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**DEPARTMENT OF JUSTICE**



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December 22, 2008

*Via Facsimile*

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Dear Counsel:

Pursuant to Rule 3.1312 of the California Rules of Court and the court's minute order of December 19, 2008, please find enclosed a proposed order with respect to plaintiff's motion for new trial.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Kathleen A. Lynch".

KATHLEEN A. LYNCH  
Deputy Attorney General

For EDMUND G. BROWN JR.  
Attorney General

KAL:sd  
enclosure

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State, and Real Party in Interest Geoff Brandt, State  
9 Printer

10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 IN AND FOR THE COUNTY OF SACRAMENTO  
12

13 **JAMES KING, as the Chairman of the American**  
14 **Independent Party, and as an elector residing in the**  
15 **state of California,**  
16  
Petitioner,  
17  
v.  
18 **DEBRA BOWEN, California Secretary of State, in**  
**her official capacity,**  
19  
Respondent,  
20 **GEOFF BRANDT, State Printer, Department of**  
**State Publishing in his official capacity,**  
21  
Real Party in Interest,  
22  
**EDWARD NOONAN,**  
23  
Real Party in Interest.  
24

34-2008-80000016-CU-WM-  
GDS

**[Proposed] ORDER DENYING  
MOTION FOR NEW TRIAL**

Date: December 19, 2008  
Time: 9:00  
Dept: 31  
Judge: The Honorable Michael P.  
Kenny

Action Filed: August 4, 2008

25 This cause came on regularly for hearing before this court on December 19, 2008, the  
26 Honorable Michael P. Kenny presiding. The matter concerned plaintiff's motion for new trial.

27 Robert E. Barnes appeared on behalf of the petitioner, James King. Kathleen A. Lynch  
28 appeared on behalf of the respondent, Secretary of State Debra Bowen, and real party in interest

1 State Printer Geoff Brandt. Gary G. Kleep appeared on behalf of real party in interest Edward  
2 Noonan.

3 The cause having been argued and submitted for decision, the court being fully advised,  
4 having read and considered all the points and authorities, declarations and evidence submitted,  
5 and good cause appearing therefor, and having denied plaintiff's motion for new trial.

6 **IT IS ORDERED, ADJUDGED, AND DECREED:**

7 Plaintiff's motion for new trial is denied as stated in the court's minute order of December  
8 19, 2008, attached herein as Exhibit A.

9 DATED: December \_\_, 2008

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Michael P. Kenny  
Judge of the Superior Court

# **EXHIBIT A**

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SACRAMENTO  
GORDON D SCHABER COURTHOUSE  
MINUTE ORDER**

Date: 12/19/2008

Time: 09:00:00 AM

Dept: 31

Judicial Officer Presiding: Judge Michael Kenny  
Clerk: Susan Lee

Bailiff/Court Attendant: Greenwood, Derek  
ERM: None  
Reporter: V. Haley #10771

Case Init. Date: 08/04/2008

Case No: 34-2008-80000016-CU-WM-GDS Case Title: James King Chairman of the American Independent Party vs. Debra Bowen California Secretary of

Case Category: Civil - Unlimited

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Event Type: Motion for New Trial - Writ of Mandate  
Moving Party: James King Chairman of the American Independent Party  
Causal Document & Date Filed: Motion for New Trial, 11/04/2008

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**Appearances:**

Robert G. Bernhoft appears telephonically for Petitioner, James King.  
Kathleen A. Lynch is present for Respondent, Debra Bowen and Real Party in Interest, Geoff Brandt.  
Gary G. Kreep appears telephonically for Real Party in Interest, Edward Noonan.

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**NATURE OF PROCEEDINGS: Petitioner's Motion for New Trial**

**TENTATIVE RULING**

The following shall constitute the Court's tentative ruling on the Motion for New Trial filed by Petitioner James King, set for hearing in Department 31 on Friday, December 19, 2008 at 9:00 a.m. The tentative ruling shall become the final ruling of the Court unless a party wishing to be heard so advises the clerk of this Department no later than 4:00 p.m. on the court day preceding the hearing, and further advises the clerk that such party has notified the other side of its intention to appear.

In the event that a hearing is requested, oral argument shall be limited to no more than 20 minutes per side.

In the summer of 2008, Mr. King brought a petition under, inter alia, Elections Code § 13314 seeking an order, on an expedited schedule, removing from the ballot the presidential and vice presidential candidates for the American Independent Party (AIP) and replacing those candidates with different candidates selected by a faction of the AIP claiming control of the party. Mr. King failed to join the candidates on the ballot (Alan Keyes and Wiley Drake). The Court found those parties indispensable under the authority of *Younger v. Jordan* (1954) 42 Cal.2d 757 and accordingly dismissed the petition without prejudice. Mr. King now seeks a new trial, arguing that one issue in the case – the issue of which faction ought to be recognized as controlling the AIP – should not have been dismissed "because Alan Keyes and Wiley Drake have no interest in the on-going control of the American Independent Party, nor is this issue subject to the time-constraints of a particular election cycle." (Petnr.'s Mem. of P.'s & A.'s ISO Mot. for New Trial, p. 2.)

Mr. King's current position stands in stark contrast to the representations he made to the Court in support of his petition. In his briefs and argument, Mr. King never suggested that, should the Court find that Mr. Keyes and Mr. Wiley were indispensable, the issue of party control could be severed from the

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Date: 12/19/2008

MINUTE ORDER

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ballot issue and determined outside the time constraints of the election. On the contrary, Mr. King repeatedly represented to the Court that determination of who should be on the ballot for the AIP was "inextricably linked" to the issue of party control and thus the control issue had to be decided on the same expedited schedule that by necessity governed the ballot issue. (Petnr.'s Mem. of P.'s & A.'s ISO Petn. For Writ of Mandate, p. 2 [stating that determination of the presidential ballot issue was "inextricably linked to the determination of all other matters because all of the matters have a common denominator: namely, which faction is the duly constituted and legitimate leadership of the American Independent Party."]; id. at p. 6 ["[F]ailure to adjudicate this matter [the party control issue] now would result in grave injustice."]; id. at p. 16 ["In the interest of furthering justice, this court cannot delay or dismiss this action because of missing indispensable parties or any other person."].)

Patrick v. Alacer Corp., cited by Mr. King in support of his new trial request, does not advance his new position. In that case, the Court of Appeal simply upheld the trial court's ruling sustaining a demurrer for failure to join indispensable parties, but held that the trial court should have given the plaintiff leave to amend to join those parties because nothing in the record before the court indicated that plaintiff would not be able to do so. (Patrick v. Alacer Corp. (2008) 167 Cal.App.4th 995, 1016.) The courts in Patrick were not constrained by an election cycle, nor had the party seeking leave to amend represented, in briefing and arguing the issue of indispensable parties, that the matter had to be heard so quickly that the indispensable parties could not be joined.

Mr. King sought, and obtained, expedited resolution of his petition. He may not now complain that the quick resolution he pushed for on all issues was inappropriate as to one of those issues. As his petition was dismissed without prejudice, Mr. King remains free to file another petition or other civil action to resolve the internal party dispute.

*Disposition.* The motion is denied. Petitioner has failed to show that a new trial is warranted under CCP § 657. Respondent is directed to prepare a formal order, incorporating the Court's ruling herein verbatim or attaching it as an Exhibit and thereafter submit it to the Court for signature in accordance with CCP § 660 and Rule of Court 3.1312.

#### **COURT RULING**

The matter is argued and submitted. The Court takes the matter under submission.

#### **COURT RULING ON SUBMITTED MATTER**

The Court affirms the tentative ruling.