Michael Denny
IN PRO PER
3329 Cabrillo St
San Francisco, California
Telephone:415-608-0269
E-mail:mike@Dennz.com

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

Michael Denny; Contestants. vs. John Arntz, Director of Elections; Respondent. Board of Supervisors, City and County of San Francisco Real Party in Interest.	Case No.: CPF-19-516823 REPLY IN OPPOSITION TO DEMURRER OF RESPONDENTS AND REAL PARTIES TO PETITION FOR WRIT OF MANDATE; REQUEST FOR DISQUALIFICATION OF JUDGE; MEMORANDUM OF POINTS AND AUTHORITIES Hearing Date: October 11, 2019 Time: 9:30 a.m. Dept: 302 Date Action Filed: August 27, 2019 Trial Date: Not set

PETITIONER'S REPLY TO RESPONDENTS' DEMURRER

For the purposes of this filing, Petitioner will refer to both the Respondents and the Real Party in Interest, collectively as Respondents. Since they are apparently perfectly comfortable with being represented by the same Counsel, Petitioner presumes their interests, in keeping their scheme of conducting local ballot measure elections that violate the legislative commands for fair and honest elections, are the same.

Petitioner objects to the demurrer based on, among other things argued below, the equitable principle of laches in that Respondents' have intentionally attempted to run out the clock in order to avail themselves of the argument that the requested relief is unavailable expressly because so much time has elapsed that it prevents an effective order of relief. Respondents have offered no competent evidence to support its contention that there is no way to make an effective order of relief.

Petitioner requests that the court issue an order that Respondents show cause why the ballots cannot be reprinted or overprinted or some other notification cannot be used to alert the voters to a change in status of Proposition A.

Petitioner's reply is based upon the supporting Memorandum of Points and Authorities set forth below, the pleadings and papers on file herein, and upon such other and further evidence as may be presented at the hearing of the demurrer.

Dated: October 4, 2019

Respectfully submitted,

By: _____
Michael Denny - Pro-Per
For Contestants

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REQUEST FOR DISQUALIFICATION OF JUDGE

Petitioner filed the Petition, served the parties, and returned proof of service to the court all on the same day, Tuesday, August 27, 2019. On August 27, 2019, there was still plenty of time for the court to consider the relief requested. The Legislature commanded the court that "The action or appeal shall have priority over all other civil matters." Elections Code 13314(a)(3).

Having received no communication from the court, the Petitioner checked with the court clerk on September 5, 2019 for a hearing date assignment. The court clerk informed Petitioner that the Petitioner had to request a date by completing a form. Petitioner completed the form requesting September 10 or September 11 as the date. The clerk rejected those dates due to a court rule that required 16 court days. Petitioner then requested September 30 or October 1.

Petitioner served notice of the September 30 on the Respondents and the Real Party in Interest. The clerk rejected that notice and required that it be served on pleading paper. Petitioner prepared the notice, as required, and served it on the Respondents and the Real Party in Interest on September 17, 2019.

Until that notice was served, no one had entered an appearance for the

Respondents or the Real Party in Interest.

Counsel contacted Petitioner on September 19, 2019 to object that the notice was defective in many respects and that Counsel still had until September 27 to file its demurrer.

In a conversation with Counsel on September 19, Counsel expressed the intent to vacate the hearing date at an ex parte hearing at which Counsel would request October 11, 2019 as the hearing date. Counsel requested that Petitioner stipulate to that. After some thought, Petitioner replied that agreeing to delay that would prejudice the Petition. Counsel notified that the Petitioner that the ex parte hearing to vacate and reset the date would be heard on September 24, 2019.

At the hearing the Judge laid the burden and the delay in setting the hearing date on the Petitioner. The Judge granted Counsel's motion and the hearing was set to October 11, 2019.

The Judge admitted at the September 24 hearing what the clerk had already told the Petitioner -- that the Judge was the default judge to hear matters of this nature.

The Judge has thereby prejudiced the Petition, and in all likelihood will dismiss the Petitioner based upon the sum of the delays.

The Judge has demonstrated prejudicial and perhaps fatal bias against the Petition in two instances. First, the Judge failed to implement the legislative command to give the Petition priority, I strongly suspect that the court has heard other civil matters between August 28, 2019 and September 30, 2019.

The Judge, over the Petitioner's objection then prejudiced the Petitioner further by granting Counsel's request for a date which is likely to prove fatal to the Petition.

But for the Judge's failure in the first instance, the Petition would have been able to be heard in much more than adequate to grant the relief requested.

Petitioner requests that a replacement judge be assigned by the Chief Justice under the authority of Article VI, Section 6 and that the judge assigned has never received supplemental judicial benefits under GC 68220.

MEMORANDUM OF POINTS AND AUTHORITIES

TABLE OF CONTENTS

I. INTRODUCTION

As used herein, references to California Constitution Article XIII-A, Section 1(b)(2) are designated "Proposition 46," references to Elections Code sections are designated "EC," references to Government Code sections are designated "GC," references to Code of Civil Procedure sections are designated "CCP," and references to San Francisco Municipal Elections Code sections are designated "SFMEC." The language to appear on the ballot is designated "Ballot Statement." "City" refers to the City and County of San Francisco.

"Election Contest" refers to Petitioners' previous action against Proposition A (November 2018) -- CGC-19-575070. The granting of a demurrer (now on an appeal) in the Election Contest was primarily based on the ungrounded position of the Defendants that the Contestant was required to have availed himself of pre-election remedies. Obviously, that position was just a smoke screen to give cover to a judge that treated dicta as holdings and precedent as "old law." Defendants there, Respondents here, don't care about the law. All they care about is using specious legal maneuvering to evade being held accountable for their criminal conduct under EC 18002 and EC 18401 and thereby continuing their scheme of using public moneys to conduct elections that are entirely biased in favor of passage and to thereby benefit by converting huge amounts of taxpayer

money from the people (businesses don't pay taxes, only people do) to the City.

The only reason for this Petition is to get Respondents to follow the law and conduct fair and honest local measure elections. Respondents will have none of that.

Frivolous, misleading, and specious. That about sums up the demurrer. That's business as usual for lawyers aiding and abetting their government clients to avoid following the law.

A. Evidence and Requests for Judicial Notice

Petitioner objects to all evidentiary statements disguised as argument in Counsel's Memorandum of Points and Authorities. Counsel is neither a party nor a witness. Any statements or conclusions of Counsel not based on testimony before the court are improper hearsay because Counsel does not have personal knowledge of the matters.

Petitioner objects to Respondents' Exhibits B, C, D, E, F, I, and J as hearsay (an out-of-court statement used for the truth of the matter and therefore unreliable), irrelevant, and immaterial.

The common issue that Counsel attempts to prove by the use of Exhibits B, C, and D is that it is too late to grant the Petitioner relief.

Exhibit B is a proposed calendar for the election. It presents an ideal situation. It does not represent a situation of an election process under stress. Most importantly it does not represent the capabilities of the vendors used by the City to work under stress. Any testimony by a City employee, including the calendar, not under oath and not available for cross-examination, can only be considered self-serving. The only witnesses who could speak for the vendors are representatives of the vendors themselves. Petitioner went through the effort to identify the vendors, which Counsel conveniently omits. They are for the ballot: K&H Integrated Print Solutions (Everett, WA); for the voter information guide: InterEthnica (San Francisco, CA); and for the online voter information guide: FivePaths, LLC (San Francisco, CA).

Exhibit C involves a different case completely. The witness in Exhibit C is the clerk for the Ballot Simplification Committee and does not claim that she has any expertise in or

knowledge of the printing process. The witness mostly relates hearsay or double hearsay. Petitioner would object to the witness's testimony even it were to have been made specifically for this case.

Exhibit D is more of the same and highlights Counsel's mission to intentionally delay any hearing beyond October 7, 2019 to prejudice the relief sought by the Petitioner when there was still more than adequate to grant the relief sought.

The sole purpose of Exhibit E is to shift the attention of the court from the culpable Respondents. Yes, Petitioner could have done many speculative things. Petitioner could have run for President, too. Respondents, on the other hand, have been commanded by the Legislature to conduct fair and honest local measure elections. Respondents could have followed the law! What a concept! As the California Supreme Court observed in *Lockyer v. City and County of San Francisco* (2004) 33 Cal.4th 1055 (the gay marriage case), "There is no justification for forcing private parties to go to Court in order to require agencies of government to perform the duties they have sworn to perform." Yet here we are. Again.

Exhibit F is a bald attempt, by parsing individual words, to redefine a phrase in Proposition 46.

Exhibit I is an opinion of an administrative body with limited jurisdiction. It is an attempt at a poor analogy to compare the paid arguments in the official materials to a FREE live or video-recorded public forum hosted by a different city (not the City) at that city's facilities or on that city's equipment. The amount of the potential contribution's value in question was both minimal and speculative. It's merely an opinion based on a specific set of facts that has, apparently never been litigated, where both favorable and opposing views would have been aired. It has no relevance to the City giving paid arguments an equal footing with official material in the voter information guide. It begs the question, however, why the City has never asked for such an opinion.

Exhibit J is a report created to sell the City on the idea of what eventually became Proposition A. It is hearsay and speculative. It's a propaganda piece. Just as in a contract,

all actions of the City leading up to the ordinance, whatever purpose they might have served, are superseded by the actual terms of the written ordinance. Proposition A is in the nature of a contract. The language chosen by the Respondents encompasses the full scope of the proposal to the voters. Proposition A speaks for itself.

Suits based on statutes are suits in equity. In an equitable jurisdiction, certain behaviors of the party making a claim are deemed relevant. These are principles that, under certain circumstances, bar the availability of the claim. Laches and unclean hands come immediately to mind.

II. DISCUSSION

Forget that Counsel has taken oaths to the Constitution and the laws of the State of California. Forget that Counsel is an officer of the court. Forget that Counsel is a public servant. Forget that Counsel has, supposedly, subscribed to a code of ethics, the Code of Professional Responsibility. When it comes to a case of public corruption (public employees not following the law), pull out all the stops to win at all costs, no matter how ridiculous the means to that end or how many times the court is misled as to the law.

Does Counsel know the rules for a demurrer? (CCP 430.10) Then why does it appear that Counsel is arguing the facts of the case for Cause 1 and Cause 6. Even if the alleged jurisdiction issue in Cause 2 through Cause 5 were valid, which it is not, there is no grounds for a demurrer on Cause 1 and Cause 6. Regardless, the inability for a court to grant effective relief, which has not yet been proven, is not a grounds to grant a demurrer.

Nevertheless, Petitioner feels that it must respond lest the court find any reason whatsoever to demonstrate further prejudice and grant the demurrer on all causes.

If you can't win with law, win with procedure.

Counsel simply ignores Petitioner's fourth request for relief. That's not surprising, since Counsel ignores everything that doesn't suit Counsel's agenda. Every one of these issues is guaranteed to occur again, given the Respondents' demonstrated pattern of

behavior in refusing to follow the law with respect to local measure elections over, at a minimum, the last three elections.

That, should this Court consider any of these causes moot, that it exercise its discretion to resolve causes that pose issues of continuing public interest that are likely to recur and those claims present questions capable of repetition yet evading review.

"Although the election has long since passed, and there is no longer an actual controversy regarding the two initiatives at issue, we exercise our discretion to consider this appeal. We do so because the issues presented are of significant public interest and are likely to recur while evading review, given the timeframes applicable to elections." Vargas v. Balz (2014) 223 Cal.App.4th 1544. "Issues in elections cases are of public importance, yet the timing of such cases means that they will frequently evade review because the election will have occurred before meaningful appellate review can be had. (See Edelstein v. City and County of San Francisco (2002) 29 Cal.4th 164, 172; Myers v. Patterson (1987) 196 Cal.App.3d 130, 134-135.)" Vargas, supra, at 1550.

A. Constitutional Challenge Is Ripe When Measure Can't Be Changed

While a court may defer a constitutional challenge until after the election, that does not mean that it is not ripe pre-election.

> Jones stated only that "preelection review might be appropriate upon a 'clear showing of invalidity.'" (Jones, supra, 21 Cal.4th at p. 1154, quoting Brosnahan v. Eu (1982) 31 Cal.3d 1, 4 (Brosnahan I).) As the high court has explained, "a majority of the court in Brosnahan I was not persuaded that, in that instance, the challenged initiative violated the single-subject rule" and thus had deferred ruling on the merits of a single subject challenge to the initiative at issue until after the election. (Jones, supra, at p. 1154.) Absent some clear showing of invalidity, the court further elucidated, "it is usually more appropriate to review constitutional and other challenges to ballot propositions or initiative measures after an election rather than to disrupt the electoral process by preventing the exercise of the people's franchise . . . ." (Brosnahan I, supra, at p. 4.)
> Hernandez v. County of Los Angeles (2008) 167 Cal.App.4th 12

In this case, only in the world of Counsel is the six word phrase at issue "acquisition or improvement of real property" not clearly understood. The language of the measure

itself is the basis for the challenge. It will not change from the time it was filed. And no, the court does not have the jurisdiction or the power to rewrite the measure to save it from its demise. One would think that Counsel understood the separation of powers clause, Article III, Section 3, of the California Constitution. "The powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution."

Proposition 46 was a legislative constitutional amendment. It is an exception to the general rule of Proposition 13's 1% limit on ad valorem taxes.

"A constitutional amendment should be construed in accordance with the natural and ordinary meaning of its words." Amador Valley Jt. Un. High Sch. v. State Bd. of Equal. (1978) 22 Cal.3d 208 "Words used in a statute or constitutional provision should be given the meaning they bear in ordinary use.... If the language is clear and unambiguous there is no need for construction...." Lungren v. Deukmejian (1988) 45 Cal.3d 727. "But the "plain meaning" rule does not prohibit a court from determining whether the literal meaning of a statute comports with its purpose or whether such a construction of one provision is consistent with other provisions of the statute. The meaning of a statute may not be determined from a single word or sentence; the words must be construed in context, and provisions relating to the same subject matter must be harmonized to the extent possible." Lungren v. Deukmejian (1988) 45 Cal.3d 727.

One would think that Counsel would be very familiar with the rules surrounding property taxation, after all Counsel are employees of a city that collects millions of dollars from property owners. Maybe a conference with the Assessor would be in order. In the context of property taxation, "improvements" have a special, widely used meaning. An improvement is a use of labor and money (capital) that adds value, not merely recaptures value lost due to neglect or calamity. Thus, the commonly understood phrase -- capital improvement.

"IMPROVEMENT. A valuable addition made to property (usually real estate) or an amelioration in its condition, amounting to more than mere repairs or replacement of

waste., costing labor or capital, and intended to enhance its value, beauty or utility or to adapt it for new or further purposes." Black's Law Dictionary, 5th ed., page 927

Improvement to real property means "a permanent addition to or betterment of real property that enhances its capital value and that involves the expenditure of labor or money and is designed to make the property more useful or valuable as distinguished from ordinary repairs." Integrity Floorcovering, Inc. v. Broan-Nutone, LLC, 521 F.3d 914, 917-918 (8th Cir. Minn. 2008)

Improvements to real property are generally developments of land or structures on property that do more than merely replace, repair or restore the original condition. Improvements are characterized as being permanent and adding to the value of the property. http://definitions.uslegal.com/r/real-estate-improvements/

We dare say that every tax assessor in the country knows the difference between an improvement, which initiates a change in assessment, and repairs, replacements, and other like work which merely brings the property into a nicer looking version of itself. Adding structures that didn't exist previously are improvements. Repairing or replacing with comparable structures are not improvement.

The authors of Proposition 39, the exception to Proposition 46, clearly understood this. They replaced the term "improvement" with "construction, reconstruction, rehabilitation, or replacement of school facilities." Even before Proposition 39, Education Code 15100 similarly limited the kinds of uses to which general obligation bond proceeds could be used.

By comparison, when the initiative that resulted in Proposition 39 was drafted, the authors (not the legislature) believed that "improvement and acquisition of real property" was too limiting for their purposes. They specifically included "replacement" along with "construction," "reconstruction," and "rehabilitation" to expand the lawful uses of proceeds of general obligation bonds for school and college districts. Acquisition was expanded to include both "lease and acquisition." Significantly, the Proposition 39 authors did not include "repair" or "security interest" as Counsel, apparently with a straight face, is

proposing to the court.

Of course, if the City wished to divert funds from its current revenue streams to purchase revenue bonds or certificates of participation, they could spend the money as they please. Invoking an ad valorem tax on property has significant restrictions because the nature of the tax on the ownership of property is a natural right recognized by the California Constitution.

Nevertheless, Counsel puts forward the absurd notion that the legislature wasn't clear about what amounts to a term of art. Counsel completely ignores the Legislative Analysts's analysis that "the money raised through the sale of the bonds must be used exclusively to purchase or improve real property (that is, land and buildings)." "Exclusively" comports with the narrow construction afforded exceptions to the rule.

Counsel intentionally misleads the court by creating a new rule of construction that the opinions of the proponents in their arguments define the meaning of the language of a constitutional amendment. Counsel cites no court opinions supporting such an absurd rule because there are none. Counsel simply makes it up to support an untenable position. Making it even more absurd is that the page in the voter information guide on which the argument appears has the disclaimer "Arguments printed on this page are the opinions of the authors and have not been checked for accuracy by any official agency."

Courts regularly reject testimony from voters as to what the language of a ballot measure means. Everyone has their own opinion. But when you have no other recourse, like Counsel, you simply make up new rules that suit your position. In fact, courts have held that arguments may not even alter the language of a measure, much less the language of a law on which a measure was based. Assoc. Students of N. Peralta v. Bd. of Trustees (1979) 92 Cal.App.3d 672

Counsel argues that because local governments and school districts have been misusing Proposition 46 bond funds for more than 30 years, this court should permanently ratify grand theft by government to be repaid by property owners at the risk of the taking of their property.

Similarly, Counsel attempts to justify redefining "acquisition" to include "security interest." All the mortgage holders in the City better watch out. If Counsel succeeds in this ruse to change the taxing event for real property, they may find themselves paying the property taxes (because they "acquired" real property) as well as the owners. Acquisition means purchase of an ownership interest in property.

Aside: San Francisco is the only jurisdiction in California that takes umbrage at the use of the lowly, proletariat term "measure." To elevate its status, it uses the term Proposition (stealing the importance of state measures with its local measures by association). It is also the only jurisdiction in California that restarts its measure letter assignments with A for every individual election and thereby purposely confuses the public by making it impossible to refer to a measure solely by its letter designation. The two 2018 Proposition A's and the 2019 Proposition A are just part of the alphabet soup of measures that never get beyond the first half of the alphabet.

The City has a pending sale of bonds based on the passage of Proposition A (November 2018). Regarding the pending sale, despite the Election Contest being on appeal, the official statement fraudulently misleads investors that the proceeds from the sale of the bonds will be used only for the "improvement or acquisition of real property." Both measures, in fact all San Francisco measures that invoke Proposition 46 explicitly exact 1% (amounting to millions of dollars in principal alone) of the proceeds from the sale of the bonds for the fake oversight committee parties. On that basis alone, they are all defective.

B. Causes 2 through 5 Are Within the Jurisdiction of this Court via EC 13314

Counsel has no case law support for the contention that EC 13314 is jurisdictional. In Counsel's win-at-all-costs world, Petitioner would be required to file up to three separate writs -- one during each separate 10-day mandatory public examination period.

It's indicative of Counsel's single-minded mission to avoid allowing any substantive issue to reach a public trial that Counsel makes conclusions based only on Counsel's limited reading of statutes, in this case EC 13314 and EC 9295. It's surprising that

Counsel hasn't attempted to object that the Elections Code itself provides no remedy at all for a petitioner in the People's Republic of San Francisco, because, after all, EC 9223 et al., referenced in EC 9295 are not applicable to the City and "this chapter" refers to the Elections Code and not the SFMEC. Counsel's crusade to avoid any accountability or responsibility for fair and honest elections is the only continuing theme, both in this Petition and in the Election Contest.

First, none of the cases cited by Counsel deal with a writ based on either of the aforementioned sections of the Elections Code. All the citations are to issues dealing with the complex internal rules of the Code of Civil Procedure. The CCP is referenced only three times in the entire Elections Code at EC 16401 (Election Contests), EC 18323 (Penal Provisions), and EC 20010 (Election Campaigns). None of those references are applicable to this Petition.

EC 13314(a)(1) states, in relevant (to Petition) part, "An elector may seek a writ of mandate alleging that an error or omission has occurred, or is about to occur, ... or in the printing of, a ballot, county voter information guide, ... or that any neglect of duty has occurred, or is about to occur."

EC 13314 has no cut-off deadline except for the practical consideration in EC 13314(a)(2)(B) "That issuance of the writ will not substantially interfere with the conduct of the election." (See separate discussion, below.)

Petitioner filed the Petition, served the parties, and returned proof of service to the court all on the same day, Tuesday, August 27, 2019. On August 27, 2019, there was still plenty of time for the court to consider the relief requested. The Sixth Cause only became ripe on Saturday, August 24, 2019. Between the court's failure to respect EC 13314(a)(3) legislative mandate ("The action or appeal shall have priority over all other civil matters." and Counsel's intentional dilatory tactic to run down the clock with its demurrer and going to the extra effort to make an ex parte request to vacate the hearing on September 30, 2019, with this court's full cooperation, mission accomplished.

EC 9295(a) states, in relevant (to Petition) part, "The elections official shall make a

copy of the material ... available for public examination in the elections official's office for a period of 10 calendar days immediately following the filing deadline for submission of those materials. ..."

EC 9295(b)(1) states, in relevant (to Petition) part, "During the 10-calendar-day public examination period provided by this section, any voter ... may seek a writ of mandate ... requiring any or all of the materials to be amended or deleted. The writ of mandate or injunction request shall be filed no later than the end of the 10-calendar-day public examination period."

The "filing deadline" referenced in EC 9295 is dependent on reference to the Elections Code. In other words, is not set in stone. Counsel wishes to exempt its clients from Causes 2 through 5 with the wave of a hand. If Petitioner were to rely on EC 9295, which Petitioner does not, it addresses "the 10-calendar-day public examination period" as a single period. EC 9295 anticipates that there are not a set number of public examination periods, as is the case in some counties in some instances. EC 9295 anticipates that the deadlines are not dictated by the Elections Code. EC 9295 is flexible. One point of view maintains that there are three temporal groupings -- the measure itself, the arguments, and the rebuttals. Of the other materials are that subject to public examination, there is no statutory deadline. This view would measure out a combined minimum 30-day period for public examination.

Whatever view of EC 9295 and its cousin sections -- EC 9190 (counties), EC 9380 (special districts), and EC 9509 (school districts) -- one subscribes to, the legislature has provided a process that starts early enough to provide time for printing and circulating ballots and other election materials. Even though rebuttals are the last of the three temporal groupings, they deserve the same opportunity to be considered as the earlier ones.

Based on Counsel's dilatory tactics and arguments, however, there would never be a chance that any petition would not cut into the time needed to print and circulate the election materials.

As a practical matter, Petitioner will have lost to the system, no matter what date the Petition was filed. It would either be too early (not ripe) or too late (barred). Counsel's objective is to deny all relief.

Neither Cher nor the courts in California can turn back time. This is exactly the reason that this court should deny the demurrer on all causes and consider each cause, because based on the City's flagrant disregard for the law, it is guaranteed to occur over and over and over at every subsequent election. Petitioner requests that the court take judicial notice of the measure filings for the March 3, 2020 election, should the Petition still be under review by the December 5, 2019 filing deadline. The scorpion can't change its nature. The pattern of behavior of the Respondents over three elections since the effective date of AB-195 is unmistakable. Law? What law? We don't need to follow no stinkin' law!

Since the mission of Counsel is to evade review of the election practices of its clients, the Petition certainly qualifies for review of each and every cause, based on Counsel's clients' intentional refusal to follow the law with respect to fair and honest local measure elections.

When the courts wanted to benefit the City, it had no problem in finding an exception to its mootness doctrine over the objection of the prevailing party.

> "Section 9295 is a preelection remedy. The City's appeal is arguably moot because the election has already taken place and Proposition A passed. Nevertheless, this court has the discretion to consider the merits if the appeal presents a question "'capable of repetition, yet evading review'" (Ferrara v. Belanger (1976) 18 Cal.3d 253, 259, 133 Cal.Rptr. 849, 555 P.2d 1089; Hammond v. Agran (1999) 76 Cal.App.4th 1181, 1186, 90 Cal.Rptr.2d 876) or the issue is of continuing public interest. (Patterson v. Board of Supervisors (1988) 202 Cal.App.3d 22, 27, 248 Cal.Rptr. 253 [after an election had taken place, this court applied the exception to mootness doctrine, to review writ ordering the deletion of portions of ballot arguments]; Brennan v. Board of Supervisors (1981) 125 Cal.App.3d 87, 90, fn. 2, 177 Cal.Rptr. 677 (hereafter Brennan) [this court applied the same exception to review, postelection, a writ requiring revision of digest prepared by Ballot Simplification Committee].) Respondent urges us not to apply this well-established exception to the mootness doctrine in this case. She argues that our prior decision in Brennan, supra, 125 Cal.App.3d 87, 177 Cal.Rptr. 677 has settled the law concerning the requisite contents of a digest prepared by a Ballot Simplification Committee and the standard to be applied in determining whether a judicially

> ordered revision is appropriate. We decline to deem the case moot. The issue raised is a matter of continuing public interest, and the arguments in this appeal demonstrate the need to clarify our holding in Brennan."
> Horneff v. City and County of San Francisco (2003) 110 Cal.App.4th 814.

Under the scheme that Counsel has contrived, the Petitioner would have had to file one writ of mandate by August 23, 2019 and a second writ of mandate by September 2, 2019 and then move to merge them into a single case. Then endure Counsel's dilatory tactics to run out the clock with its demurrers. To top it off, even if successful at this procedural jujitsu, Petitioner would have then have to file a third writ of mandate sometime after the November 5, 2019 election were certified, likely around November 21, 2019. Under another of Counsel's self-serving, contrived scenarios, Petitioner would have to file a writ of mandate around the time each set of bonds were being issued to somehow invoke clairvoyance and predict that the City was about to use bond funds in a way that violates Proposition 46's strictly limited purposes. This is absurd.

What Counsel really wants is for Petitioner to give up. In that way, the City can win tax elections by hoodwinking the voters with slick sales pitches on the ballot and sales pitches throughout the voter information guide materials (all paid for or virtually completely subsidized by public moneys). Then after the election is won, the City can issue bonds and spend the proceeds in any way it likes, the California Constitution be damned, when it will be too late for anyone to do anything about it. And if anyone, like the Petitioner, were to have to temerity to interfere with this scheme to commit grand theft, Counsel can pull out its trump card with individual validating actions or rely on the Legislature's validating acts, to seal off all avenues to remedies.

The fake bond oversight committee, comprised of connected political activists and cronies, can provide the political cover through its fawning annual reports that all the money has been spent "legally," and oh, look at all the beautiful, compassionate, cool, neat, progressive, smart, sustainable (you get the idea) things that the money has provided. (Just don't look behind the curtain or take a deep breath. The streets are still

littered with sharps and human bowel movements.) The public will never learn the real cost to taxpayers, like the more than $12,000,000 (total debt service) just for the oversight committee's fancy digs, propaganda production system, and staff.

Finally, at least for the alleged "affordable" housing measure, it's like buying voters who now have a city address from which they will greatly help to keep the gravy train rolling for themselves and all the firms, organizations, and other parasites that profiteer off public moneys.

C. Paid Arguments Violate Stanson v. Mott

Paid arguments have no place among the official materials printed in the voter information guide. They are express advocacy entirely subsidized by public moneys except for a token payment. Petitioner suspects that the token payment is there to prevent the riffraff and gadflies from clogging up the propaganda machinery of the Elections Direktorat. If it were a true public forum, without a turnstile to exact an admission fee, it would likely disappear under its own mountain of garbage.

"Official voters' pamphlets are *limited* public forums provided by the government, so the government can constitutionally impose what would be an otherwise unlawful prior restraint of speech by way of precluding false or misleading statements." Huntington Beach v. Superior Court (2002) 115 Cal.Rptr.2d 439 (Emphasis in original.)

> We concluded that a voter's pamphlet is not a traditional public forum: "Political speech is, of course, protected under both the federal and state Constitutions. However, it is not the traditional political speech of campaign literature, public speeches or demonstrations, or even public solicitation, that is at issue herein. Rather, the challenge focuses on a specific instrument funded by the [government] in order to convey information to the voters about an upcoming election...." (202 Cal.App.3d at p. 29, 248 Cal.Rptr. 253.) "The speech activities permitted in the voter's pamphlet -- unlike those in traditional public fora such as streets and parks -- are narrowly circumscribed to the ballot measures proposed for public consideration." (Gebert v. Patterson (1986) 186 Cal.App.3d 868, 874, 231 Cal.Rptr. 150.)
>
> San Francisco Forty-Niners v. Nishioka (1999) 75 Cal.App.4th 637

The difference between the fair market value of the service provided and the

amount paid for the service is a contribution or a gift. In this case, such a contribution is of public moneys in an amount that qualifies the City or some city department as a committee. The service is the designing, printing and circulating of half a million voter information guides. The token cost amounts to a fraction of a penny per registered voter. It's a self-proving and self-fulfilling outcome. The deal is so good that no qualified committee would pass up the opportunity to get its materials into the hands of every voter in the City. Not every side of every measure has a qualified primarily formed committee. That explains the absence or disparate number of paid arguments by one of the sides.

Yes on A, Affordable Homes for San Franciscans Now! (ID #1418611) is the primary campaign committee ("Yes on A") for the proponents of Proposition A. The City's Ethics Commission posts campaign finance filings on its web site (http://public.netfile.com /Pub2/AllFilingsByFiler.aspx?aid=sfo&id=180593819). Specifically, Yes on A's Form 460 for the period ending September 21, 2019 shows, on page 12, the expenditure to the San Francisco Department of Elections of $5,118 for paid ballot arguments. Petitioner requests that the court take judicial notice of the Yes on A's Form 460 filing posted on the City's Ethics Commission web site under Evidence Code sections 451(f), 452(g), 452(h), and 453.

Proponents submitted eighteen paid arguments in favor containing 2260 words. Opponents submitted one paid argument against. Although Petitioner has been unable to locate the invoice, proponent paid arguments (18 x $200 ea) = $3,600 plus (2260 x $2/word) = $4,520 amount to a cost in the neighborhood of $8,120. Sending a single first-class mailing piece privately to 498,070 addresses voters at the best possible current USPS rate ($0.383) would cost $190,761 just in postage. Each propenent and opponent benefited the City's largesse in the same amount. At least some of the proponents didn't even have to pay anything because Yes on A paid the fees for them.

According to a public records, the Respondents took in $38,960 from paid arguments for local measures on the November 5, 2019 election.

The fact that no other county in California, and to the Petitioner's knowledge, no

other county in the county, has such a mechanism to promote local ballot measures should be a red flag that it might actually be unlawful.

Stanson v. Mott (1976) 17 Cal.3d 206 is the gold standard on government advocacy on measures. By definition, the paid arguments are express advocacy, so we're not talking about some fine line.

> Indeed, every court which has addressed the issue to date has found the use of public funds for partisan campaign purposes improper, either on the ground that such use was not explicitly authorized (see Porter v. Tiffany (1972) 11 Or.App. 542 [502 P.2d 1385, 1387-1389]; Elsenau v. City of Chicago (1929) 334 Ill. 78 [165 N.E. 129, 130-131]; State v. Superior Court (1917) 93 Wn. 267 [160 P. 755, 756]) or on the broader ground that such expenditures are never appropriate. (See Stern v. Kramarsky (1975) 84 Misc.2d 447 [375 N.Y.S.2d 235, 239-240].) As in the instant case, the majority of these decisions related to expenditures in connection with bond elections.

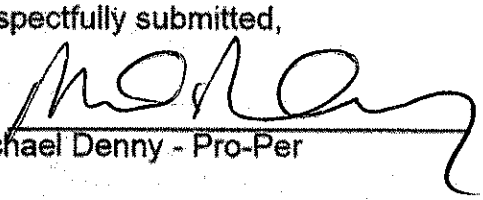
III. CONCLUSION

Since Counsel has argued the case with respect to Cause 1, it's clear that there is no defense to the allegation that Proposition A authorizes the spending of general obligation bond funds for purposes prohibited by Proposition 46. Petitioner requests that the court grant Petitioner's first request for relief. If Respondents, through their own dilatory tactics, are now unable to do that, that the court order that the votes for Proposition A not be counted, that the Proposition A election not be certified, and that the Respondents publish a public notice to that effect and post it at polling places and at any other locations Respondents deem appropriate.

Based on the discussion and relevant authorities, the demurrer should be dismissed on all causes and a trial date set for all causes at the earliest agreeable time.

Dated: October 4, 2019

Respectfully submitted,

By: 
Michael Denny - Pro-Per