

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
HALL OF JUSTICE
TENTATIVE RULINGS - September 04,2008**

EVENT DATE: 09/04/2008 EVENT TIME: 02:00:00 PM DEPT.: C-62

JUDICIAL OFFICER: Ronald L. Styn

CASE NO.: 37-2008-00090299-CU-WM-CTL

CASE TITLE: LITRENTA VS. DEBORAH SEILER IN HER OFFICIAL CAPACITY AS SAN DIEGO
COUNTY REGISTRAR OF VOTERS

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Writ of Mandate

EVENT TYPE: Motion Hearing (Civil)

CAUSAL DOCUMENT Petition - Other, 08/22/2008

/DATE FILED:

The following is a tentative ruling only. The final order of the court will be issued following oral argument.

Petitioner Peter Litrenta's petition for writ of mandate is denied.

Timeliness

Elections Code § 13314 [Writ of mandate; Issuance] provides

"(a)(1)Any elector may seek a writ of mandate alleging that an error or omission has occurred, or is about to occur, in the placing of any name on, or in the printing of, a ballot, sample ballot, voter pamphlet, or other official matter, or that any neglect of duty has occurred, or is about to occur.

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

The court finds Elections Code § 13314 the controlling statute. There is no time deadline set forth in § 13314. The petition is timely. As Real Party in Interest concedes, §9380 does not explicitly apply to challenges to ballot questions. Absent such authority, the court declines to apply the time deadlines set forth in §9380 to Petitioner's challenge to the ballot question.

Ballot Question Language

§ 13119 [Words to appear on ballot containing ordinance submitted as initiative] provides

"The ballots used when voting upon a proposed county, city, or district ordinance submitted to the voters of the respective local government as an initiative measure pursuant to Division 9 (commencing with Section 9000) shall have printed on them the words "Shall the ordinance (stating the nature thereof) be adopted?" Opposite the statement of the ordinance to be voted on, and to its right, the words "Yes" and

"No" shall be printed on separate lines, with voting squares. If a voter stamps a cross (+) in the voting square after the printed word "Yes," his or her vote shall be counted in favor of the adoption of the ordinance. If he or she stamps a cross (+) in the voting square after the printed word "No," his or her vote shall be counted against its adoption."

Other than reference to § 13119, neither party cites authority providing the standard specific to ballot questions. However, both parties rely on the standards applicable to ballot titles as set forth in *Horneff v. City and County of San Francisco* (2003) 110 Cal.App.4th 814, 820 and *Brennan v. Board of Supervisors of the City and County of San Francisco* (1981) 125 Cal.App.3d 87.

"The correct standard of judicial review in determining whether to grant a request to amend or delete material in a Ballot Simplification Digest is the same as the principles applied to judicial review of challenges to titles and summaries prepared by the Attorney General and Legislative Analyst for statewide initiatives or referenda. The test is not whether the digest is *complete*, but rather whether it contains "a statement of the major objectives or 'chief purposes and points' of the measure." (*Brennan, supra*, 125 Cal. App. 3d at p. 92.) It need not refer to " 'auxiliary or subsidiary' " matters, nor need it " 'contain a summary or index of all of the measure's provisions. Within certain limits what is and what is not an important provision is a question of opinion. Within those limits the opinion of the [Ballot Simplification Committee] should be accepted by this court.' " (*Id.* at p. 92.) Moreover, " '[s]ubstantial compliance' is sufficient, and if reasonable minds may differ as to the sufficiency of the summary, it should be held sufficient. (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization*, (1978) 22 Cal.3d 208, 243 [149 Cal. Rptr. 239, 583 P.2d 1281]; *Vandeleur v. Jordan* (1938) 12 Cal.2d 71, 73 [82 P.2d 455].)' " (*Brennan, supra*, 125 Cal. App. 3d at p. 96.) Of course, "[t]he Attorney General's statement must be true and impartial, and not argumentative or likely to create prejudice for or against the measure. [Citation.] The main purpose of these requirements is to avoid misleading the public with inaccurate information. [Citations.]" (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization, supra*, 22 Cal.3d at p. 243.) The ballot title and summary must reasonably inform the voter of the character and real purpose of the proposed measure. (*Tinsley v. Superior Court* (1983) 150 Cal. App. 3d 90, 108 [197 Cal. Rptr. 643], citing *Boyd v. Jordan* (1934) 1 Cal.2d 468, 472 [35 P.2d 533].) Still, " '[o]nly in a clear case should a title ... [or summary] be held insufficient.' " (*Brennan, supra*, 125 Cal. App. 3d at pp. 92–93, quoting *Epperson v. Jordan* (1938) 12 Cal.2d 61, 66 [82 P.2d 445].)"

Horneff v. City and County of San Francisco (2003) 110 Cal.App.4th 814, 820.

Both parties also rely on another ballot title case, *Martinez v. Superior Court* (2006) 142 Cal.App.4th 1245, a case addressing a ballot title which included a ballot question.

"A ballot title must not be false, misleading, or partial to one side. (Elec. Code, § 9295; L.A. Elec. Code, § 96.) A ballot title passes muster if it substantially complies with that standard, and we independently review whether it achieves such compliance. (See *Horneff v. City & County of San Francisco* (2003) 110 Cal.App.4th 814, 820–821 [2 Cal. Rptr. 3d 79].)

We find nothing in the city council's original ballot title which is false or misleading. Neither do we find the language of the original heading to be partial. Whether the council's phrasing of the question is partial, however, is a closer call. The question could be more complete, and thus more informative, by noting that the measure *increased* the number of terms a council member could serve from two to three; we presume that is the effect the respondent court was trying to reach by inserting what it described as "more specific" language. But the completeness of a ballot question is not the test; the test is whether it is

partial (or false or misleading). [Citations omitted.] We understand "partial" to mean the council's language signals to voters the council's view of how they should vote, or casts a favorable light on one side of the term limit issue while disparaging the opposing view. By that measure, the council's language is impartial because it does not hint at how the electorate should vote, nor does it disparage one side or the other.

...

To comply with the election statutes, the ballot title need not be the "most accurate," "most comprehensive," or "fairest" that a skilled wordsmith might imagine. The title need only contain words that are neither false, misleading, nor partial. The title adopted by the city council meets that standard, and the judiciary is not free to substitute its judgment given its deferential standard of review. [Citations omitted.]"

Martinez, 142 Cal.App.4th at 1248.

The court evaluates the original ballot question under these standards. The original ballot question states: "Shall the San Diego Unified Port District's Master Plan be Amended by the Adoption of "The Port of San Diego Marine Freight Preservation and Bayfront Redevelopment Initiative?"

The court finds this question informs the voters of the nature and 'chief purposes and points' of the Initiative – marine freight preservation and Bayfront redevelopment. Although, considering the intricacies of the Initiative, the ballot question is not the "most accurate" or "fairest" ballot question, the question is not false or misleading. The Initiative provides for both marine freight preservation and Bayfront development [see, §2., §3, 1., b. and d. and §3., 2.]. This question is not partial. Under *Martinez*, "partial" means the language of the ballot question "signals to voters the council's view of how they should vote, or casts a favorable light on one side of the term limit issue while disparaging the opposing view." *Martinez*, 142 Cal.App.4th at 1248. Similar to the language in *Martinez*, the language of the original ballot question "is impartial because it does not hint at how the electorate should vote, nor does it disparage one side or the other." *Martinez*, 142 Cal.App.4th at 1248. The question simply refers to both stated purposes of the Initiative – marine freight preservation and Bayfront redevelopment. To the extent Petitioner seeks to include more information about the "purpose" of the Initiative, including information contained in the Notice of Intent, completeness is not the standard *Martinez*, 142 Cal.App.4th at 1248 [the ballot title need not be the "most comprehensive"]. Moreover, as stated in *Horneff*, "'[s]ubstantial compliance' is sufficient, and if reasonable minds may differ as to the sufficiency of the summary, it should be held sufficient." *Horneff*, 110 Cal.App.4th at 820. Petitioner fails to establish a "clear case" the ballot question is insufficient. *Brennan*, 125 Cal.App.3d at 92-93.

Verification

The court finds Petitioner's counsel's verification sufficient to meet the verification requirements of CCP §1086 and 2015.5. See, *League of Women Voters v. Eu* (1992) 7 Cal.App.4th 649, 656;

Amendment is Not time barred by Elections Code §§ 9605 and 10403

The court finds the San Diego Unified Port District's amended ballot question was not timely submitted to

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Respondent Seiler. Elections Code §§ 9605 and 10403. The court is not persuaded by Petitioner's argument the ballot question is not an element of "ordering an election." The case relied on by Petitioner, *Veterans' Finance Committee of 1943 v. Betts* (1961) 55 Cal.2d 397, does not construe Elections Code §9605. Nor is the court persuaded the provision in §10403 requiring "the question or proposition to appear on the ballot shall conform to this code" provides Respondent Seiler with the authority to change the ballot question less than 88 days before an election.