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**SANTA BARBARA COUNTY
BOARD AGENDA LETTER**



Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Agenda Number:
Prepared on: 6/14/02
Department Name: 4th District Office
Department No.: 0240
Agenda Date: 061802
Placement: Departmental
Estimate Time: 20 Minutes
Continued Item: NO
If Yes, date from:

TO: Board of Supervisors
FROM: 4th District Supervisor Joni Gray
STAFF CONTACT: Susan Warnstrom
7700
SUBJECT: Recall Peition Election

2002 JUN 14 PM 4:42
COUNTY OF SANTA BARBARA
CLERK OF THE
BOARD OF SUPERVISORS

Recommendation(s):

- That the Board of Supervisors:
1. Receive certificate of sufficiency of recall petition
 2. Set Public Hearing for June 25, 2002
 3. Issue order setting a special election

Alignment with Board Strategic Plan:

1. Efficient Government. An efficient government able to anticipate and respond effectively to the needs of the community
2. Citizen Involvement. A county government that is accessible, open and citizen friendly.

Executive Summary and Discussion:

On March 7, 2002 a petition was submitted to the office of County Clerk-Recorder-Assessor (Elections Division) for the recall of the Third District Supervisor.

The verification process was initiated and subsequently stayed pending the adjudication of a lawsuit. (No On Recall Committee v. Pettit, Santa Barbara Superior Court No. 1070263) The case was determined on May 22, 2002.

The verification process was resumed forthwith and the recall petition was certified on June 5, 2002. This petition is submitted to the Board pursuant to California Elections Code section 11227.

Pursuant to Elections Code section 11240 it is requested that the Board set a public hearing for June 25, 2002, for the purpose of issuing an order setting an election not less than 88 days, nor more than 125 days (September 8 – November 4, 2002). If the Board issues such an order the optional election dates would be September 29, October 1, 8, 22 or 29. (Elections Code section 1100 declares that no election is to be held on the day before, the day of, or the day after, a state holiday. October 15, 2002 is the day after Columbus Day, a state holiday as defined by Government Code section 6700 (k)).

As a second option if the Board, for whatever reason, fails to issue the order within the time specified in section 11240, supra, then the county elections official, within five days of June 25, 2002, shall set the date for holding the election (September 29, October 1, 8, 22 or 29). Again elections code section 1100 would preclude an election to be held on October 15 or November 15, the days prior being Columbus Day and Veterans Day, respectively. Ibid.

Neither the Board nor the Elections Official has the option to set the election on November 5, 2002. California courts agree and generally only allow substantial compliance “as a means to *avoid* nullifying the actions of the voters for some insubstantial variation in the procedures...” *D’Agostino v Superior Court 33 Cal. App 4th 107 115 1995* (emphasis added). In addition, the concept of substantial compliance is never permitted to allow circumvention of specific requirements. *Id.* Thus, it follows that the 88-125 day window is not a provision that can be legitimately expanded or moved even five days. To allow this to be done would give the current office holder a license to do the same, rendering the statute meaningless. In fact, County Counsel acknowledges the sensitivity of violating a statute pertaining to timing of elections and states that the “setting of elections may be considered directory.”

Mandates and Service Levels:

The signatures on the petition has been certified sufficient (Elections Code 11227). Therefore it follows the election must be set according to the Elections Code 11242, “The election **shall** be held not less than 88, nor more than 125, days after the issuance of the order, and **if** a regular or special election is to be held throughout the electoral jurisdiction of the officer sought to be recalled **within this time period**, the recall election shall be held on the same day, and consolidated with, the regular or special election.” (emphasis added) *Please note Election Code Section 354 states, “Shall is mandatory and may is permissive”.*

Fiscal and Facilities Impacts:

The county is obligated to follow election law as established by the Legislature with regard to the voter who is entitled by law to the earliest possible election in the Recall process. Election Code 11000 -11386

Special Instructions:

Concurrence:

Secretary of State – Pending

Attorney General - Pending