



DEBRA BOWEN | SECRETARY OF STATE
STATE OF CALIFORNIA | ELECTIONS

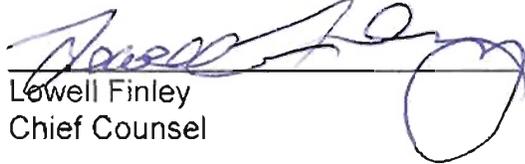
1500 11th Street, 5th Floor | Sacramento, CA 95814 | Tel (916) 657-2166 | Fax (916) 653-3214 | www.sos.ca.gov

December 12, 2011

County Clerk/Registrar of Voters (CC/ROV) Memorandum # 11138

TO: All County Clerks/Registrars of Voters

FROM:


Lowell Finley
Chief Counsel

RE: Elections: County Central Committees

The California Elections Code sets forth the process by which the county central committees shall elect and appoint their members:

- o Section 7200¹, et seq. applies to the Democratic Party
- o Section 7400, et seq. applies to the Republican Party
- o Section 7650, et seq. applies to the American Independent Party
- o Section 7850, et seq. applies to the Peace and Freedom Party
- o The Libertarian Party adheres to the Peace and Freedom Party rules set forth in Section 7850, et seq.
- o The Green Party adheres to some of the Peace and Freedom Party rules and its own adopted bylaws.

In 2009, the Court of Appeals, Second District, heard the case of *Wilson v. San Luis Obispo County Democratic Central Committee* (2009) 175 Cal. App. 4th 489. The question before the court was whether the San Luis Obispo County Democratic Central Committee had the right to adopt specific bylaws that conflicted with portions of Section 7200, et seq. that govern Democratic Party county central committee affairs.

The court in *Wilson* ruled in favor of the San Luis Obispo Democratic Central Committee Party, finding that it did have the right to adopt specific bylaws that conflicted with portions of Section 7200, et seq., writing in part:

The controlling authority is *Eu v. San Francisco Democratic Committee* (1989) 489 U.S. 214 [secondary citations omitted] (*Eu*). In *Eu* the Supreme Court concluded that certain provisions of the Elections Code are unconstitutional because they "burden the First Amendment rights of political parties and their members without serving a compelling state interest." [Citation omitted.] The unconstitutional provisions "prescribe the composition of state central

¹ All code citations within this document are to the California Elections Code, unless otherwise noted.

committees, limit the committee chairs' term of office, and designate that the chair rotate between residents of northern and southern California ..." [Citation omitted.] (*Wilson* at p. 497.)

...

In sum, the [*Eu*] court declared, "a State cannot justify regulating a party's internal affairs without showing that such regulation is necessary to ensure an election that is orderly and fair. Because California has made no such showing here, the challenged laws cannot be upheld." [Citation omitted.] (*Wilson* at p. 498.)

...

Thus, to the extent that Elections Code provisions prescribe the composition of Democratic Party county central committees, they cannot be upheld because they "burden the First Amendment rights of political parties and their members without serving a compelling state interest." [Citation omitted.] (*Wilson* at pp. 504-505.)

While the *Wilson* decision applied directly to specific sections of the Elections Code regarding the Democratic Party, the Secretary of State's office believes the decision should be read to apply to all other qualified political parties whose county central committee functions are set forth in the Elections Code as well. Reading the decision narrowly to apply only to the Democratic Party central committees would lead to an absurd result, affording more rights and options to that group of county central committees than are afforded to any other group of county central committees.

In 2010, subsequent to the rulings in both *Eu* and *Wilson*, California voters adopted Article II, Section 5(c) of the California Constitution, which requires the Legislature to provide for partisan elections for political party and party central committees. Article II, Section 5(c) reads in relevant part:

(c) The Legislature shall provide for partisan elections for ... political party and party central committees ...

The combination of the *Eu* and *Wilson* decisions along with the 2010 amendment to the California Constitution means that while the Legislature is required to allow county central committee members to be elected, it cannot mandate that the county central committees use the elective process in lieu of, for example, a caucus process.

The *Wilson* decision did not, however, question or overturn the Legislature's ability to, for example, establish the maximum number of seats that may be filled at an election should a county central committee opt to use the applicable Elections Code process to elect county central committee members.

It is the position of the Secretary of State's office that a county central committee is not required to elect its members by placing its contests on a statewide direct primary election ballot. However, if a county central committee chooses to have the elections official place the contest on the ballot, the elections official must do so in accordance with the procedures set forth in the Elections Code for that particular party.

The Secretary of State's office recommends that in order to comply with the California Constitution and the court decisions in *Eu* and *Wilson*, each county elections official should:

- Contact the Democratic, Republican, Peace & Freedom, American Independent, Libertarian, and Green Party county central committees in your county.
- Inform each county central committee that it must let your office know by Monday, January 23, 2012 (E-134), whether it will be making any changes to the process by which it elects county central committee membership. Sunday, January 22, 2012 (E-135), is the date by which, under Section 7770, the Peace and Freedom Party county central committees must notify the Secretary of State and their respective county elections officials if they wish to have county central committee contests on the June 5, 2012, Presidential Primary Election ballot. Pursuant to Section 15, that date rolls forward to Monday, January 23, 2012, which is why the Secretary of State's office is recommending that all county central committees respond by this date.
- Verify the number of members to be elected to each central committee.
- Inform each county central committee that absent a response by January 23, 2012, you will continue to conduct county central committee elections as set forth in the relevant code sections as they have been conducted in prior years.

Attached is a sample letter that you may wish to use to contact the county central committees in your area.

If you have any questions, please feel free to contact me at Lowell.Finley@sos.ca.gov or (916) 654-4666. Thank you.

Sample Letter

Dear _____:

Pursuant to a recent court decision, a voter-approved initiative, and guidance from the Secretary of State's office available at www.sos.ca.gov/elections/ccrov/pdf/2011/december/11138lf.pdf, county central committees now have the option of not having the election of members appear on the June 5, 2012, Presidential Primary Election ballot. Instead, you are free to remove the selection of central committee members from the ballot entirely and develop an alternate method to elect your membership.

Please let my office know by 5:00 p.m. on Monday, January 23, 2012, if you would like us to continue to conduct your elections for you as we have in the past, or if you would like to remove them from the ballot so you can develop an alternate method.

If I do not hear from you by that time, then I will open candidate filing for your Party's county central committee contests as scheduled on February 13, 2012, and the candidates will be required to complete the nomination process as they have been in prior years. If there are more candidates than the number of seats to be filled, I will conduct an election pursuant to the applicable Elections Code requirements for the June 5, 2012, Presidential Primary Election.

Thank you for your attention to this matter.

If you have any questions, please feel free to contact me at (xxx) xxx-xxxx.

Sincerely,