

**FILED**  
San Francisco County Superior Court

JAN 09 2020

CLERK OF THE COURT

BY: *Anna Gonzalez*  
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

**MICHAEL DENNY,**

Petitioner,

v.

**JOHN ARNTZ, Director of Elections;  
DENNIS HERRERA, City Attorney,**

Respondents.

No. CPF-19-516970

**ORDER STRIKING "MOTION FOR  
PEREMPTORY CHALLENGE"**

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1 On December 26, 2019, Petitioner Michael Denny, in pro per, filed a Statement of Election  
2 Contest against Respondents John Arntz, Director of Elections, and Dennis Herrera, City  
3 Attorney of the City and County of San Francisco. The Statement of Election Contest is brought  
4 pursuant to Division 16 of the Elections Code, and challenges Proposition A, the Affordable  
5 Housing Bond measure enacted by San Francisco's voters in the November 5, 2019 election.  
6 Petitioner seeks to state seven grounds for the contest, including challenges under the Elections  
7 Code to the ballot statement, to the City Attorney's impartial analysis of the ballot measure, and  
8 to the inclusion of paid arguments in the voter information guide, as well as a claim that  
9 Proposition A violates provisions of the California Constitution. Based on these alleged  
10 violations, Petitioner seeks a determination that the Proposition A bond special election was not  
11 conducted in a fair and impartial manner, and seeks to set aside the results of that election. He  
12 also requests the Court to refer Defendant John Arntz, the City's Director of Elections, to the  
13 District Attorney for prosecution "for printing and circulating every ballot containing local  
14 measures that did not conform to [Elections Code section] 13119 for all elections held in 2018  
15 and 2019."

16 This is not the first proceeding that Petitioner has filed challenging Proposition A. On  
17 August 27, 2019, before the November 2019 election was held, Petitioner filed a verified petition  
18 for writ of mandate against the same respondents, as well as naming as real party in interest the  
19 City's Board of Supervisors. (*Denny v. Herrera, et al.*, No. CPF-19-516823.) That petition,  
20 which raised claims substantially similar to those presented here, sought a peremptory writ of  
21 mandate directing the City to "cease all actions associated with preparation of Proposition A and  
22 strike it from the Election ballot and voter information guide," as well as other alternative and  
23 related relief. By order filed October 11, 2019, this Court sustained the City Respondents'  
24 demurrer to that petition for writ of mandate on the grounds that (1) Petitioner failed to show that  
25 removal of Proposition A from the ballot and from the voter information guide would not  
26 substantially interfere with the conduct of the then-impending November 5, 2019 election; (2)  
27 that Petitioner's challenges to the ballot statement and the digest analysis were untimely under the  
28 Elections Code; (3) that the City, as a charter city, has control over municipal elections, including

1 the use of paid ballot arguments, and (4) that Petitioner failed to state a claim that the paid  
2 arguments by ballot proponents and opponents constitute the use of public funds to promote the  
3 City's agenda. Judgment in Respondents' favor was subsequently entered on November 12,  
4 2019.

5 By "Motion for Peremptory Challenge" filed January 3, 2020, Petitioner filed a peremptory  
6 challenge under Code of Civil Procedure section 170.6 to Judge Ethan P. Schulman of this Court  
7 that, if granted, would preclude Judge Schulman from hearing the instant matter on its merits.  
8 For the following reasons, Petitioner's challenge is stricken.

9 Where, as here, a litigant files a lawsuit that is substantially similar to an earlier suit and  
10 the litigant attempts to disqualify the judge who presided in the prior proceeding, the peremptory  
11 challenge must be denied. "A peremptory challenge may not be made when the subsequent  
12 proceeding is a continuation of an earlier action. . . . The rule is designed to prevent forum  
13 shopping." (*Bravo v. Superior Court* (2007) 149 Cal.App.4th 1489, 1493-1494; see also, e.g.,  
14 *Jacobs v. Superior Court* (1959) 53 Cal.2d 187, 192 [a peremptory challenge "cannot be  
15 entertained as to subsequent hearings which are a part or a continuation of the original  
16 proceedings"].) Under this so-called "continuation rule," it is immaterial that the second case is  
17 re-filed under a different case number. (*Birts v. Superior Court* (2018) 22 Cal.App.5th 53, 59.)  
18 "A proceeding is a continuation of the prior or original action, rather than a separate or  
19 independent action, if it involves substantially the same issues and matters necessarily relevant  
20 and material to the issues involved in the [original] action." (*Bravo*, 149 Cal.App.4th at 1494  
21 (quotations omitted); accord, *McClenny v. Superior Court* (1964) 60 Cal.2d 677, 684 ["a  
22 proceeding is a continuation of the original action out of which it arises if it involves  
23 'substantially the same issues' as the original action."]; compare *Nutragenetics, LLC v. Superior*  
24 *Court* (2009) 179 Cal.App.4th 243, 247 [where second lawsuit "(1) involves a different lawsuit  
25 and different causes of action asserted against that defendant, and (2) does not arise from conduct  
26 in, or involve enforcement or modification of an order in, the first lawsuit," it cannot be  
27 considered a continuation of the first].)

1 Here, Petitioner's current proceeding is a continuation of his prior action. It is a challenge  
2 to the same ballot measure; it is brought against the same respondents; and it raises substantially  
3 the same issues as those presented in the earlier action. Although the earlier action was brought  
4 as a pre-election challenge to Proposition A and the current proceeding purports to be a post-  
5 election contest to the same ballot proposition, both proceedings raise substantially the same  
6 issues. The seven grounds for the Statement of Election Contest closely track the six causes of  
7 action that Petitioner sought to state in the prior petition. Indeed, Petitioner himself explicitly  
8 acknowledges in his own verified Statement of Election Contest that several of its grounds are  
9 identical to those he previously presented in the prior action. (See Statement of Election Contest  
10 ¶¶ 31, 46, 70 [alleging that Defendants were "further put on notice by a petition for writ of  
11 mandate (Case No. CPF-19-516823 filed on August 27, 2019) of this specific violation."].)  
12 Under the circumstances, the instant proceeding is a continuation of the prior action, and the  
13 Motion for Peremptory Challenge is stricken.

14 **IT IS SO ORDERED.**

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16 Dated: January 9, 2020

17   
18 HON. ETHAN P. SCHULMAN  
19 JUDGE OF THE SUPERIOR COURT  
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CPF-19-516970  
IN RE: MICHAEL DENNY

I, the undersigned, certify that I am an employee of the Superior Court of California, County Of San Francisco and not a party to the above-entitled cause and that on January 09, 2020 I served the foregoing on each counsel of record or party appearing in propria persona by causing a copy thereof to be enclosed in a postage paid sealed envelope and deposited in the United States Postal Service mail box located at 400 McAllister Street, San Francisco CA 94102-4514 pursuant to standard court practice.

Date: January 09, 2020

By: GINA GONZALES  
Deputy Clerk

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