

FILED

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

APR 06 2018

DAVID H. YAMASAKI, Clerk of the Court

BY: _____, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ORANGE

MARY ANN GAIDO,

Petitioner and Plaintiff,

v.

MOLLY McLAUGHLIN, City Clerk of the City
of Irvine; NEAL KELLEY, Orange County
Registrar of Voters; and DOES 1 through 100,
inclusive,

Respondents and Defendants.

IRVINE CITY COUNCIL; ROES 1 through 100,
inclusive,

Real Party in Interest.

Case No.: 30-2018-00972013-CU-JR-CJC

W.S. 4-6-18

[PROPOSED] JUDGMENT

**Calendar Preference Required By Statute
(Elec. Code § 13314(a)(3))**

Judge: Hon. Walter P. Schwarm
Dept.: C19

Petition Filed: February 7, 2018

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1 This matter came on for hearing before this Court at 1:30 p.m. on March 20, 2018, in
2 Department C19 of the Orange County Superior Court, the Honorable Walter P. Schwarm, presiding.
3 Petitioner Mary Ann Gaido was represented by Beverly Grossman Palmer and Dale Larson of
4 Strumwasser & Woocher, LLP. Respondent Neal Kelley was represented by Rebecca Leeds, Senior
5 Deputy County Counsel. Respondent Molly McLaughlin and Real Party in Interest Irvine City
6 Council were represented by Mark Austin and Jeff Melching of Rutan & Tucker, LLP. After oral
7 argument, the Court ordered supplemental briefing on the scope of the Court's authority and continued
8 the matter to 8:30 a.m. on March 27, 2018, at which point additional oral argument was heard and all
9 parties were again represented by counsel. After oral argument on March 27, the Court ordered the
10 parties to meet and confer and continued the hearing to March 29, 2018, at 8:30 a.m. After oral
11 argument on March 29, the Court took the matter under submission.

12 The Court considered the pleadings on file, the documentary evidence, and the arguments of
13 counsel, and then issued a Minute Order on April 2, 2018, a true and correct copy of which is attached
14 to this Judgment as Exhibit A. The matter having been submitted for decision and good cause
15 appearing therefore,

16 IT IS ORDERED, ADJUDGED AND DECREED that:

17 1. The Court grants the Writ of Mandate in part. The Clerk of Court is directed to issue a
18 peremptory Writ of Mandate directing Respondent Kelley, and all of Respondent Kelley's officers,
19 agents, employees, service providers, and all others acting by, through, or in concert with Respondent
20 Kelley, or at Respondent Kelley's direction, to:

21 a. **Refrain** from printing the following ballot label for Measure B on the ballot
22 and in the sample ballot and all other election materials for use for the June 5, 2018 special
23 election:

24 Shall Ordinance No. 17-08, approving a zone text amendment so as to facilitate the
25 development of the Southern California Veterans Cemetery by reflecting an exchange of
26 City-owned property for the State-approved site at the intersection of Bake Parkway and
Interstate 5, commonly known as Strawberry Fields, be adopted?

27 and;


28 //

1 b. Modify the ballot label for Measure B on the ballot and in the sample ballot and
2 all other election materials for use for the June 5, 2018 special election so that it reads:

3 Shall Ordinance No. 17-08, approving zone text amendments to allow for a land
4 exchange agreement that facilitates (a) the allocation of development previously planned
5 for the Bake Parkway Site to property near the intersection of Pusan and Irvine Blvd, and
6 (b) the development of the State-approved site for the Southern California Veterans
7 Cemetery on strawberry fields located near the intersection of I-5 and Bake Parkway, be
8 adopted?

9 2. Service of this Judgment and the peremptory writ of mandate ordered herein, and any
10 notice of the entry thereof, may be effected upon the parties' counsel by facsimile or e-mail.

11 Dated: April 6, 2018



Hon. Walter P. Schwarm
Superior Court Judge

Exhibit A

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

MINUTE ORDER

DATE: 04/02/2018

TIME: 03:38:00 PM

DEPT: C19

JUDICIAL OFFICER PRESIDING: Walter Schwarm

CLERK: Javier Espino

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT: None

CASE NO: **30-2018-00972013-CU-JR-CJC** CASE INIT.DATE: 02/07/2018

CASE TITLE: **Gaido vs. McLaughlin**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Judicial Review - Other

EVENT ID/DOCUMENT ID: 72784883

EVENT TYPE: Chambers Work

APPEARANCES

There are no appearances by any party.

The Court, having taken the above-entitled matter under submission on 3/29/2018 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

FINAL RULING: *Gaido v. McLaughlin* (Case No. 30-2018-00972013)

On February 7, 2018, Petitioner filed a Verified Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief. This Petition challenges the Ballot Label pertaining to Ordinance No. 17-08, adopted by the Irvine City Council (Real Party in Interest) on July 30, 2018, as partial, misleading, and inaccurate. (Petition, ¶¶ 37-47.) Respondent contends that Petitioner has failed to show, by clear and convincing evidence " . . . that the Ballot Label is false, misleading or partial." (Opposition of Respondent Molly McLaughlin and Real Party in Interest Irvine City Council to Petitioner's Mary Ann Gaido's Petition for Writ of Mandate filed on March 12, 2018 (hereafter "Opposition"); 20:2-3.) The Ballot Label at issue reads as follows: "Shall Ordinance No. 17-08, approving a zone text amendment so as to facilitate the development of the Southern California Veterans Cemetery by reflecting an exchange of City-owned property for the State-approved site at the intersection of Bake Parkway and Interstate 5, commonly known as Strawberry Fields, be adopted?" (March 12, 2018 McLaughlin Decl, ¶ 11 and Exhibit EE.)

According to the Ballot Label, Ordinance No. 17-08 addresses the exchange of two pieces of property. The City Attorney's Impartial Analysis of Ordinance 17-08, which is not the subject of a legal challenge, explains the exchange, in relevant part, as follows: "This measure involves two approximately 125-acre properties within the City's '8.1 Trails and Transit Oriented Development' zoning district. Both properties

are on the former Marine Corps Air Station, El Toro and are located near, but outside, the boundaries of the Orange County Great Park." [¶] The first property is privately-owned and located near the intersection of Bake Parkway and Interstate 5. . . . [¶] The second property is City-owned and located adjacent to Irvine Boulevard, between Ridge Valley and Alton Parkway. (March 12, 2018 Melching Decl., ¶ 5 and Exhibit M.)

The effect of this exchange is that the City of Irvine will become the owner of the property located at the intersection of Bake Parkway and Interstate 5, and the private owner will become the owner of the property located "adjacent to Irvine Boulevard, between Ridge Valley and Alton Parkway." (The court will refer to the property located at the intersection of Bake Parkway and Interstate 5 as the Bake Parkway site. Respondent also refers to the Bake Parkway site as Strawberry Fields. The court will refer to the property located adjacent to Irvine Boulevard, between Ridge Valley and Alton Parkway, as the ARDA Transfer Site because the parties use this designation. The ARDA Transfer Site designation is based on the Amended and Restated Development Agreement entered into between the City of Irvine and Heritage Fields El Toro LLC. (March 14, 2018 Larson Decl., ¶ 4 and Exhibit 21.)

Elections Code section 13314 states, "(a)(1) An elector may seek a writ of mandate alleging that an error or omission has occurred, or is about to occur, in the placing of a name on, or in the printing of, a ballot, county voter information guide, state voter information guide, 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. [¶] (B) That issuance of the writ will not substantially interfere with the conduct of the election." Elections Code section 13119 addresses the form of a ballot regarding ". . . a measure proposed by a local governing body. (Elec. Code, § 13119, subd. (a).) Elections Code section 13119, subdivision (c), states, "The statement of the measure shall be a true and impartial synopsis of the purpose of the proposed measure, and shall be in language that is neither argumentative nor likely to create prejudice for or against the measure." Elections Code section 9051 explains, "(b) "The ballot label shall not contain more than 75 words [¶]

Initially, the court must identify the applicable standard used to evaluate whether a ballot label is false, misleading, or partial. Respondent contends that Petitioner must establish, by clear and convincing evidence, that the Ballot Label is false, misleading, or partial. Elections Code section 9295, subdivision (b)(2), provides, "A peremptory writ of mandate or an injunction shall be issued only upon clear and convincing proof that the material in question is false, misleading, or inconsistent with the requirements of this chapter, and that issuance of the writ or injunction will not substantially interfere with the printing or distribution of official election materials as provided by law."

Huntington Beach City Council v. Superior Court (Huntington Beach) (2002) 94 Cal.App.4th 1417, 1433, states, "The wording of a ballot is governed by different standards than govern arguments in voters' pamphlets. Voter pamphlets are governed by the strictures inherent in section 9295-which the Legislature plainly intended to maximize freedom of speech short a very few specified categories, e.g., false, misleading, or inconsistent with the requirements of chapter 3." [¶] Ballots, on the other hand, are hemmed in by the constitutional guarantees of equal protection and freedom of speech. [Citations.] These guarantees mean, in practical effect, that the wording on a ballot or the structure of the ballot cannot favor a particular partisan position. [Citations.]"

Horneff v. City & County of San Francisco (2003) 110 Cal.App.4th 814, 821, fn. 5, states, "Respondent, in reliance upon a single sentence in *Huntington Beach City Council v. Superior Court* (2002) 94 Cal.App.4th 1417, 115 Cal.Rptr.2d 439, suggests that the standard we articulated in *Brennan* applies

only to arguments for or against a measure and that a different level of scrutiny applies to titles and summaries of measures. The *Huntington* court did generally state that arguments for or against a measure are subject to "different standards" than the ballot title and summary of a measure. [Citation.] Viewed in context, however, the court was referring to the obvious distinction that an *argument* need not be impartial, whereas, as we stated in *Brennan*, a ballot title and summary must be. (Italics in original.)

McDonough v. Superior Court (McDonough) (2012) 204 Cal.App.4th 169, 1174, explains, "We independently examine the question of whether the ballot title 'substantially complies' with that standard. [Citation.] As in the case of statewide initiatives, the drafter is afforded 'considerable latitude' in composing the ballot title, and we must presume its language to be accurate. [Citation.]" " 'Only in a clear case should a title so prepared be held insufficient. Stated another way, if reasonable minds may differ as to the sufficiency of the title, the title should be held to be sufficient.' [Citations.]" (*ibid.*)

Martinez v. Superior Court (Martinez) (2006) 142 Cal.App.4th 1245, 1248, explains, "A ballot title must not be false, misleading, or partial to one side. (Cal. Elec. Code, § 9295; L.A. Elec. Code, § 96.) [Citations.] A ballot title passes muster if it substantially complies with that standard, and we independently review whether it achieves such compliance. [Citation.] [¶] 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. [¶] 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. [Citation.]" The court notes that *Martinez* specifically cites to Elections Code section 9295 after referring to the standard that a ". . . ballot title must not be false, misleading, or partial to one side."

Finally, *Citizens for Responsible Government v. City of Albany (Citizens)* (1997) 56 Cal.App.4th 1199, 1227, states, "Government action which may tend to influence the outcome of an election operates in an area protected by the guarantee of equal protection and freedom of speech. [Citation.]"

Based on *Huntington Beach*, *McDonough*, *Martinez*, and *Citizens*, the court applies a clear and convincing standard to its determination as to whether the Ballot Label for Ordinance No. 17-08 is false, misleading, or partial. Specifically, the court must determine, by clear and convincing evidence, whether the evidence establishes that Respondent has substantially complied with the standard that the Ballot Label is not false, misleading, or partial.

Martinez guides the court by explaining, "We recognize the parties would not be disagreeing over the language if they did not perceive something were at stake. But it is the ballot title's language which must be impartial, not the claimed motives of the council." (*Martinez, supra*, 142 Cal.App.4th at p. 1288.) *Citizens, supra*, 56 Cal.App.4th, at p. 1226, provides, "We agree that, by selectively mentioning two favorable impacts, the ballot language had the effect of stating a partisan position favoring proponents of the measure. The language in fact reflected the arguments in favor of the measure which immediately followed in the official ballot pamphlet, giving them added credence."

Here, the evidence sufficiently establishes that the Ballot Label is partial when viewed in its totality. First, The Ballot Label mentions the potential impact to the Bake Parkway site by referring to its use for the placement of the Southern California Veterans Cemetery. Similar to *Citizens*, the Ballot Label does not mention the impact to the ARDA Transfer Site based on the exchange. Section 6.1 of Ordinance No.

17-08 describes, in part, the impact to the Irvine Boulevard site as follows: "The Zone Change will allow for a total of 812,000 square feet of Research & Development square footage to be shifted from existing Development District 2 to the new Development District 9 (i.e., the existing ARDA Transfer Site) in Planning Area 51."

District 9 refers to ". . . the creation of a 'District Character' for the ARDA Transfer Site (to be designated as 'District 9' under Ordinance 17-08) that matches the District character applicable to the Strawberry Fields Site." (Gehrich Decl., ¶ 26.) By referring to the use of the Bake Parkway site for the placement of the Southern California Veterans Cemetery without mentioning the shift specifically referred to in Section 6.1 of Ordinance No. 17-08, the Ballot Label does not describe the impact of the exchange as to both pieces of property.

Second, the use of the words "State-approved" implies that the State of California favors the Bake Parkway site as compared to the ARDA Transfer Site as a location for the Southern California Veterans Cemetery. The court recognizes that Military and Veterans Code section 1410, subdivision (a)(1), provides, "The department, in voluntary cooperation with local government entities in the County of Orange pursuant to Section 1412, shall acquire, study, design, develop, construct, and equip a state-owned and state-operated Southern California Veterans Cemetery, which shall be located at the 125 acres known as the Bake Parkway site." The court's focus, however, is on the words contained in the Ballot Label and whether they signal the City Council's view as to how a voter should vote.

Third, the use of the phrase "commonly known as Strawberry Fields" suggests that the ARDA transfer is less desirable as a location for the Southern California Veterans Cemetery. The use of the term "Strawberry Fields" is not necessary to describe the location of the site. Although "Strawberry Fields" may be a term that is used in the discussion of Ordinance No. 17-08, it does not appear that it is a term that is popularly used outside of that context to refer to the property near the intersection of Bake Parkway and Interstate 5.

Fourth, the Ballot Label suggests that approval of Ordinance No. 17-08 will result in an exchange of the ARDA Transfer Site ("City-owned property") for the Bake Parkway site ("State-approved site"). Both sides appear to agree that, by its terms, Ordinance No. 17-08 pertains to a zone change rather than an authorization to exchange the ARDA Transfer Site for the Bake Parkway site. The zone change may be necessary to facilitate the transfer of these properties, but Ordinance No. 17-08 does not provide that authorization.

Based on the totality of the evidence discussed above, the court finds, by clear and convincing evidence, that the Ballot Label is partial. The Ballot Label fails to substantially comply with the standard that a ballot label must not be false, misleading, or partial. The failure to mention the impact to the ARDA Transfer Site and the use of "State-approved" and "Strawberry Fields" tends to convey the Irvine City Council's view as to how a voter should vote. Viewed cumulatively using the applicable the legal standard, the language in the Ballot Label signals the Irvine City Council's preference for placement of the Southern California Veterans Cemetery at the Bake Parkway site. The court is not finding or suggesting that the Irvine City Council specifically intended to submit a Ballot Label that failed to meet the above standard. The court's role is to focus on the wording of the Ballot Label and to apply the applicable law.

On March 28, 2018, Petitioner filed a "Status Report on Meet and Confer and Proposed Ballot Label Language" that proposed three options for the court to consider as ballot labels. On March 29, 2018, Respondent and Real Party in Interest filed "Submission of Alternative Ballot Labels by Defendant Molly

McLaughlin and Real Party in Interest Irvine City Council" that proposed two options for the court to consider as ballot labels.

After considering all of the options and based on the deferential standard of review as stated in *Martinez v. Superior Court (Martinez)* (2006) 142 Cal.App.4th 1245, 1248, the court finds, by clear and convincing evidence, that the "Second Alternative Ballot Label," submitted by Respondent and Real Party in Interest, substantially complies with the requirement that a ballot label is not false, misleading, or partial. Further, the court finds, by clear and convincing evidence, that the "Second Alternative Ballot Label" is ". . . a true and impartial synopsis of the purpose of the proposed measure . . ." within the meaning of Elections Code section 13119. The "Second Alternative Ballot Label" addresses the flaws discussed above that led the court to conclude that the Ballot Label was partial. For example, the "Second Alternative Ballot Label" addresses the allocation of the development near the intersection of Pusan and Irvine Boulevard, and eliminates the reference to "commonly known as Strawberry Fields." In summary, the court cannot conclude, by clear and convincing evidence, that the "Second Alternative Ballot Label" is partial.

Therefore, the court grants the Writ of Mandate, and orders Respondent and Real Party in Interest to rewrite the Ballot Label as stated in the "Second Alternative Ballot Label." Specifically, the Ballot Label should read as follows: "Shall Ordinance No. 17-08, approving zone text amendments to allow for a land exchange agreement that facilitates (a) the allocation of development previously planned for the Bake Parkway Site to property near the intersection of Pusan and Irvine Blvd, and (b) the development of State-approved site for the Southern California Veterans Cemetery on strawberry fields located near the intersection of I-5 and Bake Parkway, be adopted?"

The court orders Petitioner to prepare a Judgment that is consistent with the above. The court requires the Judgment to be prepared in a form that will adequately advise the Orange County Registrar of Voters as to how to prepare the ballot materials at issue with respect to this Writ of Mandate. Petitioner is to submit this Judgment no later than April 4, 2018 at noon (12:00 p.m.).

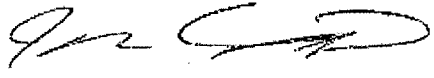
The court stresses that its ruling is not intended as a comment on the merits of the zone change implemented by Ordinance No. 17-08, the merits of placing the Southern California Veterans Cemetery at a particular site, or the impact of the zone change on the Bake Parkway site or the ARDA Transfer Site.

Court orders Clerk to give notice.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE Central Justice Center 700 W. Civic Center Drive Santa Ana, CA 92702	
SHORT TITLE: Gaido vs. McLaughlin	
CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE	CASE NUMBER: 30-2018-00972013-CU-JR-CJC

I certify that I am not a party to this cause. I certify that a true copy of the above Minute Order dated 04/02/18 has been placed for collection and mailing so as to cause it to be mailed in a sealed envelope with postage fully prepaid pursuant to standard court practice and addressed as indicated below. This certification occurred at Santa Ana, California on 4/2/18. Following standard court practice the mailing will occur at Sacramento, California on 4/3/18.

LEON J. PAGE
333 W SANTA ANA BOULEVARD SUITE 407
SANTA ANA, CA 92702


Clerk of the Court, by: , Deputy

I certify that I am not a party to this cause. I certify that the following document(s), Minute Order dated 04/02/18, have been transmitted electronically by Orange County Superior Court at Santa Ana, CA. The transmission originated from Orange County Superior Court email address on April 2, 2018, at 3:57:12 PM PDT. The electronically transmitted document(s) is in accordance with rule 2.251 of the California Rules of Court, addressed as shown above. The list of electronically served recipients are listed below:

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Clerk of the Court, by: , Deputy

CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE

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PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF ORANGE

Re: *Mary Ann Gaido v. Molly McLaughlin, et al.*,
Case Number 30-2018-00972013-CU-JR-CJC

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 10940 Wilshire Boulevard, Suite 2000, Los Angeles, California 90024.

On **April 3, 2018**, I served the foregoing documents described as **[PROPOSED] JUDGMENT** on all appropriate parties in this action, as listed on the attached Service List, by the method stated:

If Electronic Filing Service (EFS) is indicated, I electronically filed the document(s) with the Clerk of the Court by causing the documents to be sent to One Legal, the Court's Electronic Filing Services Provider for electronic filing and service. Electronic service will be effected by One Legal's case-filing system at the electronic mail addresses indicated on the attached Service List.

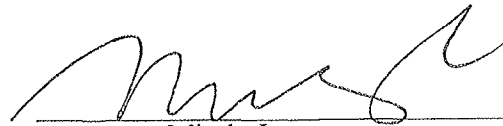
If electronic-mail service is indicated, by causing a true copy to be sent via electronic transmission from Strumwasser & Woocher LLP's computer network in Portable Document Format (PDF) this date to the email address(es) stated, to the attention of the person(s) named.

If U.S. Mail service is indicated, by placing this date for collection for mailing true copies in sealed envelopes, first-class postage prepaid, addressed to each person as indicated, pursuant to Code of Civil Procedure section 1013a(3). I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing contained in the affidavit.

If overnight service is indicated, by placing this date for collection by sending true copies in sealed envelopes, addressed to each person as indicated, pursuant to Code of Civil Procedure, section 1013(d). I am readily familiar with this firm's practice of collecting and processing correspondence. Under that practice, it would be deposited with an overnight service in Los Angeles County on that same day with an active account number shown for payment, in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on **April 3, 2018**, at Los Angeles, California.



Mindy Lu

SERVICE LIST

Mary Ann Gaido v. Molly McLaughlin, et al.,
Case Number 30-2018-00972013-CU-JR-CJC

By EFS

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Related Case

Sandlin et al. v. McLaughlin et al.
Case No. 30-2018-00975288-CU-WM-CJC

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