LINE 2
CPF-19-516970 IN RE: MICHAEL DENNY
Hearing On Order Setting Hearing On Statement Of Election Contest
Moving Party:
Filed: Jan 16, 2020
Tentative Ruling:

Petitioner Michael Denny challenges Proposition A, the Affordable Housing Bond measure enacted by San Francisco's voters on the November 2019 ballot by a 71.16% to 28.84% vote. Petitioner's election contest is brought pursuant to Division 16 of the Elections Code, Elec. Code §§ 16000-16940. Petitioner previously brought substantially identical claims in a separate pre-election challenge to Proposition A, which this court dismissed on demurrer. (*Denny v. Herrera*, No. CPF-19-515823 (Oct. 11, 2019 order sustaining demurrer to petition for writ of mandate).)
By order filed December 30, 2019, the Presiding Judge set the matter for hearing on January 16 in this Department. On January 7, 2020, after the parties stipulated to continue the hearing, this Court issued an order setting a revised briefing schedule. On January 9, 2020, the court struck petitioner's peremptory challenge pursuant to Code of Civil Procedure section 170.4(b) on the ground that this proceeding is a continuation of a prior pre-election challenge filed by petitioner to the same ballot measure that raised substantially the same claims and issues. Petitioner did not file a petition for writ of mandate seeking review of the denial of his peremptory challenge. (Code Civ. Proc. § 170.3(d).) Petitioner did not file any response to respondents' memorandum opposing his statement of election contest.

Petitioner's current election contest is dismissed, pursuant to Elec. Code § 16002, as his statement fails to set forth a sufficient basis to support an election contest. The Elections Code expressly provides with respect to election contests that the court "may dismiss the proceedings if the statement of the cause of the contest is insufficient." (Elec. Code § 16602.)

"The purpose of an election contest is to ascertain the will of the people at the polls, fairly, honestly and legally expressed. Strict rules embodied in the Elections Code govern a court's review of a properly contested election. It is a primary principle of law as applied to election contests that it is the duty of the court to validate the election if possible. That is to say, the election must be held valid unless plainly illegal." (*Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4th 165, 192 (citations and internal quotations omitted)).) A trial court's authority to invalidate an election is limited to the grounds specified in Elections Code Section 16100. (*Id.* at 192-193.) Those grounds are the exclusive statutory grounds for a post-election challenge. (*Id.* at 192-194 [holding that challenge to adoption of voter-approved initiative measure submitted to the voters by a city council was not a permissible election challenge under § 16100]; see also, e.g., *McKinney v. Superior Court* (2004) 124 Cal.App.4th 951, 954 [grounds for post-election challenge enumerated in § 16100 are "exclusive"].) Here, the various grounds set forth in Petitioner's statement do not set forth a sufficient basis for such a contest.

Grounds 1, 2, 3, 5, and 7 are dismissed because Petitioner cannot maintain a statutory election contest on any basis alleged therein. Section 16100 does not provide grounds to contest ballot materials. "The requirement that there be an impartial analysis of a ballot measure applie[s] only

to preelection activities." (*Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4th 165, 192.) Thus, there is no statutory basis for attacking the postelection effects of ballot materials. That was the square holding of *Horwath v. City of East Palo Alto* (1989) 212 Cal.App.3d 766, which decided that although the city attorney prepared an analysis of a proposed rent stabilization ordinance that did not discuss the ordinance's rent rollback provision and therefore violated the statutory requirement that the city prepare an impartial analysis of the measure, because the analysis could only have been challenged before the election, it could not be challenged on a postelection basis. (*Id.* at 769, 7732-774.) Further, Section 16100(c) does not provide a ground for contest because Petitioner cannot show that the alleged flaws in the contents of the ballot statement and digest affected the outcome of the election. Petitioner brings his contest under § 16100(c). (Pet. ¶¶ 33, 48, 72, 86, 102, 122, and 129.) "When a contestant seeking to overturn a ballot measure election . . . relies on subdivision (c), he or she must demonstrate that the forbidden act affected the outcome." (*Horwath*, 212 Cal.App.3d at 775 [holding that election contest remedy was not available to challengers who did not offer any proof that "the deficient impartial analysis in fact affected the outcome of the vote"].) Petitioner admits that such evidence is not possible. "No one can say with any certainty what the will of the voters would have been…." (Pet. 22:3.) The challenges therefore must be dismissed.

Ground 4 is dismissed because Petitioner does not show that Proposition A would violate the constitution. Article XIIIA, § 1(b)(2) of the California Constitution, part of Proposition 13, provides an exception to the overall one percent maximum tax limitation on real property taxes for ad valorem taxes or special assessments to pay the interest and redemption charges on "[b]onded indebtedness for the acquisition or improvement of real property approved on or after July 1, 1978, by two-thirds of the votes cast by voters on the proposition." Proposition A, which as noted was enacted by more than a two-thirds vote of the electorate, authorized the City to issue $600 million in general obligation bonds with the stated intent, among others, "to finance the construction, development, acquisition, and preservation of housing affordable to extremely-low, low and middle-income households"; "to assist in the acquisition, rehabilitation, and preservation of existing affordable housing to prevent the displacement of residents"; "to repair and reconstruct distressed and dilapidated public housing developments and their underlying infrastructure"; and "to assist the City's middle-income residents or workers in obtaining affordable rental or home ownership opportunities including down payment assistance and support for new construction of affordable housing for San Francisco Unified School District and City College of San Francisco employees." Petitioner argues that these stated objectives fall outside the constitutional authorization of bonds used "for the acquisition or improvement of real property." The court disagrees. Courts are directed to "construe constitutional phrases liberally and practically; where possible they avoid a literalism that effects absurd, arbitrary, or unintended results." (*Carmen v. Alvord* (1982) 31 Cal.3d 318, 327.) Petitioner asks the court to do the opposite, by construing "acquire" and "improve" in a cramped way that would ignore the related meanings and synonyms of the constitutional language. The language of Proposition A falls squarely within the parameters of constitutionally permissible uses.

Ground 6 is dismissed because the claim is barred under the doctrine of res judicata. Under res judicata, "a final judgment, rendered upon the merits by a court having jurisdiction of the cause, is conclusive of the rights of the parties and those in privity with them, and is a complete bar to a new suit between them on the same cause of action." (*Goddard v. Sec. Title Ins. & Guar. Co.*

(1939) 14 Ca.2d 47, 51.) The normal “rules of law and evidence governing the determination of questions of law and fact” apply in election contests. (Elec. Code § 16602.) Thus, the doctrine of res judicata bars readjudication of Petitioner’s paid arguments claim. This court squarely addressed this matter on the merits in its order on October 11, 2019, holding that “[a]s a charter city, San Francisco has control over municipal elections.” (Resp’ts Req. for Jud. Not., Ex. J.) Judgment was entered November 12, 2019, with notice given November 13. (Id., Ex. L-M.) The decision became final on January 13, 2020. (See Cal. R. Ct. 8.104(a)(1)(B) [notice of appeal must be filed on or before “60 days after” after service of notice of entry of judgment]; *Alberston v. Raboff* (1956) 46 Cal.2d 375, 378 [judgment becomes final when no appeal is taken].)

Any party who contests a tentative ruling must send an email to contestdept302tr@sftc.org with a copy to all other parties by 4pm stating, without argument, the portion(s) of the tentative ruling that the party contests. The subject line of the email shall include the line number, case name and case number. Counsel for the respondents is required to prepare a proposed order which repeats verbatim the substantive portion of the tentative ruling and must bring it to the hearing or email it to contestdept302tr@sftc.org prior to the hearing even if the tentative ruling is not contested.

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