

FAX



BILL JONES
SECRETARY OF STATE
 Elections Division
 1500 11th Street
 Sacramento, CA 95814
 (916) 657-2166

TO: Janice Atkinson

FROM: State of California

Bill Jones, Secretary of State



DATE: 3/17/98

FAX: (707) 527-1833

Pam Giarrizzo
Elections Counsel

PHONE: _____

Elections Division
1500 11th Street
Sacramento, CA 95814

(916) 657-2166
FAX (916) 653-3214

RE: Rawls v. Jones

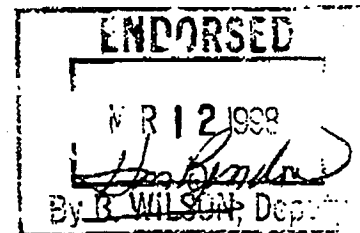
MESSAGE: Hi, Janice!

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Completed _____
Date _____
Time _____



1 Oliver S. Cox, Staff Counsel (No.92565)
 2 Pamela S. Giarrizzo, Staff Counsel (No.119333)
 3 1500 11th Street
 4 Sacramento, California 95814
 (916)657-2166

5 Attorneys for Respondent
 6 BILL JONES, Secretary of State

7
 8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 COUNTY OF SACRAMENTO

10	ALEXANDER E. RAWLS,)	NO. 98CS00514
11)	
11	Petitioner,)	MEMORANDUM OF POINTS AND
12)	AUTHORITIES IN SUPPORT OF
12	vs.)	ANSWER TO AMENDED COMPLAINT
13)	FOR DECLARATORY RELIEF AND
13)	PETITION FOR WRIT OF MANDATE
14	BILL JONES, Secretary of State, State)	
14	of California, and Dwight Beattie,)	Date: March 13, 1998
15	Registrar of Voters of Santa Clara County,)	Time: 11:00 a.m.
15)	Dept: 23
16	Respondents.)	
16)	
17)	Honorable James T. Ford
17)	
18)	

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Post-it® Fax Note	7671	Date	# of pages ▶
To	Sheriff Piccinini	From	JANICE
Co./Dept	SHERIFF	Co.	ASST. R.O.U.
Phone #		Phone #	527-1814
Fax #	522-6061	Fax #	527-1833

INTRODUCTION

1
2 Secretary of State Bill Jones, acting in his capacity as the chief elections officer of the State
3 of California, opposes Petitioner Rawls' petition for writ of mandate. Petitioner admits that he
4 does not possess the qualifications for the office of county sheriff required pursuant to
5 Government Code section 24004.3, but claims that these qualifications violate his First, Second,
6 and Fourteenth Amendment rights under the United States Constitution. Respondent Secretary of
7 State believes that the enactment of Government Code section 24004.3 was a constitutional
8 exercise of the Legislature's authority to prescribe the qualifications for any office which it is
9 entitled to establish. Lacking those qualifications, Petitioner is not eligible to be a candidate for
10 sheriff and his petition for writ of mandate should be denied.
11

STATEMENT OF FACTS

12
13 The office of sheriff is an elected county office mandated by the California Constitution at
14 Article XI, Section 1(b). Candidates for the office of sheriff must comply with Government Code
15 section 24004.3 by meeting at least one of the specified criteria at the time of the close of the filing
16 period for the office. The criteria relate to specified training and experience in law enforcement.
17 The only exception to the requirements set forth in this statute is that persons holding the office of
18 sheriff on January 1, 1989, shall be deemed to have met all the qualifications required for
19 candidates seeking election or appointment to the office of sheriff. A copy of Government Code
20 section 24004.3 is attached hereto as Exhibit 1.
21

22
23 The deadline for candidates for the office of sheriff in Santa Clara County to submit their
24 nomination papers, declaration of candidacy, and filing fee was 5:00 p.m. on March 6, 1998.
25 (Elections Code sections 8020 and 8105.) The incumbent sheriff did not file for the office, which
26 resulted in an extension of the filing period. This extension expired on March 11, 1998.
27

1 (Elections Code section 8024.)

2 The declaration of candidacy that a candidate for sheriff is required to sign includes the
3 following statement: "I meet the statutory and constitutional qualifications for this office
4 (including but not limited to citizenship, residency, and party affiliation, if required)." (Elections
5 Code section 8040.) Petitioner admits that he has not submitted a declaration of candidacy to the
6 elections official because he cannot declare that he meets the statutory qualifications for the office
7 of sheriff. See admission in Petitioner's "Amended Complaint for Declaratory relief and petition
8 for Writ of Mandate" at page 2, paragraph 7.

10 Petitioner submitted his nomination signatures and filing fee in time to meet the March 11,
11 1998, deadline. However, he apparently amended the wording of his declaration of candidacy
12 with regard to meeting the statutory qualifications for the office so that the declaration does not
13 conform to the requirements of Elections Code section 8040. Therefore, he cannot be certified as
14 a candidate for sheriff for the June 2, 1998, election.
15

16 ARGUMENT

17 I. THE LEGISLATURE IS AUTHORIZED TO SET THE QUALIFICATIONS 18 FOR CANDIDATES FOR SHERIFF

19 Article XI, Section 1(b), of the California Constitution provides, in pertinent part: "The
20 Legislature shall provide for county powers, an elected county sheriff, an elected district attorney,
21 an elected assessor, and an elected governing body in each county." The Constitution does not set
22 forth the qualifications for candidates for these offices. However, the Legislature has established
23 qualifications for two of the three offices listed that go beyond the usual qualifications for
24 candidacy. Candidates for district attorney are required to have been admitted to practice in the
25 California Supreme Court pursuant to Government Code section 24002, and candidates for sheriff
26 must meet the experience and training requirements set forth in Government Code section
27

1 24004.3.

2 It is well established that the Legislature is empowered to set qualifications for candidates
3 for public office, provided that those qualifications are not less than or in addition to any
4 qualifications that have been specifically set forth in the Constitution. In the case of *Sheehan v.*
5 *Scott* (1905) 145 C. 684, 687, the court held:
6

7 "It may be admitted that the legislature can neither increase nor diminish the
8 qualifications which the constitution has prescribed for eligibility to any of
9 the offices created by that instrument; but for all offices which the legislature
10 may authorize or establish, either by virtue of express authority therefor in
11 the constitution itself, or by virtue of its general legislative authority, it may
12 prescribe such qualifications as in its judgment will best accord with public
13 policy or subserve the interests of those affected thereby."

14 Thus, the Legislature has the authority to prescribe qualifications for the office of sheriff because
15 there are no conflicting constitutional qualifications.
16

17 **II. THE QUALIFICATIONS MANDATED BY THE LEGISLATURE FOR**
18 **CANDIDATES FOR THE OFFICE OF SHERIFF ARE REASONABLE**
19 **AND NONDISCRIMINATORY**
20

21 Petitioner argues that Government Code section 24004.3 impinges on his First, Second,
22 and Fourteenth Amendment rights under the United States Constitution, and he appears to argue
23 that this statute should thus be subject to review pursuant to the strict scrutiny standard. As to
24 Petitioner's First and Fourteenth Amendment claims, courts have long held that when evaluating
25 the constitutionality of a state election law, the court must weigh "the character and magnitude of
26 the asserted injury to the rights protected by the First and Fourteenth Amendments that the
27 plaintiff seeks to vindicate against the precise interests put forward by the State as justifications for
the burden imposed by its rule." *Burdick v. Takushi* (1992) 504 U.S. 428, 434 (citing *Anderson v.*
Celebrezze [1983] 460 U.S. 780, 789). When the state election law imposes severe restrictions, it
must be "narrowly drawn to advance a state interest of compelling importance." *Norman v. Reed*

1 (1992) 502 U.S. 279, 289. However, if the state election law imposes only "reasonable,
2 nondiscriminatory restrictions" upon First and Fourteenth Amendment rights, "the State's
3 important regulatory interests are generally sufficient to justify" the restrictions. *Anderson*, 460
4 U.S. at 788. This is the standard that applies in this case.

5
6 First, the statute is nondiscriminatory in that it does not impinge on the rights of any
7 suspect classification. It merely requires that a person running for the top law enforcement job in a
8 county must have a minimum level of law enforcement experience and training. A candidate may
9 pursue this experience and training without regard to the candidate's gender, race, or other
10 attributes that would be considered suspect classifications. Persons who choose not to acquire law
11 enforcement training and experience do not make up a suspect classification.

12
13 Secondly, the statute is reasonable and furthers not merely an important, but a compelling,
14 state interest: that of ensuring that the top law enforcement officer in a county have the training
15 necessary to make crucial decisions that may affect the health and safety of the county's residents.
16 These decisions often must be made instantly and under difficult circumstances, and the state has a
17 compelling interest in ensuring that the person exercising the police powers of the state has the
18 appropriate experience and training to analyze the situation at hand and reach the proper decision.
19 It is also reasonable to expect that the person who leads the sheriff's department have at least the
20 same level of training as the deputy sheriffs who will report to him or her.

21
22 Until 1988, the only qualification for the office of sheriff was that the candidate be a
23 registered voter and otherwise eligible to vote for the office at the time that nomination papers
24 were issued. (Elections Code section 201, previously Elections Code section 75.) In 1988,
25 however, the Legislature passed Senate Bill 1356 (Chapter 57, Statutes of 1988), which added
26 Government Code section 24004.3 to the statutes. An analysis of this bill, which was prepared by
27

1 the Office of Senate Floor Analyses, sets forth the measure's purpose in a section titled,
2 "ARGUMENTS IN SUPPORT," which states:

3 "Sponsors of SB 1356 indicate that sheriffs should have some law enforcement
4 experience. Deputy sheriffs must have a minimum Basic POST certificate. In
5 all major cities the chief of police is required to have as a minimum 4 years of
6 college as well as an Advance POST certificate. The sponsors state there is
7 precedence for this kind of requirement for an elected position - i.e. district
8 attorney, judges and county auditors. They state 'it is little enough to require
9 the person in charge of the Sheriff's Department to have the same minimum
10 training as that required by all of his subordinates.'"

11 A copy of this analysis is attached hereto as Exhibit 2. In a letter to the bill's author, the
12 California State Sheriffs' Association, which sponsored SB 1345, also made the following point:

13 "Being a sheriff in California is a complex law enforcement position and it is only reasonable to
14 require a minimum amount of law enforcement experience and education for this important
15 position." A copy of the letter to the Honorable William Campbell from Alva Cooper is attached
16 hereto as Exhibit 3. The slight burden imposed by Government Code section 24004.3 is neither
17 discriminatory nor unreasonable, and therefore does not violate the First and Fourteenth
18 Amendments.

19 **III. GOVERNMENT CODE SECTION 24004.3 DOES NOT IMPINGE ON** 20 **PETITIONER'S SECOND AMENDMENT RIGHTS**

21 Petitioner claims that Government Code section 24004.3 also impinges upon his Second
22 Amendment rights under the United States Constitution. There is no basis in fact for this claim.
23 Government Code section 24004.3 does not speak to the issue of concealed weapon permits at all.
24 It deals only with the training and experience required of candidates for sheriff. It does not include
25 any requirement that a candidate for sheriff hold any particular philosophy with regard to gun
26 permits, and no such requirement can be implied from Petitioner's experience with other
27 candidates for sheriff. Therefore, this claim is not relevant to the discussion of the constitutional

1 validity of Government Code section 24004.3.

2 **IV. PETITIONER IS NOT ENTITLED TO A WAIVER OF HIS FILING FEE**

3 Petitioner makes the claim that by filing this lawsuit, he has proven that he is a serious
4 candidate for the office of sheriff and therefore should not have to pay the filing fee required
5 pursuant to Elections Code section 8104. He bases this argument on language in the case of *Lubin*
6 *v. Panish* (1974) 415 U.S. 709, suggesting that the purpose of a filing fee is to deter candidates
7 who are not serious from cluttering the ballot. However, the point of *Lubin* was simply that states
8 must offer candidates an alternative to payment of a filing fee. The court held that requiring a
9 filing fee without providing candidates with an alternative means of ballot access impinged upon
10 the rights of indigent candidates and therefore could not pass constitutional muster. The state
11 responded by devising a system whereby candidates may collect signatures in lieu of the filing fee.
12 (Elections Code section 8106.) This is the only alternative to the filing fee that is allowed by
13 statute, and it satisfies the concerns expressed by the court in *Lubin*. Therefore, no other
14 alternative is needed or authorized.

17 **V. PETITIONER HAS FAILED TO STATE SUFFICIENT FACTS TO CONSTITUTE ANY CAUSE OF ACTION AGAINST RESPONDENT SECRETARY OF STATE**

19 Elections Code section 13314, subdivision (a), paragraph (2), expressly provides:

20 “A peremptory writ of mandate shall issue only upon proof of both of the
21 following: (A) that the error, omission, or neglect is in violation of this
22 code or the Constitution, and (B) that issuance of the writ will not
substantially interfere with the conduct of the election.”

23 Thus, in order for Petitioner to succeed with this writ, he must show that Respondent acted in
24 violation of the Elections Code or the California Constitution and that the issuance of the writ will
25 not substantially interfere with the conduct of the election.

26 With regard to the first prong, Respondent Secretary of State has made no error or

27

1 omission. Respondent is not required or authorized to accept candidate nomination documents
 2 filed by candidates for county office. That responsibility lies with the county elections official in
 3 the candidate's county of residence. Respondent had no duty or opportunity to even consider
 4 Petitioner's status as a candidate for the office of sheriff of the County of Santa Clara, and
 5 Respondent lacks the authority to certify or determine Petitioner's right to become a candidate for
 6 a county office. Therefore, Respondent bore no responsibility for any part of Petitioner's
 7 candidate filing process whatsoever.

9 With regard to the second prong of the requirements of Elections Code section
 10 13314(a)(2), it is the position of Respondent Dwight Beattie that this matter must be resolved no
 11 later than March 20, 1998, to avoid substantial interference with the conduct of the election. See
 12 Respondent Dwight Beattie's Demurrer and Opposition to Amended Complaint and Petition for
 13 Writ of Mandate, page 4, line 28, and page 5, line 1. While Petitioner has satisfied this prong of
 14 Elections Code section 13314, he cannot satisfy the first prong.

16 **CONCLUSION**

17 For the foregoing reasons, Respondent requests this court deny the petition for writ of
 18 mandate.

19 DATED: March 12, 1998

21 Respectfully submitted,

22 OLIVER S. COX, Staff Counsel
 23 PAMELA S. GIARRIZZO, Staff Counsel

24
 25 by: Pamela S. Giarrizzo
 26 PAMELA S. GIARRIZZO, Attorney for
 27 Respondent BILL JONES, Secretary of State

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Mar 15 '98 14:54 P.02

P.02

1 Oliver S. Cox, Staff Counsel (No.92565)
2 Pamela S. Giarrizzo, Staff Counsel (No.119333)
3 1500 11th Street
4 Sacramento, California 95814
(916)657-2166

FILED

MAR 13 1998

5 Attorneys for Respondent
6 BILL JONES, Secretary of State

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SACRAMENTO

10 ALEXANDER E. RAWLS,
11)
12)
13)
14)
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NO. 98CS00514

Petitioner,
vs.

(PROPOSED) ORDER AND JUDGMENT
DENYING AMENDED COMPLAINT
FOR DECLARATORY RELIEF AND
PETITION FOR WRIT OF MANDATE

14 BILL JONES, Secretary of State, State
15 of California, and Dwight Beattie,
16 Registrar of Voters of Santa Clara County,
17 Respondents.

Date: March 13, 1998
Time: 11:00 a.m.
Dept: 23

Honorable James T. Ford

19 This cause came on regularly for hearing before this court on March 13, 1998, the
20 Honorable James T. Ford presiding, pursuant to the petition filed by Petitioner Alexander E.
21 Rawls.

22
23 Petitioner appeared representing himself and Pamela S. Giarrizzo appeared on behalf of
24 Respondents, Secretary of State Bill Jones and Santa Clara County Registrar of Voters Dwight
25 Beattie.

26 The cause having been argued and submitted for decision, the court being fully advised,
27

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OFF SUPERIOR & COUNTY OF PEARSON

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1 having read and considered all the points and authorities, declarations and evidence submitted, and
2 good cause appearing therefore, and having directed that judgment and writ of mandate be denied,
3

4 IT IS ORDERED, ADJUDGED AND DECREED:

- 5 1. That petition for writ of mandate is denied.
- 6 2. That each party is to bear his or her own costs and attorney fees.

7 MAR 13 1998

8 Dated: _____

9
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11 _____
12 JUDGE OF THE SUPERIOR COURT

13 JUDGE JAMES T FORD
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