individual remained in the "suspect voter" pool, until proof of citizenship could be established.

Based upon a chart created by the Majority and used at the Committee meeting called to dismiss the contest (and not seen by the Minority before that meeting), the Majority somehow winnowed its inflated "suspect voter" list down to a pool of 7,841 individuals. The Majority then designated 2,493 of them as "Suspect Registrants".

At this point, the Majority finally addressed the key issue to the election contest pending before the Committee. The Majority eliminated 1,718 names of persons who did not vote in the 1996 election, and who could not have affected the outcome. All of the artificially inflated numbers previously reported by Members of the Majority included persons who could not possibly have affected the outcome of the election. This left, by the Majority's calculation, 820 individuals who were in the category of "Suspect Registrant voted in the November 1996 Election."

Of the 820 "Suspect Registrant(s)", the Majority chart again summarily declared that the Majority had sufficient evidence to place 624 "Suspect Registrant(s)" in the category of "Documented Evidence of illegal non-citizen voting", leaving the balance of 196 in the category "Circumstantial Indication of illegal non-citizen voting." The Majority then added the 124 absentee and other suspect ballots on the Lever list described above, and declared that there were 748 persons for whom the Majority had "Documented Evidence of Illegal Voting".

This number is flawed, just as the entire process of analysis was problematic from the beginning. First, as presented at the Task Force meeting, the Majority committed an arithmetic error in calculating their final number. 2,493 minus 1,718 leaves 775, not 820, as the Majority chart shows. Thus the Majority erroneously inflated its final number of alleged illegal votes by 45. But more troubling is the fact that the Majority has summarily declared that individuals are illegal non-citizens voters before the INS had even completed providing the Committee with signatures to match against Orange County registrant affidavit signatures.

D. THE MAJORITY'S FAULTY ANALYSIS GROSSLY INFLATED THE NUMBER OF INDIVIDUALS ON THEIR SUSPECT LIST

As mentioned earlier, many individuals termed "illegal non-citizen voters" were U.S. citizens when they voted in 1996, although they registered to vote in advance of being sworn in as U.S. citizens. There is no question about their citizenship status—and the Majority would have to agree—these individuals were citizens when they voted. Characterizing them as "illegal non-citizen voters" is simply wrong. There are several other defects in the Majority analysis discussed below.

First, the Committee's list of "suspect" voters who allegedly "match" INS files likely includes names whose alleged "match" is a person of a different gender. For example, for 46th District voter

Rose H_____, the Committee's INS "match" is Rosendo H_____; for voter Phuoc N_____, the Committee's INS "match" is Mai N_____; for voter Christine K_____, the Committee's INS "match" is Young K_____.[19] To say the least, this raises serious doubts about whether the Committee should consider these voters "suspect". These individuals may have become "suspect" because of the flawed methodology in the initial Committee requests to the INS.

Second, the Committee's list of illegal "suspect" voters potentially contains a significant number of names whose Orange County Voter Records indicate that they were born in the United States—regardless of what the INS records say (in fact, the INS itself says that its records are totally unreliable for the purpose for which they are being used by the Committee). For example, on the Committee's list, an actual voter designated here as Voter X was born in Canada in the Committee's INS "match", but in New York in Orange County records; Voter Y was born in Mexico in the Committee's INS "match", but in Colorado in Orange County records; Voter Z was born in Germany in the Committee's INS "match", but in Illinois in Orange County records. In several of the Committee's matches, both INS data and Orange County data reported U.S. birth, e.g., Voter A was born in "state" (meaning within the U.S.) in the Committee's INS "match", and in Texas in Orange County records. Can the Committee fairly include any of these names on its "suspect" list?

Third, the Committee may have added to its "suspect" list many names despite the fact that these persons in the INS database have a different first name than their alleged "match" from the Orange County Voter Records. These names should not be counted in determining a final number of improper votes. For example, for 46th District voter Cesar R_____, the Committee's INS "match" is Noel R_____; for voter Leonarda G_____, the Committee's INS "match" is Raquel G_____; for voter Lucus T_____, the Committee's INS "match" is Hector T_____.

Fourth, dozens of the names identified by the Committee from the INS databases have different middle names or initials than their alleged "match" from the Orange County Voter Records. These names should not be counted in determining a final number of improper votes solely on that basis. For example, for 46th District voter Maria Y. _____, the Committee's INS "match" is Maria E. _____; for voter Robert C. _____, the Committee's INS "match" is Robert W. _____; for voter Cecile V. _____, the Committee's INS "match" is Cecile P. _____.

Fifth, the Committee may be carrying on its "suspect" list voters who, upon further review of INS records, would be shown to be citizens because they had American parents, were naturalized, or were citizens by birth. Clearly these individuals should be removed from any suspect list.

Sixth, many voters on the Committee's "suspect" list probably registered prior to November 1994, and some may have been registered since 1956, even though they may have registered before

[19] The individuals in each pair are of the opposite gender. Throughout this Minority report the last names of all individuals whose votes or citizenship status the Committee examined are represented by the first letter of their last name followed by a "_____", or simply a "_____", to protect the privacy of these individuals.

being naturalized. Should the Committee count these U.S. citizens in its final number of improper votes when they have been naturalized citizens for years?

Finally, dozens of the names on the Orange County Voter Records match names of individuals who have no INS records. The Committee may be assuming that they were not citizens at the time they registered and voted. That is not a fair or reasonable assumption.

In sum, a large number of the 624 individuals on the "Documented Evidence of illegal non-citizen voting" list cannot be properly termed "illegal non-citizen voters"—that is, people who were not American citizens on November 5, 1996. In fact *nothing* definitive can be concluded about most of these people with respect to their citizenship status and right to vote, either because the INS has not been able to locate a signature in its records that can be compared to the signature provided by the Orange County Registrar, or because the INS has not located in its various computer databases and paper files a naturalization date for these individuals. Without a legible signature from both agencies, a signature comparison cannot be conducted to determine whether the voter in Orange County is likely the same person as the one in the INS file. Without a naturalization date, it is impossible to determine when or if the "suspect voter" became a citizen.

Does the failure of the INS to provide a signature and/or naturalization date imply that the voter in question is in the process of naturalizing but has not yet become a citizen, has never applied for naturalization, has been rejected for naturalization, or has illegally resided in the United States and through lax registration procedures or bureaucratic carelessness managed to vote? The answer is "no." The Majority knows this, though it conveniently omitted this crucial qualification to inflate its final number. Instead the Majority has apparently assumed the absence of these two pieces of INS data means that these persons have not naturalized yet, and may well have been illegal aliens on November 5, 1996, and thus can be confidently classified as "non-citizen voters."

The crucial question, then, is what is the status of these individuals if a significant number of them are not "illegal non-citizen voters"? The crucial answer that every Member of this body must know before casting a vote on a resolution that claims "widespread voter fraud" is that they could just as easily be citizens of the United States. In fact, it could just as easily mean that the voter in question, despite a foreign sounding name that suggests he/she was born outside the United States, was born in the United States and has never had any reason to apply for citizenship with the INS. If a person was born in the United States, the INS would not keep the kind of files on him/her that the Majority has relied upon in its investigation. The INS is not a central repository or library that keeps track of every United States citizen either born in this country or naturalized. It does not issue U.S. passports or grant visas to Americans traveling to foreign countries. As paradoxical as it may seem, a person's failure to appear in INS records may constitute the strongest evidence the person is a U.S. citizen.

Consider the following examples that illustrate why the Majority figure should be greeted with great skepticism and the charges of

fraud in the resolution be removed. The names have been blanked out and details altered to protect the privacy of the individuals.

Example 1

One Mario R_____, born in 1943, may appear on the Majority's suspect list because (1) Mario R_____ registered in Orange County in 1992 and voted in the 1996 election; (2) generated 7 "matches" from the INS when the Majority ordered the INS to run the Orange County registration list against its various databases; and (3) had an Orange County signature that did not match 4 of the 7 signatures the INS had on file with which timely naturalization dates were affiliated. The Majority would conclude from this that since there was no signature match with any of the 4 different Mario R_____ signatures on file, Mario R_____ must be one of the three remaining Mario R_____s in the INS files " all born outside of the U.S.—for whom the INS cannot find a signature, but who naturalized after November 5, 1996. In fact it is entirely possible that the Mario R_____ in Orange County is not any of the 7 Mario R_____s in the INS databases because he is a first generation American citizen who was born to Cuban immigrants, and thus had no need to apply for citizenship at the INS. Or one of the INS files may be his simply because in 1990 he used his own U.S. citizenship to sponsor the entry of a relative living in another country.

As the INS explained to the Majority, "(N)ative-born U.S. citizens do not appear in INS records. Any such citizens, however, who have registered in Orange County may be placed on the 'match' list if they share a surname and date of birth with a non-citizen whose records appear in" INS databases'assume that 10 matches result from a single name on the Orange County voter rolls' it could be that none of the 10 identified INS records corresponds to the person on the OC list because the OC voter was born in the United States. Such a "matched" individual may unfairly be placed under suspicion as an unauthorized voter'." [20]

Example 2

Similarly, a person by the comparatively uncommon name Huy P, born in 1968, who registered in Orange County in 1986 and voted in 1996, may generate a single INS match whose signature matches the one in OC, but for whom no naturalization date can be found. The Majority would conclude that since the Huy P_____ signature in the INS is the same as the Huy P_____ signature in Orange County, and yet has no naturalization date in the INS record containing the signature, it must mean he has yet to become a United States citizen and perforce should not have voted. In fact Huy P_____ may have generated an INS record because the INS granted him a certificate of citizenship in 1982 when both his foreign born parents naturalized. Or Huy P_____ may have received a certificate of citizenship from the INS because he was born overseas to a parent who was born in the United States.

[20] Excerpts from INS letter to Bill Thomas dated May 21, 1997.

Example 3

Finally, one Daniel G_____, born in Mexico in 1912, may generate 3 separate INS files, all of whose birth dates match the Orange County birth date, 2 of whose naturalization dates fall between July 1, 1982 and October 5, 1996, but whose associated signatures do not match the Orange County registration signature. The third file may contain a signature match, but have no naturalization date. The Majority would conclude that Daniel G_____ was not a citizen on election day 1996 and should not have voted. In fact Daniel G_____ may have immigrated to this country as a young boy in 1918, become a citizen in 1953 while living in New York City, moved to Orange County in 1977 and registered to vote in 1978, and voted for Mr. Dornan in every race he has entered since 1980. Because of the blank date, the Majority presumption seems to be that the Daniel G_____ has not naturalized and thus was not a citizen on election day. In fact, it could mean that Daniel G_____ naturalized long before the INS developed its computer databases. The fact that the INS has no naturalization date would mean that its New York City office misplaced his paper file years ago.

The INS cautioned the Committee about this possibility early in the Majority's review of files stating: "(A)utomated databases do not necessarily contain records pertaining to individuals who naturalized prior to 1973. Therefore, records of long-time naturalized citizens would not necessarily be easily retrievable from INS databases. [21]

E. THE MINORITY'S ANALYSIS IS BASED ON "INNOCENT UNTIL PROVEN GUILTY" METHODOLOGY.

Owing to the fact that the Task Force Majority repeatedly ignored suggestions by the Minority to combine staff resources, develop a mutually acceptable research protocol, and analyze all the INS and Orange County data in a spirit of cooperation and bipartisanship, the Minority was left with no option but to conduct a parallel analysis of the same materials, stretching both staffs' resources and wasting as much as $1 million in taxpayer money.

Unlike the Majority staff's premise, which imprudently assumed every Orange County registrant with a corresponding INS file was an "illegal non-citizen" until new information emerged indicating otherwise, the Minority assumed that apparent matches between the Orange County registration list and INS databases did not impeach the citizenship status of anyone until all the electronic and paper data provided by INS and Orange County officials had been meticulously organized and analyzed.

To that end the Minority prepared a "blended" computer database that could be easily updated. The importance of an updatable database cannot be overstated because the INS regularly delivered to both staffs hundreds of pages of new data gathered by field agents across the country from files that were often many years old.

[21] Excerpt from INS letter to Bill Thomas dated May 1997.

F. THE MINORITY PROTOCOL

The Majority confidently asserted, when it announced its plan to compare OC records with INS databases, that in cases where a suspect's first name, last name, middle initial/name, and date of birth in Orange County matched those same criteria in an INS database, odds were "they had their man." After all, what are the chances of more than one person sharing such specific criteria?

Multiple Matches (when matches are NOT "matches")

This entire investigation has depended on two enormous databases: (1) the Orange County Registrar's list, which includes approximately 176,000 registrants in the 46th; and (2) the various INS databases, which contain tens of millions of people. Size alone all but guarantees numerous cases in which a single person in Orange County will generate many "matches" with INS records, all representing different people who just happen to share the same name and birth date. For example, a person with the initials "M.H." who registered in Orange County generated 8 distinct INS matches, any or none of whom may be the "suspect registrant".

To the dismay of the Majority, which promised that comparing the two databases would resolve the contested election swiftly, elegantly, and accurately, "matches" like the one just cited were more the rule than the exception. The bottom-line is that there is no way to tell if the OC person is likely the person in the INS databases unless further steps are taken, which the Minority has been carrying out since last June and revising as the Majority has requested new information from the INS, Orange County, and the California Secretary of State. This has included signature samples and the list of 4,761 "suspect registrants" the Majority sent to Bill Jones last November and which the Minority treated as the total universe of suspect voters when it received a copy on November 4, 1996.

Step 1: Creating the master database

The Minority established a master database consisting of the following elements:

(1) the first names, last names, middle initial/middle names, and dates of birth of Orange County registrants who had a corresponding INS file;

(2) the Orange County affidavit number and the INS alien number associated with each person in the database;

(3) all naturalization dates the INS could find for the people in question, including the naturalization dates in INS records that the Majority omitted from its initial instructions to INS because the dates indicated they had naturalized before registering. Had it not been for the Minority's protests, the Majority would have excluded these essential records from its analysis. Make no mistake about it: if there is any doubt the Majority has employed a presumption of guilty until proven innocent, it should be dispelled by the fact that the Majority did not want to see INS records that indicated the person in question had naturalized before registering. As the INS stated to Chairman Thomas in correspondence dated May 21, 1997:

Because Subpoena 1 instructs INS to report only those records without a naturalization date or showing a naturalization date after the date of registration, INS dropped * * * records showing timely naturalization. This instruction reduces opportunities to recognize false matches. Assume that 10 matches result from a single name on the Orange County voter rolls, with 5 showing naturalization before the date of voter registration and 5 showing a later date of naturalization or none at all. Pursuant to the instructions, INS would have omitted from its response to the Committee the 5 records of individuals who had in fact naturalized in time. Yet, one of these omitted records could actually correspond to the person who registered to vote in Orange County.

It was not until the Minority specifically requested such information in a letter to Chairman Thomas that the Committee took the initiative to obtain the data.

(4) any hand-written notes from field agents reporting cases in which naturalization dates could not be found because the file for the person in question had been lost;

(5) the date on which the person registered in Orange County; and

(6) tags for probable signature matches, signature mismatches, and indeterminate signature matches in cases where both the INS and OC had supplied signatures.

Step 2: Reducing the Database to Voters from the 46th Congressional District

Since the Task Force's mandate was to uncover instances of *voter* irregularities that may have affected the outcome of the election, and not to uncover irregularities among OC registrants who did not vote in November 1996, the Minority removed from consideration all people in the database who registered but did not vote in November 1996. To accomplish this, the Minority used paper and computer materials provided by the Orange County Registrar of Voters and Secretary of State Bill Jones showing which registrants actually voted.

Step 3: Removing Signature Mismatches and Lost Files

On the assumption that the Majority would play by the rules it promulgated when it ordered INS and Orange County to provide signature samples to establish probable matches, the Minority:

(1) removed from the database the names of all the persons whose Orange County registration signatures did not match the INS signatures.

One feature that the Majority has yet to explain, and which contributed to the misperception late in 1997 that as many as 2,474 illegal citizens voted in November 1996, is why the Majority asked INS and OC to provide signature samples for voters whose first names and/or genders in the respective database were unmistakably different. The Minority could understand if the signature requests had been restricted to suspects whose first name as reported by OC was slightly different from the first name in the affiliated INS file—for example, Maria

C_____ in Orange County v. Marie C_____ in INS, or John Q. Public vs. John K. Public. But such minor differences were joined with major differences for which no logical explanation exists and that served only to prolong the investigation—for example Gustavo A_____ in Orange County v. Pedro A_____ in INS, or Jorge P_____ in Orange County v. Alberto P_____ in INS.

Stranger still, the same suspect list contained numerous cases in which not only were the respective first names different—for example, Ramon A_____ in Orange County v. Teresa A_____ in INS—but the genders reported by the two agencies clearly supported the distinction: male in OC vs. female in INS.

On the basis of these undeniable differences in the Majority list sent to Secretary Jones, which suggest the Majority staff carried out its research in a careless and sloppy manner, the Minority has no confidence in the accuracy of any "suspect list" created by the Majority. It is possible the Majority removed these glaring differences in the Majority's final list; then again it is entirely possible the Majority did not. In light of the fact that the Majority staff has denied the Minority access to the list, we have no choice but to conclude the list includes these obvious conflicts and cannot be relied upon at all.

(2) removed all people for whom the INS reported it could not locate a signature, or whose file the INS had lost.

The Majority will claim that in cases of "lost files" or "no INS signatures on file"—and there are many—it is justified in classifying individuals as a "Circumstantial Indication of illegal non-citizen voter." The Majority is trying to have it both ways. On the one hand, it is using the INS-OC "matches" that include reasonably complete naturalization data for its declared purpose of identifying "illegal non-citizen voters." On the other, it is interpreting cases where a "match" generates incomplete naturalization data as evidence that the voter in question is not a citizen. To be an accurate test of non-citizenship, the process of analysis the Majority designed had to yield consistently clear-cut naturalization information about each "suspect voter". The Minority's experience was that the process so frequently generated incomplete information that it calls into question the integrity of the entire process, and hence the accuracy of the final Majority number.

Step 4: Refined Database: Cases of Apparent Signature Matches

The Minority treated with great seriousness instances where Orange County signatures appeared to match INS signatures. Short of actually contacting a suspect voter and demanding proof of citizenship and date of naturalization, signature comparisons are probably the strongest indication of whether an INS record "belongs" to a "suspect voter".

Accordingly, the Minority developed a much smaller database consisting only of people whose OC signature appeared to match the INS signature.

Next, the staff compared the naturalization date associated with the INS signature with the date on which the person registered in Orange County. This procedure removed from further consideration anyone whose naturalization date fell on or before his/her registration date. In such cases, the individuals were eligible to vote on November 5, 1996.

Step 5: Refined Database: Cases of Apparent Signature Matches where Naturalizations Dates Fell after Registration Dates or after Election Day

The Minority diligently repeated this systematic protocol whenever new INS information arrived, thus keeping the following categories up to date:

(1) Citizen Voters who Naturalized After Registering

Anyone whose naturalization date fell on or before November 5, 1996, but whose registration date preceded naturalization, was a U.S. citizen on election day. However, the voters may have violated California's own registration laws.

(2) Voters who Naturalized after Registering but before Election Day 1996, and Registered before Election Day 1994.

(3) Voters who Naturalized After Election Day.

Anyone whose naturalization date fell after November 5, 1996 was not a citizen on election date.

(4) Anyone for whom the INS could not locate a naturalization date we remained silent on, pending notification from the INS as to whether a naturalization date was likely to be located.

Once again, the Majority will claim that pending receipt of a naturalization date, a shadow of suspicion hangs over any registrant/voter falling into this category and therefore is "circumstantially suspect." As the Majority knows, the absence of a naturalization date is no indication whatsoever that the person in question has not naturalized. All it means is that the INS has not yet located the file containing the naturalization date of the person, and may never find the file because the person naturalized so long ago that the record may be lost. Far from suggesting non-citizenship, a blank naturalization date may just as easily be the strongest evidence the person has been a citizen for years.

G. THE MAJORITY CONDUCTED ITS ANALYSIS IN SECRET

The Majority's decision to reject the Minority's olive branch and conduct its investigation in secret, behind closed doors, and without any input from the Committee's Minority Members, has generated faulty, irresponsible, and unchecked findings by the Majority that could have been corrected before the Committee went public with its unsupportable claim of "illegal non-citizen voting." It is essential to note that the Task Force's Minority Member never saw the suspect list, nor had the opportunity prior to the final meeting to ask his Majority counterparts why they were confident the suspect list is sound and unimpeachable. Efforts by the Minority Members and their staff to study the list, which both the Task Force chairman and the Committee chairman unconditionally promised to the Minority following the adoption of the resolution, have been

blocked by the Majority staff. As matters now stand, the Majority has announced an unsupportable number that can only have a chilling effect on every recently naturalized citizen in the 46th Congressional District, and the nation, who wishes to exercise his or her right to franchise.

If the Majority had cooperated with the Minority during the 14 month investigation, or invited the Minority to double-check its "suspect list" before publicly announcing its final figure at the meeting, the Minority would have offered the preceding critique.

The Minority's independent analysis demonstrates that the Majority is wrong when it describes the 624 voters as "Documented evidence of illegal non-citizen voting." For a matter as sensitive as the charge that non-citizens cast ballots in 1996, terms must be used with great care; in this case, the Majority has shown great carelessness.

If the Majority had executed its analysis as thoroughly and exhaustively as its counsel claimed in his testimony, using an analytical protocol whose main steps included *first* keying into their database all the hand-written naturalization data that the INS provided to the Committee over the course of 8 months, *second* determining if the newly entered naturalization dates were subsequent to November 5, 1996, and *third* establishing a probable signature match between a suspect voter's registration signature and the INS signature associated with an individual who naturalized after the election, they would have discovered that only a fraction of the people on the Majority list who voted on November 5, 1996 *may* have been non-citizens at the time they voted.

We use the word *may* quite deliberately here because short of an actual face-to-face interview with the suspect voter, nothing can be concluded about a suspect's citizenship status and right to vote in the State of California from all the materials the Majority demanded from Orange County and INS. Even *probable signature matches* between Orange County registration ballots and INS records, which the Minority used to reach its estimate, while perhaps the most reliable indication of a match, do not constitute proof because of the often poor condition of the photocopied signatures received from the two agencies, the absence of a forensic hand-writing expert to certify what may be a match, and other related factors.

The Minority cannot emphasize enough that it no more condones or minimizes the gravity of *proven* cases of "illegal non-citizens" voting than the Majority does, be it 500 such cases, 100, or 1. The fact remains, however, that nothing in the process conducted by the Majority proves widespread voter/registration fraud, and certainly nothing coming close to the 748 votes they claim contributed to Congresswoman Sanchez's victory. Furthermore, the Majority grossly mischaracterizes and slanders Ms. Sanchez's election by suggesting that the "illegal" votes they have identified came out of her margin of victory. We do *not* know for whom any "suspect" voters voted. The Majority cannot present a shred of evidence that would support such an irresponsible characterization.

V. The Majority Did Not Follow Long-Standing Committee Precedent

A. The Majority Ignored Committee Precedent by Failing to Grant Contestee's Motion to Dismiss at the Beginning of the Contest

1. The Burden of Proof Lies with the Contestant

The burden of proof in all stages of an election contest lies with the contestant. This placing of the burden is, of course, consistent with, and a product of, the very fundamental deference paid to election results and the authority of states to administer elections. That the burden lies at all times with the contestant has, therefore, been made clear in the precedents of the House: "Under [the FCEA], the burden of proof is on the contestant to present sufficient evidence, even prior to the formal submission of testimony, to overcome the motion to dismiss."[22]

That the burden of proof lies with the contestant is perhaps most significantly delineated in the seminal precedent *Tunno* v. *Veysey,*[23] an election contest out of California, which was the first contested election decided under the FCEA with a Report written by many of the authors of that Act. In *Tunno,* a unanimous Committee on House Administration stated that "[u]nder the new law then, the present contestant, and any future contestant, when challenged by a motion to dismiss, must have presented, in the first instance, sufficient allegations of evidence to justify his claim to the seat in order to overcome the motion to dismiss."[24] Mr. Dornan had the burden of overcoming the grounds in Ms. Sanchez's motion.

2. The Task Force Did Not Consider the Credibility of Contestant's Claims

In ruling on Contestee's motion to dismiss, the Committee should not have simply assumed that Mr. Dornan's allegations were true. Instead, the Committee should have evaluated the "credibility" of Mr. Dornan's allegations in determining whether the allegations and proof offered were sufficient to overcome the presumption that the state electoral result should stand and the clear precedent that, in the absence of substantial preliminary proof of misconduct, the contest proceedings should have ended with Contestee's the Motion to Dismiss.[25] In some recent election contests, there have been disputes as to whether a motion to dismiss should be considered

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[22] *House Practice.—A Guide to the Rules, Precedents, and Procedures of the House,* Wm. Holmes Brown, 104th Congress, 2d Session, U.S. Government Printing Office (1996) at 462, *citing, Deschler's Precedents* Ch. 9 § 35.7 ("Under the new contested election statute, a contestant has the burden of resisting contestee's motion to dismiss, prior to the submission of evidence and testimony, representing sufficient evidence that the election result would be different or that the contestant is entitled to the seat.")

[23] H.R. Rep. No. 92–626 (1971).

[24] *Id.* at 3; *see also, Wilson v. Hinshaw,* H.R. Rep. No. 94–761 at 3 (1975) (contestant has burden of proof that facts alleged occurred and that such facts have changed the outcome of the election); *Chandler* v. *Burnham,* H.R. Rep. No. 73–1278 (the burden of coming forward with evidence to meet or resist presumptions in favor of election results rests with the contestant) (discussed in 2 *Deschler's Precedents,* Ch. 9, § 47.4 (1977)). While there has been virtually no disagreement that the burden of proof must always lie with the contestant, there has been some partisan disagreement as to the degree of proof required at the motion to dismiss stage. *See, e.g., Anderson* v. *Rose.* H.R. Rep. No. 104–852 at 7 (1996), and *citing Paul* v. *Gammage,* H.R. Rep. No. 95–243 at 7, 9 (1977) (Republicans and Democrats disagreeing as to degree of "particularity" required in contestant's pleading).

[25] *See Rose, supra,* at 6–7; *Tunno, supra, at* 3.

under a standard analogous to a motion to dismiss pursuant to Federal Rule of Civil Procedure (FRCP) 12(b)(6) or under a FRCP 56 motion for summary judgment standard. Under the former standard, all facts as alleged by the claimant are assumed to be true and if even after such an assumption the claimant has not made a legally cognizable claim, the matter is dismissed.[26] Under FRCP 56, in contrast, the court will rule against the claimant and end the case unless the claimant has put forth an adequate and sufficient factual basis for continuing the dispute.[27]

For most of the history of the Federal Contested Elections Act, there was general bipartisan agreement that the standard to be applied to a motion to dismiss was analogous to FRCP 56: "under the [FCEA], the * * * contestant, when challenged by a motion to dismiss, must have presented, in the first instance, sufficient allegations and *evidence* * * * to overcome the motion to dismiss."[28] In *Anderson* v. *Rose, supra,* however, there was some dispute between Republicans and Democrats as to the applicability of a FRCP 12(b)(6) versus a FRCP 56 standard.[29] Nevertheless, that dispute was ultimately much ado about nothing, as even the Republican majority made very clear that a FRCP 12(b)(6) standard will not be implemented and that the evidence offered by the contestant must be and will be evaluated at the motion to dismiss stage: "a contestant must make *credible* allegations * * * the key word in this text is "credible" * * * a contestant must provide specific, credible allegations [to overcome a motion to dismiss]."[30] The majority report continued: "[in] judging whether a particular allegation is credible, a Task Force should consider not only the contestant's view and any supporting evidence, but any countervailing arguments and evidence available from the contestee or other sources."[31] Precedents representing both Republican and Democratic views demonstrate that in evaluating the Contestee's Motion to Dismiss the Committee should have considered the "credibility" or sufficiency of Contestant's evidence in fulfillment of his burden.

B. CONTESTEE'S MOTION SHOULD HAVE BEEN GRANTED BECAUSE CONTESTANT DID NOT CARRY FORWARD A CLAIM TO THE SEAT

Recognizing the need for the House to avoid becoming a forum for frivolous election challenges of any and all complaints as to any irregularity in the election process, the drafters of the FCEA included a jurisdictional requirement to ensure that only contestants raising legitimate outcome-determinative claims would be heard by the House. Thus, only contestants who can and do claim a right to a contestee's seat may be heard. In the case at hand, where Mr. Dornan failed to make a claim for Contestee's seat, the contest should have been dismissed immediately upon examination of Contestant's initial claim.

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[26] *See* Fed. R. Civ. P. 12(b)(6).
[27] *See* Fed. R. Civ. P. 56.
[28] *Tunno* v. *Veysey, supra,* at 3 (emphasis added); *see Wilson* v. *Hinshaw, supra,* at 3–4; *accord, Ziebarth* v. *Smith,* H.R. Rept. No. 94–763 (1975); *Pierce* v. *Pursell,* H.R. Rept. No. 95–245 (1977); *Archer* v. *Packard,* H.R. Rep. No. 98–452 (1983); *McCuen* v. *Dickey,* H.R. Rept. No. 103–09 (1993).
[29] *Id.* at 7.
[30] *Id.* at 6,7 (emphasis supplied).
[31] *Id.* at 7.

1. Statutory and Precedential Requirements

The FCEA requires the contestant to present a claim to the seat. "The notice of contest should also claim right to the contestee's seat, as the contestee may, at his option, assert the failure to claim right to the seat as a defense under the provisions of 2 U.S.C. §383(b)(4)."[32] In *Tunno* v. *Veysey*, *supra,* the case was dismissed, in part, because the contestant, by failing to even attempt to show how the irregularities complained of resulted in his having been wrongfully denied a victory in the election, "[did] not carry forward his claim to the seat."[33] Without the critical claim that the irregularities or other matters complained of resulted in the Contestant being denied an otherwise rightful victory, the Committee on House Oversight would become not a constitutional adjudicator of legitimate election contests, but instead a mere investigatory committee charged with uncovering various and sundry allegations of election-related violations of state and federal law.

2. Contestant Made Only "Claims" That Should Have Been Pursued in Other Forums

In his Notice of Election Contest, the Contestant did not allege that he won the election on November 5, 1996. The Contestant similarly did not claim that he was entitled to Contestee's seat. Therefore, the Contestant's contest should have been dismissed for Contestant's failure to make a specific claim for the seat in question.

This is not to say that the Contestant did not make claims of any kind. Mr. Dornan raised numerous allegations about potential violations of state and federal election laws and procedures. While it was highly questionable whether any of these allegations were based on adequate facts, it was, regardless, the very nature of these claims that demonstrates most clearly the very purpose of the jurisdictional requirement that the contestant make a claim for the contestee's seat. All other complaints regarding election irregularity should have been, and in several instances were, pursued by other authorities. However, the appropriate authority for such claims is not the Committee on House Oversight pursuant to its constitutional obligation to determine the ultimate victor in an election contest.

Mr. Dornan's claim was not that he won the election—a proper question under the FCEA and a proper question for the Committee on House Oversight. Instead, Mr. Dornan complained about alleged irregularities that at the time he filed his notice of contest were being investigated by the District Attorney and by the California Secretary of State. In addition, the Immigration and Naturalization Service was involved regarding potential matters within its jurisdiction, and had federal criminal matters been implicated, certainly the Department of Justice could have pursued such allegations.[34] These are the forums in which the "claim" made by Mr. Dornan could have been heard. The Committee should not have confused

[32] *Deschler's Precedents,* Ch. 9, § 22.

[33] H.R. Rept. No. 92–626 at 6.

[34] Indeed, as the Committee on House Oversight did in the *Rose* case, the task force could have granted Contestee's motion to dismiss and passed the information provided by the parties to the Department of Justice for review of potential election law violations.

Mr. Dornan's numerous "claims" with the important jurisdictional requirement that he make a specific claim that he had right to be the Congressman from the 46th District of California. By doing otherwise, the Committee was needlessly burdened with repetitive investigations and inquiries not contemplated by the Federal Contested Elections Act that were contemporaneously investigated by numerous other state and federal authorities.

C. CONTESTEE'S MOTION SHOULD HAVE BEEN GRANTED BECAUSE CONTESTANT FAILED TO STATE SUFFICIENT GROUNDS TO CHANGE THE RESULT OF THE ELECTION

Even if Mr. Dornan had stated a claim to Contestee's seat and had passed the jurisdictional threshold for this Committee to consider this contest, the contest should have nevertheless been dismissed because he failed to put forth sufficient "credible" evidence that if true would "likely" change the result of the election.[35] Mr. Dornan's allegations, even if viewed in a more deferential light than required under the FCEA, fell far short of this standard.

1. Applicable Standard

Numerous precedents make clear that Contestant Dornan had a significant burden of proof to demonstrate that the matters he alleged were based on credible evidence and that such conduct changed the outcome of the election.[36] The Contestant's evidence had to overcome the presumptions that official returns are prima facie evidence of the regularity and correctness of an election and that election officials had legally performed their duties.[37] The Contestant faces a high threshold in attempting to put forth such "credible" evidence as to the outcome of the election:

> It is perhaps stating the obvious but a contestant for a contest for a seat in the House of Representatives is a matter of most serious import and not something to be undertaken lightly. It involves the possibility of rejecting the certified returns of the state and calling into doubt the entire electoral process. Thus the burden of proof placed on the contestant is necessarily substantial.[38]

Mere allegations, such as allegations of fraud, are not sufficient; a contestant must show evidence that the results of the election changed because of such behavior.[139]

Similarly, as the Republican dissent noted in *Young* v. *Mikva,* "the motion to dismiss will be granted unless contestant has made allegations sufficient to justify the Committee's conclusion that grounds have been presented which if proven would change the result of the election."[40] In *Pierce* v. *Pursell, supra,* the Republicans voted to dismiss where "Mr. Pierce [was] unable to allege any specific irregularities justifying the conclusion that the result of the election was in error * * *"[41] Another formulation of this standard

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[35] *See, e.g., Anderson v. Rose, supra,* at 6–7.
[16] *See, e.g., Wilson v. Hinshaw, supra,* at 3–4.
[37] *See Chandler v. Burnham, supra, at § 47–4; Gormley v. Goss,* H.R. Rep. No. 73–893 (discussed in 2 *Deschler's Precedents,* Ch. 9, § 47.9 (1977)).
[38] *Tunno, supra,* at 10.
[139] *See, e.g., Rose, supra,* at 6.
[40] H.R. Rep. No. 95–244 at 9 (1977).
[41] H.R. Rep. No. 95–245 at 4 (1977) (supplemental views).

by which the Committee must judge Mr. Dornan's evidence was stated in *Tunno* v. *Veysey, supra.* The *Tunno* case presented a set of facts that, while the inverse of the case at hand, provide an identical flaw in the Contestant's case. In Tunno, the Contestant claimed that numerous person's registrations were disallowed and, impliedly, that such persons would have voted for the Contestant.[42] Just as Mr. Tunno did not make the necessary allegation that such voters would have voted for him, Mr. Dornan did not show that such voters voted against him, thus there was no adequate showing that the election outcome would have differed. In dismissing the contestant's claim in *Tunno,* the Committee noted that the requirement that the contestant put forth "substantiating evidence" that the election result was affected "carries with it the implication that the contestant will offer proof of such nature that the House of Representatives acting on his allegations alone could seat the contestant."[43] Contestant Dornan's allegations fell far short of this standard, just as did Mr. Tunno's.

2. Even Considered in a Most Favorable Light, Contestant's Initial Allegations Were Insufficient to Change the Result of the Election

As discussed above, in recent years Republicans and Democrats have differed as to the degree and sufficiency of proof that must be offered by a contestant in order to survive a motion to dismiss. However, Mr. Dornan's allegations did not satisfy either standard. In *Anderson* v. *Rose,* applying the more contestant-friendly Republican standard, the Committee still dismissed the claim even though the allegations called "into question the validity of more specific ballots than the margin of victory" * * * [because the] number of votes potentially affected by *credible* allegations is far below [the margin]".[44] Indeed, "on numerous occasions where allegations made in the contest were either vague, improbable on their face, or insufficient even if true to place the election in doubt, Republicans have supported dismissals."[45] As demonstrated below, Mr. Dornan's allegations regarding the number of votes that this Committee should have considered to be in question are "vague, improbable on their face, [and] insufficient even if true to place the election in doubt."[46]

a. Contestant's Initial Numbers Failed to Satisfy His Burden

In his Opposition to Contestee's Motion to Dismiss, Contestant cited numerous categories of votes that, because of alleged irregularities occurring in registration and voting, are somehow claimed to be tainted. Contestant implied that when aggregated, the numbers overcame his margin of defeat. Contestant attempted to aggregate these numbers despite the fact that they were redundant, and despite the fact that some of the numbers represented voter statistics across all of Orange County (almost five congressional districts) without any showing as to whether the alleged activities pertained

[42] Mr. Dornan alleged that numerous people were registered who should not have been, and impliedly, that such persons voted for Mr. Dornan's opponent.
[43] *Tunno, supra, at* 10.
[44] *Rose, supra,* at 12.
[45] *Id.* at 11.
[46] *Id.*

to voters in the 46th Congressional District, and for those that might have, which candidate the votes might have affected. In short, Contestant failed to show that the irregularities would have produced enough votes in his favor to change the outcome of the election.

b. Alleged Illegal Votes By Non-Citizens

Contestant referred to an affidavit filed in the course of an investigation into the activities of an immigrants rights group ("the Group") by an investigator for the Orange County District Attorney's Office which stated that the Group illegally registered 227 non-citizens, of whom Dornan claims 148 voted illegally in the 46th District.[47] Contestant offered no evidence that these individuals in fact voted in the 46th Congressional District, or, if they did, for which candidate they voted. Contestant also referred to 152 persons who were not U.S. citizens at the time they registered, but who voted in the election after becoming citizens.[48] Similarly, the Contestant identified 102 foreign-born voters for whom the INS had no record of U.S. citizenship.[49] This number, of course, should have been itself reduced since there was no evidence that the persons voted in the 46th District, or as to how they voted. Contestant cited the *Los Angeles Times* to claim that there were 431 current active "students" of the Group and that of these individuals, 374 had been illegally registered and 220 actually voted in the election.[50] These 220 "students", who may or may not have been immigrants pursuing citizenship, were, at least in part, accounted for as part of the 148 or 102 figures, referring to non-citizen or no INS-record voters. This figure was, in any event, redundant and if any "students" were in fact non-citizens at the time they either registered or voted, they were accounted for in the above numbers.[51] Therefore, the sum total of all of Mr. Dornan's initial allegations regarding the immigration rights Group and allegations of illegal voting came to 402 voters, 102 of which may have voted in any one of five congressional districts.

c. Discrepancy Between the Number of Ballots Cast and the "Voted Tape"

Without alleging how, if at all, it might affect this election, Contestant contended that there were 1,985 more ballots cast throughout Orange County than the number of votes recorded on a "voted

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[47] *Contreras Affidavit* at 30; *Opposition at* 7. Contestant cited press accounts to allege that the Group processed 13,000 clients in 1996 and that of this number 10,000 attended classes at the organization's Orange County offices. *Opposition at* 5. Contestant contended that there was an "overwhelming body of evidence" to suggest that the Group registered 10,000 to 13,000 individuals. *Id.* This number had no relevance to the issue before the Committee and enjoyed no credible support or documentation in the record. Registrations are not votes counted on election day. In addition, there was no evidence that the 13,000 registrations impacted upon the election in question because there was no evidence to suggest that all of these people registered for the 46th Congressional District. Orange County covers all or part of five congressional districts, and the Group was active throughout Southern California.

[48] *Opposition* at 13.

[49] *Opposition* at 7–8.

[50] *Id.*

[51] Even if these individuals represented all new, additional illegal voters—which they did not, when added to the other numbers as shown *infra,* the total was still short of the electoral margin (833–979).

tape".[52] In correspondence to Contestant's counsel, the Registrar of Orange County, Ms. Rosalyn Lever, addressed the apparent discrepancy between the "voted tape" and the actual ballots cast as recorded in the "Statement of Votes." The Registrar noted that the "voted tape" did not represent an actual record of all individuals who voted in the election.[53]

Lever pointed out that there were 666 "white provisional" voters under the National Voter Registration Act of 1993,[54] that were not included on the tape.[55] These were proper voters and thus Contestant's "discrepancy" should have been reduced. In addition, the Registrar explained that there were 218 "new citizen" voters who cast ballots. These voters registered between 28 and 7 days prior to the election under a special provision of California law and did not appear on the voted tape because an individual must be registered 29 days prior to an election to appear on the voted tape. These proper voters also should have been subtracted from the "discrepancy". Finally, there were 464 records that were canceled after the election and prior to the creation of the voted tape so that they counted as actual ballots, but were not included on the voted tape.[56] The Registrar attributed the remaining 460 vote difference to "an average of two data entry errors per consolidated voting precinct." [57]

Contestant appeared to accept the majority of the Registrar's explanations concerning the discrepancy between the actual number of ballots and the "voted tape" and in his Opposition to Contestee's Motion to Dismiss challenged only two of her conclusions. Contestant claimed that all or a large portion of the canceled records were due to the Registrar canceling non-citizens registrations after they voted improperly in the election. Contestant based this claim upon information from an affidavit in the District Attorney's investigation relating that a single non-citizen who voted in the election had his registration canceled by the Registrar after informing the Registrar himself that he was not a citizen. From this single statement concerning one individual, Contestant reached the astounding conclusion that "[t]his clearly suggests that all or a substantial portion of the 464 canceled records are a result of non-citizens voting

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[52] *Opposition at 10.* As described by the Registrar, "[T]he "voted tape" is a tape of voter history and is *not utilized in the official canvass.* The "voted tape" is a computer product which is created from a static file of active voter registrations as of 29 days prior to the election and which are still active when the tape is created after the election and who have voted in the election. As a result, a number of legitimate voters and "new citizen" voters are not included on the "voted tape". In addition, records canceled between election day and the creation of the tape will not appear on the "voted tape". *Letter from Rosalyn Lever to William R. Hart, Counsel to Robert Dornan,* 3 (Jan. 17, 1997) (emphasis added) (submitted as Exhibit 11 to the Opposition to Contestee's Motion to Dismiss) (hereinafter *"Lever Letter"*).

[53] *Lever Letter* at 3. In order to be included on the "voted tape", an individual must: (1) be a registered voter 29 days prior to the election, (2) vote in the election, and (3) retain an active registration for the period of time after the election until the voted tape is created. Id. Lever also noted that staff review of the voted tape indicated that there were 104,447 not 104,270 voter records on the tape, for a total of 177 more voter records than the number provided by Contestant in his correspondence to the Registrar and the Contestant's alleged "discrepancy" must in the first instance be reduced by that amount. *Lever Letter at 3.*

[54] 42 U.S.C. § 1973gg, *et seq.*

[55] "White provisional" voters include voters who recently moved into or within the 46th District and who were entitled to vote under the National Voter Registration Act of 1993. Similarly, voters who are erroneously recorded as having moved must be permitted to vote at their usual polling place upon affirmation that they have not moved, and would therefore show up as having voted, but not on "voted tape". 42 U.S.C. § 1973gg–6(e)(3).

[56] *Id.*

[57] *Id.*

whose registrations were later canceled after the election."[58] There is no other evidence to suggest that the Registrar canceled records as a result of non-citizens improperly voting in the election. In fact, the Registrar had no ability to determine whether someone was a citizen or not. Furthermore, the California Election Code and the National Voter Registration Act provide for cancellation of registrations for multiple reasons including: (1) most commonly, notification that the registrant has moved; (2) a request for removal by the registrant; (3) a criminal conviction; (4) mental incapacity; and (5) subsequent death of the registrant.[59] Thus, the Registrar canceled records during the period between the close of the 29-day pre-election period and the time the "voted tape" was created for numerous reasons other than improper voting by non-citizens.

Second, Contestant challenged Ms. Lever's explanation that the remaining 460 vote discrepancy was the result of "an average of two data entry errors per consolidated voting' precinct."[60] Combining the disputed figures for the "canceled records" and the "data entry error" votes, Contestant in his Opposition averred that there remained a 924 vote discrepancy between the actual number of ballots cast and the "voted tape" measurement.[61] But Contestant obfuscated the fact that these "data entry errors" were *not* errors made in conjunction with *counting ballots,* but only in the creation of the "voted tape". In fact, a state recount process, unchallenged by the Contestant, eliminated any potential errors in the balloting process. Thus, the data entry errors offer no evidence for Contestant.[62]

d. Other "Irregularities" Claimed By Contestant

Contestant raised other "irregularities" concerning votes cast in the election. These allegations were either irrelevant to the vote total or constituted an insignificant number of votes. Contestant claimed that there were 145 residences from which six to twelve persons voted for a total of over 700 "suspect" votes.[63] The Registrar's staff investigated these residences and found that they appeared to be "residences with multiple families or large family groups," apartment complexes, or large residential facilities.[64] In any event, Contestant's claim was irrelevant because he did not offer any suggestion as to why votes from residences with six to twelve adults should count any less than votes from residences with one or two adults, nor did he allege that such voters did not vote for him. Thus, there was no improper effect here on the election.

Contestant also alleged that the Group turned in 400 registration affidavits on October 7, 1996, the last day permitted by law.[65] Once again, Contestant did not indicate how this number affects the vote total for the election. He may have intended to suggest that the Group held onto registration affidavits longer than the

[58] *Opposition at 10.*
[59] *See* 42 U.S.C. § 1973gg; Cal. Elec. Code § 2201 (West 1996).
[60] *Lever Letter* at 3.
[61] *Opposition at* 11.
[62] And even if they did, such random human errors would have been counted equally against each of the candidates, resulting in a net effect of zero votes.
[63] *Opposition* at 14.
[64] *Lever Letter* at 2.
[65] *Opposition at* 15.

three days permitted under California law. Even if the Group held onto the affidavits longer than three days, the proper remedy under California law for such a violation would not have been to exclude the votes of the registrants.[66] Furthermore, Contestant offered no evidence to indicate for whom the registrants voted. He did not assert that any specific votes should be counted or not counted due to these registrations. Again, there was no impact here on the election.

Contestant asserted that there were 39 voters who voted from business addresses.[67] The Registrar addressed this issue in her correspondence to Contestant's counsel, stating that her staff investigated these addresses and found only two addresses that were not residences for a total of four improper votes.[68] Similarly, Contestant claimed that there were 38 instances of duplicate registrations indicating possible double voting.[69] After investigation by the Registrar's office, the Registrar concluded that there were eleven duplicate registrations for a total of eleven voters. According Contestant the benefit of the doubt, these 11 double voters could have produced 22 votes. Once again, there was no indication that these 22 votes were not cast for the Contestant.[70]

Contestant contended that there were 128 absentee ballot envelope discrepancies. The Registrar investigated these allegations and determined that 60 ballots did not meet requirements under California law and four were not properly executed, for a total of 64 improper votes. Again, we did not know, nor did the Committee ever determine, how these people voted.

e. Contestant Did Not Demonstrate Any Irregularities In The Electoral Process That Would Have Changed The Outcome Of The Election

As demonstrated above, Contestant's own numbers and figures claiming irregularities and improper votes, numbers in no way justified or conceded by Contestee, when put in the light most favorable to Contestant, reduced to "possible": (i) 402 votes by non-citizens, (ii) 464 "canceled record" votes, (iii) four votes from non-residential addresses, (iv) 22 votes from duplicate registrations and (v) 64 improper absentee ballots. There are several reasons why these figures could never have demonstrated that the outcome of the election had been placed in doubt.

First, the categories were not mutually exclusive. For example, the number of alleged non-citizen votes may have represented some of the "canceled record" votes, "non-residence" votes, "duplicate registration" votes or absentees. This was true for each of the categories. Second, each category of improper votes should have been further reduced since we did not know for which candidate, if any, they were cast. Third, in the case of the non-citizens, we did not even know if they voted in the 46th District.

The Contestant and the Committee should not have assumed that all questionable votes benefited Contestee. As discussed in de-

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[66] *Cf.* Cal. Elec. Code § 2158(b)(1).
[67] *Opposition* at 14.
[68] *Lever Letter* at 2.
[69] *Opposition* at 14.
[70] *Lever Letter* at 2.

tail below, Committee precedent dictates that the Contestant and the Committee should have allocated the votes in question by proportionally reducing the questionable votes from each candidate's total according to the proportion of voters in each precinct who voted for each candidate in the election.[71] Proportional reduction would have substantially reduced any total number of votes Contestant Dornan claimed far below the number needed to question the outcome of the election.

Therefore, even assessing Contestant's evidence in a most favorable light, it is a simple matter of arithmetic that there is a lack of "credible" evidence that would "likely" change the result of the election. The Committee should have granted Contestee's Motion to Dismiss without delay.

D. THE MAJORITY WAS POISED TO DISREGARD WELL-ESTABLISHED COMMITTEE PRECEDENT REQUIRING THE USE OF PROPORTIONAL DEDUCTION TO APPORTION DISPUTED VOTES

1. Introduction

The Federal Contested Election Act does not provide the positive law to be applied by the Committee in rendering a final decision in an election contest. The FCEA governs only the process, and not the substance, in disposing of election contests.[72] Because the FCEA "was meant to install a procedural framework without changing substantive precedent of the House,"[73] in determining the rules and standards to apply in evaluating the evidence gathered by the Committee and reaching a substantive decision as to the outcome, the Committee must look, with strong inclination toward stare decisis, to House precedents.

The Majority presented "documented evidence" of 748 illegal votes upon approving a motion to dismiss to conclude the election contest.[74] The Majority continued to present its evidence as if it only had to present a number of votes greater than the Contestee's margin of victory to demonstrate that the outcome of the election should be questioned. However, there is no way to determine for which candidates these voters cast their ballots. The Committee[75] cannot determine which voters cast improper votes without violating the Constitutional and statutory provisions protecting the secrecy of the ballot. Even if the individuals agreed to disclose for whom they voted, this testimony might not be accurate, as external factors could influence individuals' public testimony to differ from the votes they cast at the polls in secrecy. House precedents applying remedies for treating irregularities in the votes cast in previous elections indicate that, although there may be several possible remedies for addressing contested votes, the Committee would be re-

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[71] *Anderson v. Rose, supra,* at 7 n. 15 ("The House's precedents allow for deletion of improper ballots by proportional and deduction").

[72] The Act "is strictly limited to setting up a procedural framework for prosecution defense and disposition of an election challenge * * *" H. Rept. 91–569, accompanying H.R. 14195 *cited in* U.S.C.C.A.N., 91st Cong., 1st Sess., 1969 at 1459.

[73] *See* H. Rep. No. 104–852, 104th Cong., 2d Sess., *Dismissing the Election Contest Against Charlie Rose,* at 8 (1996) (hereinafter *"Rose"*.

[74] This number ignores the Majority's blatant arithmetic error discussed above, whereby the Majority improperly inflated the number of illegal votes by 45.

[75] Throughout this portion of the Minority views the term "Committee" refers to the House Committee on Oversight and its predecessors that dealt with election contests.

quired use the proportional reduction method to reduce the number of suspect votes.

Under proportional reduction, the number of questioned votes are reduced, precinct by precinct, in the inverse proportion to the candidates' percentages in that precinct. For example, if there are a number of votes from across a district that are in question, and 10 of those votes were cast in Precinct A, and in Precinct A there were 100 votes cast, with candidate X receiving 80 votes (80 percent), and candidate Y receiving 20 votes (20 percent), then you would subtract 8 votes (80 percent of 10) from candidate A's total of 80 and 2 votes from candidate B's total of 20 to give a new vote result in Precinct A of 72 votes for candidate X and 18 votes for candidate Y. This process would be carried on for each precinct where questioned votes were cast and then the votes totals across the district would be added up to determine the winner of the election.

2. Prior Election Contest Precedents Indicate That Proportional Deduction Is the Appropriate Remedy to Apportion The Disputed Votes

In the most recent election contest considered by the House of Representatives prior to Contestant Dornan's challenge, the Committee on House Oversight discussed several potential remedies available for contestants successful in "establishing convincing evidence of irregularities or fraud. * * *" [76] In that election contest, involving former Representative Charlie Rose, the Committee set forth the appropriate remedies for election contests as: (1) proportional deduction of the improper votes; (2) exclusion of entire contaminated precincts; or (3) ordering a new election.[77] It found that selection of the appropriate remedy depended on whether the allegations could be proven and the extent to which the alleged conduct impacted upon the apparent victory of the contestee.[78]

Examination of the three categories of remedies as they have been used in prior election contests demonstrates that proportional deduction is the appropriate remedy for voting irregularities caused by voters. In prior election contests, the Committee excluded the returns of individual precincts only where the facts demonstrated that election officials engaged in improper conduct or evidence of irregularities strongly indicated fraud. The Committee appears to have rarely, if ever, formally recommended a new election and considers such a remedy to be extreme in nature.

a. Requiring a New Election Would Have Been Inappropriate In the Present Election Contest Because This Remedy Is Rarely Used And It Was Possible to Determine The Winner Without Holding An Entirely New Election

In the *Rose Contest,* the Committee stated that "an entirely new election is proper if the contamination of votes makes the winner of the election virtually impossible to determine." [79] This view was

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[76] *See* H. Rep. No. 104–852, 104th Cong., 2d Sess., *Dismissing the Election Contest Against Charlie Rose,* at 7 (1996) (hereinafter *"Rose Contest"*).
[77] *Id.* at 7–8.
[78] *Id.* at 8.
[79] *Rose Contest* at 7–8.

prefaced in *Tunno* v. *Veysey,*[80] where the Committee commented that:

> Declaring a vacancy in the seat is one of the options available to the House of Representatives and is generally exercised when the House decides that the contestant, while he has failed to justify his claim to the seat, has succeeded in so impeaching the returns that the House believes that the only alternative available to determine the will of the electorate is to hold a new election.[81]

Thus, the limited precedents on declaring a new election suggest that such action should only be taken where the returns are so contaminated that an accurate determination of the winner would be impossible. Use of this remedy requires irregularities beyond even the high threshold required for the exclusion of precincts. In several prior election contests, the Committee believed that the violations of election laws were substantial enough so that the true outcome of the election could not be determined.[82] However, the Committee did not resort to the extreme remedy of ordering a new election. This remedy has rarely, if ever, been used and the present case does not represent the type of widespread fraud that might justify such an extreme remedy.

Most importantly, as discussed above, the Contestant did not produce evidence indicating that there are sufficient improper votes to change the outcome of the election.[83] Since such evidence has not been presented, the Committee should not consider ordering a new election. In fact, since the Contestant cannot establish that there are more votes in question than the Contestee's margin of victory, he cannot even support a claim that there exists any doubt as to the true winner of the election. Such a situation is analogous to the election contest of *Salts or Major,* where the Committee found it unnecessary to consider any remedy because, even if all the disputed votes were awarded to the Contestant, it would not alter the outcome of the election.

b. Committee Precedents Dictate That The Remedy of Excluding Entire Precincts Should Only Be Used When An Accurate Vote Count Cannot Be Obtained Due to Widespread Illegal Activities or Fraud

In general, the Committee has used the remedy of excluding entire precincts when the extent of illegal votes affected the total vote count in the precincts to a such degree that an accurate count could not reliably be obtained. Unlike the proportional deduction cases, these cases did not involve a limited number of votes from precincts, but involve widespread fraud or illegal activities, usually on the part of election officials.

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[80] H. Rep. No. 92–626, 92d Cong., 1st Sess. (1971).

[81] *Id.*

[82] *See* discussion of *Chandler v. Bloom, Farr v. McLane* and *Paul v. Harrison ,* in sections I.B, I.D, *infra.*

[83] Additionally, there appears to be a lesser percentage of alleged improper votes in the present case than in previous cases in which the Committee found that the outcome of the election could not be determined. *See* discussion of *Chandler v. Bloom, Farr v. McLane* and *Paul v. Harrison,* in sections I.B, I.D, *infra.*

In *Hill v. Palmisano,*[84] the Committee resorted to excluding the votes of entire precincts after finding "the conduct of the election board in this precinct with respect to the custody, count, tally, and certification of ballots was in total disregard of and disobedient to the provisions of the laws of the State of Maryland."[85] The Committee found severe violations of state election laws including: (1) false and fraudulent vote tally sheets; (2) the vote count was unreliable and uncertain; (3) the vote count was tainted with fraud because candidates' workers participated in the count; (4) false and fraudulent returns; (5) the certificate of election was filled out with blanks left before the polls even closed; (6) unauthorized persons counted the ballots; (7) the method of counting the ballots was unreliable and presented opportunities for tampering; and (8) election officials falsified returns with regard to state constitution and city ordinance referendum questions on the ballot. The Committee concluded that the opportunity to substitute ballots, coupled with the desire to substitute ballots, was sufficient justification to believe that some substitutions occurred. Most importantly, the Committee believed that exclusion of the precincts would serve as a refusal to condone election officials' violations of the law.

The Committee also invoked the remedy of excluding entire precincts in *Chandler* v. *Bloom*[86] where it found:

> * * * utter complete, and reckless disregard of the provisions of the election laws of the state of New York involving the essentials of a valid election, and the returns of the election boards therein are so badly tainted with fraud that truth is not deductible therefrom, and that it can be fairly said that there was no legal election held in said election districts.[87]

The Committee detailed egregious violations of the state election laws to support its conclusion including: (1) stolen ballots; (2) improperly constituted board of election inspectors; (3) persons voting multiple times; (4) electioneering too close to the polls; (5) unsworn persons handling ballots; (6) intimidation of poll workers; (7) drunkenness by the head of the board of election inspectors; (8) inspectors with knowledge of stolen ballots failing to report such illegalities; and (9) torn, erased, and mutilated ballots.

In *Salts or Major*[88] the Committee found it unnecessary to decide the contestee's claim that an entire precinct should be excluded because the contestee would win regardless of whether the votes of the precinct were counted. However, the Committee stated that precedent clearly supported taking this action, since election officials had not placed the registration number of the individual voters on their ballots as required by state law.

The Committee deviated from its traditional use of the remedy of excluding precincts in the contest of *Tague* v. *Fitzgerald*,[89] where the irregularities involved illegal registration. Bar tenders, liquor

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[84] *See Deschler's Precedents,* Vol. 2, Ch. 9 App., § 7.4 (discussing *Hill v. Palmisano,* H. Rep. 1901 Part 2, 71st Cong., 2d Sess. (1930)).

[85] *Id.* at 877.

[86] *See Deschler's Precedents*, Vol. 2, Ch. 9 App., §4.2 (discussing *Chandler* v. *Bloom*, H. Rep. 224, 68th Cong., 1st Sess. (1924))

[87] Id. at 789.

[88] *See Deschler's Precedents*, Vol. 2, Ch. 9 App., §2.4 (discussing Salts or Major, H. Rep. 961, 66th Cong., 2d Sess. (1920)).

[89] *See Deschler's Precedents*, Vol. 2, Ch. 9 App., §2.1 (discussing *Tague* v. *Fitzgerald*, H. Rep. 375, 66th Cong., 1st Sess. (1919)).

dealers, and municipal employees registered to vote, even though they did not reside in the districts in which they registered, in order to be able to vote on issues affecting their livelihoods. The Committee excluded the returns of entire districts where the vote was so tainted with fraud or irregularity that a true count could not be taken, despite the fact that there was no evidence of misconduct on the part of the election officials. The Committee dismissed using the remedy of proportional deduction because it believed: (1) the number of fraudulent votes exceeded the number of legal proven votes in the districts; (2) the conditions producing the fraudulent votes did not cause them to be cast pro rata; and (3) it would establish a bad precedent and inadequate remedy, especially because it would result in the election of the contestant. Eventually the Committee declared the seat vacant.

Prior election contest precedents do not support excluding entire precincts from the vote count in the current contest. This case does not involve fraud or misconduct on the part of the election officials, as was the case in *Paul* v. *Harrison*, *Farr* v. *McLane*, *Hill* v. *Palmisano*, *Chandler* v. *Bloom*, and *Tague* v. *Fitzgerald*. Nor is there any evidence of widespread disregard for the election laws of the state of California. In the present case, unlike *Tague* v. *Fitzgerald*, the Contestant did not allege that there were a greater number of fraudulently cast votes than legally valid votes. Thus, excluding entire precincts would have been too extreme a remedy to apportion the disputed votes in the present contest.

c. The Committee Has Relied On Proportional Reduction In Analogous Situations to Contestant Dornan's Election Challenge

Proportional deduction involves determining the number of improper votes in a precinct and reducing the number of votes from each candidate on a pro rata basis according to the percentage of the vote each candidate received in that precinct. In *Oliver* v. *Hale*,[90] the Committee determined that 109 absentee and physical disability ballots should be rejected on the basis of several different categories of violations by voters—including the fact that a portion of the 109 individuals were not registered or qualified to vote. The Committee believed that it was not possible to match the invalid absentee ballots to particular votes cast by identified voters. Citing Committee precedent, the Committee proceeded to use the proportional deduction method to apportion the votes in question.

The Committee stated a "general rule" for using proportional deduction in *Macy* v. *Greenwood*.[91] The Committee found that the Board of Election Commissioners properly determined that 932 votes challenged on the basis of failing to meet a durational residency requirement were in fact valid. However, the Committee stated that had it found "the 932 votes illegally cast, the votes presumably would be deducted proportionally from both candidates according to the entire vote returned for each. This is the general rule when it cannot be ascertained for which candidate the illegal

[90] *See* Lewis Deschler, *Deschler's Precedents of the United State House of Representatives*, 94th Cong., 2d Sess., H. Doc. No. 94–661, Vol. 2, Ch. 9, § 57.3 (discussing *Oliver* v. *Hale*, H. Rep. 2482, 85th Cong., 1st Sess. (1958)) (hereinafter *"Deschler's Precedents"*).

[91] See *Deschler's Precedents*, Vol. 2, Ch. 9, § 56.4 (discussing *Macy* v. *Greenwood*, H. Rep. 1599, 82nd Cong., 2d Sess. (1952)).

votes were cast."[92] The Committee also indicated that in the absence of fraud, charges of irregularities as to registration would not invalidate votes. In *Roush* or *Chambers*,[93] the Committee once again applied "the general rule in the House for deduction of illegal votes where it is impossible to determine for which candidate they were counted"[94] to attribute 42 absentee ballots that had been illegally cast. The Committee stressed its long history of using proportional deduction in such circumstances.

The Committee used proportional deduction to apportion the illegal votes of non-citizens in *Bailey* v. *Walters*,[95] including aliens who had never been naturalized and would not disclose for whom they voted. The Committee subtracted the votes of non-citizen voters who testified for whom they voted from the appropriate candidates' totals. For non-citizen voters who exercised their Constitutional right not to disclose their vote, the Committee used proportional deduction to attribute their votes.

Proportional deduction would have been the appropriate remedy for attributing the disputed votes in the present contest. In past election contests, the Committee has used proportional deduction to attribute votes in similar situations to the present contest. In *Bailey* v. *Walters*, the Committee determined that proportional deduction was the proper remedy to attribute the votes of certain non-citizens. Similarly, in *Oliver* v. *Hale* and *Roush* or *Chambers* the Committee used proportional deduction to attribute small numbers of absentee ballots, 109 and 42, respectively. The 932 votes at issue in *Macy* v. *Greenwood*, which the Committee could have attributed using proportional deduction, are similar to the votes that may be at issue in the present controversy because both situations involve deficient registrations, while neither situation involves fraud.

d. The Nature And Severity of the Alleged Election Law Violations Required the Committee to Use the Remedy of Proportional Deduction Rather Than the Exclusion of Precincts

In at least two election contests, the Committee used a combination of the remedies of proportional deduction and exclusion of entire precincts to resolve election contests. These contests highlight the differences between the two remedies and demonstrate why proportional deduction is the appropriate remedy in the present contest. The Committee rejected the votes of entire precincts in *Paul* v. *Harrison*[96] because "there was such an utter, complete, and reckless disregard of the mandatory provisions of the fundamental law of the State of Virginia involving the essentials of a valid election, that it can be fairly said that there was no legal election in those precincts."[97] The Committee found that there were violations of the Constitutional and statutory requirements of secrecy of the ballot, laws requiring keeping the ballot box in view; and the counting and disposition of ballots. While the Committee found these

[92] *Id.* at 572.
[93] *See Deschler's Precedents*, Vol. 2, Ch. 9, § 59.1 (discussing *Roush* or *Chambers,* H. Rep. 513, 87th Cong., 1st Sess. (1961)).
[94] *Id.* at 602.
[95] *See Deschler's Precedents*, Vol. 2, Ch. 9 App., § 5.4 (discussing *Bailey* v. *Walters*, H. Rep. 1450, 69th Cong., 1st Sess. (1926)).
[96] *See Deschler's Precedents*, Vol. 2, Ch. 9 App., § 3.6 (discussing *Paul* v. *Harrison*, H. Rep. 1101, 67th Cong., 4th Sess. (1922)).
[97] *Id.* at 770.

violations to be egregious enough to warrant exclusion of entire precincts, it indicated that instances of illegal registration or the non-payment of poll taxes, where the Committee could not determine for whom individual voters voted, should be attributed using proportional deduction.

Similarly, in *Farr* v. *McLane* [98] the Committee addressed an election contest containing a wide range of violations including: (1) unregistered voters casting ballots; (2) names appearing on the voted tape for persons who had not cast ballots; (3) individuals voting who were minors or had not paid the mandatory poll tax; and (4) the placement of fraudulent ballots in the ballot box. The Committee found that for the majority of the 1,006 illegal votes, there was no way to determine for which candidate the votes were cast. It determined that in the districts in which there was conclusive evidence of fraud on the part of the election officials, precedent justified rejecting the entire vote of these precincts. The Committee emphasized that in these precincts not only had persons been permitted to vote who had not registered, but there was evidence of other fraud and collusion on the part of election officials. Where there was solely evidence of persons voting who had not registered, the Committee used proportional deduction to reduce the votes of each candidate pro rata.

These contests clearly demarcate the line between the remedies of proportional deduction and the exclusion of precincts. Unlike the present contest, both *Paul* v. *Harrison* and *Farr* v. *McLane* involved violations of election laws by election officials. These violations contributed to an overall disregard for the applicable election laws not present in the current contest. In such instances, the Committee relied on the exclusion of entire precincts. Contestant Dornan did not suggest that California election officials violated applicable election laws and thus the Committee properly did not resort to excluding entire precincts.

Paul v. *Harrison* and *Farr* v. *McLane* also addressed the issue of improper registrations, the only violation Contestant claimed in the current contest. In both these contests, the Committee determined that proportional reduction was the proper remedy to apportion the ballots of voters who had improperly registered. The Committee should have adhered to its determinations in prior contests and used proportional reduction in the present contest to apportion the disputed ballots of voters who allegedly registered improperly.

VI. CONCLUSION

The Minority fully supports the dismissal of Contestant Dornan's election contest against Contestee Sanchez. However, we have strong concerns regarding the process the Majority used to extend the election contest beyond the time warranted. The costs of the election contest to the Contestee, Contestant, and U.S. taxpayers exceeded one million dollars. The Contestee, Contestant, and Committee spent valuable time and resources on a matter that should have been resolved in a shorter time frame and at considerably less cost. The Majority constantly denied the Minority the basic cour-

[98] *See Deschler's Precedents,* Vol. 2, Ch. 9 App., § 2.7 (discussing *Farr* v. *McLane*, H. Rep. 1325, 66th Cong., 3d Sess. (1921)).

tesies of sharing information in a timely manner and providing notice of Committee actions.

The Minority has strong concerns that this election contest may establish an unwelcome precedent of extending election contests beyond the stages of investigation of the claim and a contestee's motion to dismiss. The Majority should have found that Contestant Dornan's Notice of Election Contest did not present "credible" evidence to survive Contestee Sanchez's Motion to Dismiss. Inviting full investigations of any election with close results will threaten our nation's democratic processes. The Majority included numerous categories of voters in its final number of suspect voters when they could not establish that these voters cast illegal ballots. Their refusal to share their analysis and establish a joint database to agree on the status of individual voters made it impossible for the Minority and Majority to work from an identical group of suspect voters. Finally, even after reaching its final number of suspect voters, the Majority did not recognize Committee precedent and proportionally reduce these votes according to the number of votes each candidate received in specific precincts. The Majority's action in this regard could have established a dangerous precedent of changing the outcome of an election without regard to the true number of suspect votes necessary to produce this result.

SAM GEJDENSON.
STENY HOYER.
CAROLYN C. KILPATRICK.

APPENDIX A

COUNTY OF ORANGE
GENERAL SERVICES AGENCY,
Santa Ana, California, January 17, 1997.

WILLIAM R. HART,
Hart, King & Coldren, 200 East Sandpointe, Fourth Floor, Santa Ana, California 92707

DEAR MR. HART: Our office has concluded its review of the various lists submitted by you on December 17, 1996. Though it would be inappropriate to discuss individual voter records, I have provided below summary data which should clarify and offer perspective on the issues you have raised.

Business Addresses

Of the 50 addresses submitted representing 122 voters, 8 of the addresses representing 29 voters were duplicated on your list. The resulting 42 addresses representing 93 voters were reviewed by staff. From that review the following was determined:

39 addresses representing 88 voters were locations which served as the voters' residence and, therefore, met criteria for registering to vote.

2 addresses representing 4 voters were locations which were not the voters' residence. Those records are being forwarded to the District Attorney for review and appropriate action.

1 address representing 1 voter was improperly entered in the computer system. The address information has been corrected. Both addresses were within the same ballot type for the general election.

Registration Indicating the Voter was Under Age

Two records were submitted which appeared to indicate the voters were not 18 years of age at the time of election. After reviewing the original and prior affidavits of registration, staff has determined both individuals are over 18 years of age and the discrepancies were caused by data entry errors.

Absentee Voter Records

Of the 128 records submitted, 5 records were duplicated on your list. The resulting 123 records were reviewed by staff. From that review the following was determined:

59 records appear to have met the basic criteria of absentee return in person, by certain authorized relatives, or in emergency by a designated representative.

60 records do not appear to have strictly conformed to the criteria of EC 3017 but were executed by the voter.

4 records that the absent voter had not properly executed.

Duplicate Registrations Indicating Possible Double Voting

Of the 114 registration groupings submitted, 17 registration groupings were duplicated on your list. The resulting 97 registration groupings were reviewed by staff. From that review the following was determined:

67 registration groupings, though appearing to indicate duplicated records on your list, were actually separate individuals with similar registration data.

19 registration groupings had duplicate records. However, after reviewing original documents, information does not support the conclusion that any of these voters actually voted twice. The duplicate registrations have been canceled.

11 registration groupings, representing 11 voters, have been referred to the District Attorney for review for possible Elections Code violations.

Addresses with 6 or More Registered Voters

Of the 145 addresses submitted with 6 or more registered voters, two addresses were also submitted and reviewed as part of the business address list. Staff reviewed the remaining 143 addresses with the following result.

127 addresses appear to be residences with multiple families or large family groups.

11 addresses are apartment complexes.

5 addresses are large residential facilities.

Affidavits Potentially Held More than 3 Days Before Submittal to the Registrar of Voters

Holding records for more than three days does not affect the voter's eligibility to vote.

"Voted Tape" and "Statement of Votes" do not Match

The "voted tape" is a tape of voter history and is not utilized in the official canvass. The "voted tape" is a computer product which is created from a static file of active voter registrations as of 29 days prior to the election and which are still active when the tape is created after the election and who have voted in the election. As a result the "white provisional" (NVRA Fall Safe) voters and "new citizen" voters are not included on the "voted tape". In addition, records canceled between election day and the creation of the tape will not appear on the "voted tape". Some voted records will not accurately reflect the method of voting.

The data you submitted was compiled by "regular" precinct and not "consolidated voting" precinct. This accounts for many of the discrepancies in the detail portion of your list. Due to the nature of the "voted tape" and the fact that the Statement of Votes is compiled by "consolidated voting" precinct, this office will address only the summary totals on your report.

The report submitted indicated 106,255 ballots cast on the statement of Votes and 104,270 voters on the "voted tape". Staff has reviewed our "voted tape" and has determined there are 104,447 individual voter records on the "voted tape". Therefore, that shall be the base number used.

"Voted tape" total	104,447
"White provisional" voters not included on "voted tape"	666
"New citizen" voters not included on "voted tape"	218
Canceled records not included on "voted tape"	464
Total	105,795

This leaves a difference between the "voted tape" and the Statement of Votes of 460 records. The 460 records indicate an average of two data entry errors per "consolidated voting" precinct.

The information you have submitted has been valuable in providing an additional opportunity for this office to review various aspects of our operation. Thank you for bringing your concerns to my attention.

Very truly yours,

ROSALYN LEVER,
Registrar of Voters.

ADDITIONAL VIEWS

I concur in the Minority views which have been subscribed to by my colleagues, Congressman Sam Gejdenson and Congresswoman Carolyn Kilpatrick. Those views set forth what I believe to be the appropriate precedents, previously enunciated in cases dismissing contests filed by both Democrats and Republicans. Those precedents were agreed to in most instances by Republican Minority Members. In addition, the precedents established by the present Republican Majority in *Anderson* v. *Rose,* H. Rept. 104–852 (1996) were basically consistent with those set under Democratic Majorities.

It has been clear over the last three years that the Majority has been committed to lowering the threshold necessary to overcome a contestee's motion to dismiss. That threshold has been constructed to insure that the judgment of an electorate would be challenged only upon a showing of "sufficient allegations and evidence," *Tunno* v. *Vessey,* H. Rept. 92–626 (1971), that the outcome of that election was other than the election of the contestee. Such evidence must be more than simple assertion or hearsay, it must be credible.

In my opinion, this case and the very bad precedent that the Majority is attempting to establish is a direct outgrowth of the outrage the Majority still harbors about the process and decision in the *McCloskey* v. *McIntyre* case, H. Rept. 99–58 (1985). That outrage (see the additional views of Congressman Bill Frenzel appended to the Minority views in the above House report) has, I regret, led today's Republican Majority to do exactly that which they strongly condemned then.

The Majority has repeatedly distinguished its handling of this case and previous ones in the 104th Congress from what they believe was the egregious and unjust "stealing" of the election in the Eighth Congressional District of Indiana. However, in many ways the procedures followed here more nearly replicate the McCloskey process, which was not an FCEA case, more than that established by the FECA. Essentially, the Committee in this case became the moving party and investigator. To that extent, the parties contrary to what was contemplated by the FECA, became spectators and in fact, to this very date, do not have the essential facts on which this case is now being resolved. They, like the Minority, and the public, have simply the conclusions drawn by the Majority from the facts gathered by the Majority.

It would be unproductive to discuss the McCloskey case here. However, I believe it useful to briefly review the Minority (Republican) views in that case. They then complained bitterly that McCloskey had not been required to pursue his claim under the Federal Contested Election Act. In so doing they said:

> Under the FECA, a candidate contesting an election must prove that the election result entitle him to the seat, 2 U.S.C.

> Sec. 385. His allegations, the equivalent of pleadings of law and fact, *must show* (emphasis added) that, except for the grounds stated, the challenged election results would have been different." McCloskey v. McIntyre, House Rept. 99–58, p. 50.
>
> As has been pointed out in the Minority views here, the precedents established and followed consistently should have resulted in the granting of Congresswoman Sanchez's Motion to Dismiss either at the Feb. 19, 1997 hearing or subsequent to the "field hearing" held in California in April, 1997.

Instead, the Majority chose to embark on an unchartered and, I believe, very unwise course in this case. They said they did so to establish a precedent for going beyond a motion to dismiss, which had never before been done in an FECA case. In so doing, they pursued an ad hoc process which largely ignored the process established in the FECA and denied due process to both the parties. Indeed, at almost every juncture the Majority trampled on basic fairness to the parties and to the Minority. As a result, I am hopeful that this case will be viewed as an anomaly in the future. At almost every stage in the Task Force's deliberations, the Majority ignored the requirements of the statute, the relevant precedents, and basic procedural due process.

Throughout the course of this case, I urged the Majority to work together with the Minority to establish mutually agreed upon procedures as we engaged in areas of discovery and considerations never previously undertaken under the FECA. The Majority initially suggested (incorrectly) that meeting to discuss such procedures might violate some uncited sunshine law. When told that discussing such procedures in open session would be welcomed, they simply demurred. Ironically, as is pointed out in the Minority views, almost every decision in this case was made unilaterally, secretly, and incorrectly. However, the decision to dismiss, although late, was a correct one.

The only area in which there was an effort to reach decisions through open discussion between Majority and Minority was with respect to the disposition and enforcement of Mr. Dornan's subpoenas. It is not clear to me why that was the exception. However, it convinced me that such bipartisan discussions should absolutely occur in the future, if a fair procedure is to be constructed and pursued in the future.

Historically, both parties have dealt with great care when considering a contest to the election of a Member of Congress. It is a grave constitutional responsibility. As such, it should be considered in the most judicious and bipartisan way possible. That was not done in this case. Therefore, although the proper outcome was reached, the precedent established is of no value to future Congresses. Indeed, I would urge that it be rejected as a precedent for any case in the future.

I trust that in future cases both parties, whether in the Majority or Minority, will work together to establish a procedural framework in which this most serious matter can be considered fairly and in a timely fashion.

ADDITIONAL VIEW

The legacy of the protection of voting rights for minorities in the United States was a hard-fought battle that saw its culmination in the adoption of the Voting Rights Act of 1965. Despite entreaties to the contrary, there has been no demonstration from the Majority that any changes to our current registration laws—proof or documentation of citizenship to register to vote, or to allow states to require Social Security numbers on voting registration applications—are needed or necessary to ensure the accuracy and validity of our nation's elections.

We all want open, honest and fair elections and registration processes. What should not happen, as a result of this decision, is the further disenfranchisement of voters by even more restrictive registration requirements. This would only be the beginning of the recurrence of poll watchers, literacy tests, and poll taxes—other relics of a bygone era that died with the adoption of the Voting Rights Act of 1965. These, and other further and unwarranted restrictions upon the voting rights of all hinder the progress and freedom of not just minorities, but of all Americans.

CAROLYN C. KILPATRICK

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