



SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

JULIAN CAMACHO; JAMES CATHCART; DELPHINE CATHCART; VOTERS FOR A FAIR ARENA DEAL; SACRAMENTO TAXPAYERS OPPOSED TO PORK; DENNIS NEUFELD; AND JENNIFER SOLOWAY

v.

SHIRLEY CONCOLINO, in her capacity as City Clerk of the City of Sacramento; CITY COUNCIL OF THE CITY OF SACRAMENTO; CITY OF SACRAMENTO; and DOES 1 through 10

Case Number: 34-2014-80001748

RULING ON SUBMITTED MATTER & JUDGMENT

Date: February 21, 2014

Time: 1:30 p.m.

Dept.: 29

Judge: Timothy M. Frawley

Petitioners bring this action to challenge the Sacramento City Clerk’s rejection of a proposed initiative known as the “Voter Approval for Public Funding of Professional Sports Arena Act” (the “Arena Initiative”).

The purpose of the Arena Initiative is to prohibit the City of Sacramento from using, diverting, obligating, or borrowing against the City general fund for the development of a professional sports arena without the approval of a simple majority of voters. The proponents of the measure circulated an initiative petition throughout the City, and the Sacramento County Registrar of Voters found the measure contained the minimum number of valid signatures to qualify for the ballot. The City Clerk, however, refused to certify the petition, finding numerous “technical and procedural deficiencies,” which rendered the petition noncompliant with the California Elections Code and the Sacramento City Charter.

Petitioners, who include the proponents of the measure, subsequently filed this writ petition seeking to compel the City Clerk to certify the petition, and order the City Council to either adopt the measure or place it on the ballot. While conceding that the proponents did not strictly comply with the procedural requirements of the election laws, Petitioners argue the defects should be excused under the judicially-created “substantial compliance” doctrine.

Respondents contend that the proponents made fundamental errors that (individually and collectively) frustrated the basic purposes served by the election laws. Thus, Respondents maintain, the proponents cannot meet the substantial compliance test. Moreover, even if the proponents “substantially complied” with the election laws, Respondents contend the Arena Initiative should be withheld from the ballot because it conflicts with the City Charter, and therefore is beyond the power of the voters to enact.

The court shall conclude that both of Respondents’ arguments have merit, and deny the petition.

Background Facts and Procedure

In March 2013, the City Council approved a “term sheet” for the potential development of a new Entertainment and Sports Center (arena) in downtown Sacramento. Under the term sheet, the City will contribute \$258 million toward the cost of developing a new arena.

On May 29, 2013, the proponents filed the text of the proposed Arena Initiative and a “Notice of Intent to Circulate Petition.” The Notice of Intent indicates that the proponents of the measure intend to circulate a petition within the City of Sacramento for the purpose of qualifying the Arena Initiative for a vote of the people at a special election, pursuant to California Elections Code sections 1405 and 9214. The Notice of Intent contains a short statement of reasons for the proposed measure and the names and signatures of the measure’s proponents: Julian Camacho, James Cathcart, and Delphine Cathcart.

The Sacramento City Attorney prepared an official ballot title and summary for the measure. The City Attorney entitled the measure, “INITIATIVE MEASURE TO PROHIBIT THE CITY OF SACRAMENTO FROM USING GENERAL FUND MONEY FOR THE DEVELOPMENT OF A PROFESSIONAL SPORTS ARENA,” and summarized the measure as follows:

The purpose of this initiative measure, identified as the 'Voter Approval for Public Funding of Professional Sports Arena Act,' is to prohibit the City of Sacramento from using, diverting, obligating, or borrowing against the city's general fund for the development of a professional sports arena without the approval of a majority of voters.

On June 20, 2013, the official title and summary and the Notice of Intent were published in the Sacramento Observer newspaper. About June 27, 2013, the proponents caused a Proof of Publication to be filed with the City Clerk. Although Petitioners contend the copy of the Notice of Intent provided to the Sacramento Observer was the same as that provided to the City Clerk, the *published* Notice of Intent did not include the names or signatures of the measure's proponents.

During the summer and fall of 2013, the proponents formatted, printed, and circulated petitions to obtain the signatures necessary to qualify the Arena Initiative for the ballot. On December 10, 2013, the proponents submitted over 30,000 petition signatures to the City Clerk.

On December 13, 2013, the City Clerk transmitted the petition signatures (and approximately 15,000 signature withdrawal requests) to the County Registrar, whom the City Clerk had engaged to conduct the signature verification process. On January 23, 2014, the County Registrar certified that the petition contained the legally required number of valid signatures (22,024) to qualify for the ballot. The County Registrar then presented the signature verification findings to the City Clerk.

The City Clerk refused to certify the petition, finding numerous "technical and procedural deficiencies," which rendered the petition noncompliant with the California Elections Code and the Sacramento City Charter. The identified deficiencies can be summarized as follows:

- The proponents published an incomplete Notice of Intent, which omitted the names and signatures of the proponents of the measure.
- The proponents failed to include a mandatory enacting clause in the petitions.
- The proponents included superfluous, unauthorized "preamble" language between the ballot title/summary and the text of the measure in the petitions.
- The proponents circulated several, different versions of the petition, which included three different versions of the "preamble" language and several different

versions with a defective copy of the “Notice of Intent to Circulate Petition,” including one that omitted two of the five stated reasons for the proposed petition.

The differences between the circulated versions of the petitions relate primarily to (1) the “preamble” language inserted between the ballot title/summary and the text of the measure; and (2) the included copy of the Notice of Intent.

In some versions of the petition (Versions 1, 3, 4, and 6-9), the “preamble” language states:

To the Honorable Clerk of the City of Sacramento:
We, the undersigned registered and qualified voters of the State of California, residents of the City of Sacramento hereby present to the City Council this petition proposing the following act:

In another version (Version 2), it states:

To the Honorable Clerk of the City of Sacramento:
We, the signers of this petition, registered and qualified voters and residents of the City of Sacramento, comprising not less than 10 percent of the registered voters of the city, hereby propose a measure as set forth herein and request that the proposed measure be submitted to a vote of the people at the earliest regular or special election for which this petition qualifies pursuant to the California Elections Code. The text of the proposed measure is set forth below.

In still another version (Version 5), the language is the same as in Version 2 except that it states the text of the proposed measure is set forth below “and on subsequent pages,” when, in fact, the text of the proposed measure was contained entirely on the first page.

Similarly, some versions of the petition include the language of the Notice of Intent as it was filed with the City Clerk (Versions 2, 4, and 7-9), whereas other versions do not.¹ In one version of the petition (Version 1), the first paragraph of the Notice of Intent omits the name of the initiative, and the Notice of Intent is erroneously dated “May 19th,

¹ Technically, even these Notices of Intent do not perfectly match the Notice of Intent filed with the City Clerk: Versions 2, 4, 7, 8, and 9 include a hyphen between the words “largely” and “publicly” that does not appear in the original, and Versions 2, 7, 8, and 9 also have slight differences in punctuation at the end of the third paragraph. The court has ignored these differences, and also the differences in punctuation – a comma instead of a period – at the end of Section 2 of the text of the measure in Versions 2, 3, 4, 6, 7, and 8, because these differences are trivial.

2013,” instead of May 29, 2013.² In another version (Version 5), the Notice of Intent does not include any date. Another version, Version 6, failed to include a copy of the Notice of Intent. Yet another version, Version 3, fails to include the full and complete text of paragraph 5 and entirely omits paragraph 6 of the original Notice of Intent, and includes the wrong date.³

On January 29, 2014, Petitioners filed this writ petition.

Discussion

Petitioners filed this writ petition seeking to compel the City Clerk to certify the petition, and order the City Council to either adopt the measure or place it on the ballot.

Petitioners concede that the proponents failed to follow the procedural requirements, but contend the violations are minor defects, resulting from honest mistakes, which did not undermine the integrity of the electoral process. Thus, Petitioners argue, the defects should be excused under the “substantial compliance” doctrine.

Respondents contend that Petitioners understate the gravity of the violations. Respondents argue the violations constitute fundamental defects that (individually and collectively) frustrated the basic purposes of the election laws. Thus, Respondents maintain, the proponents cannot satisfy the substantial compliance test. Moreover, whether or not there was substantial compliance, Respondents argue the proposed ordinance should be excluded from the ballot because it conflicts with the City’s Charter, rendering it substantively invalid and beyond the power of the voters to enact.

The two principal questions to be resolved by the court are:

² This version also includes the hyphenation error described in footnote 1 and misspells the word “built” in paragraph 4. Version 3 includes the hyphenation error as well.

³ The redline below shows how Version 3’s Notice of Intent differs from the original (strike-out indicates language that was deleted and bold indicates language that was added):

Economic analysis repeatedly shows that developments such as this arena ~~do not increase economic prosperity of cities. Our sister city, Stockton, just an hour drive from our Sacramento, subsidized a similar project without voter approval, that led them to bankruptcy.~~ **We acknowledge that it is a misdemeanor under state law (California Elections Code section 18650) to knowingly or willfully allow the signatures on an initiative petition to be used for any purpose other than qualification of the proposed measure for the ballot. We certify that we will not knowingly or willfully allow the signatures of this initiative to be used for any purpose other than qualification of the measure on the ballot.** ~~Since the city council did not submit this arena funding proposal to the electorate, we propose to circulate a petition to submit ‘Voter Approval for Public Funding of Professional Sports Arena Act’ to an immediate vote of the people of the City of Sacramento at a special election, pursuant to California Elections Code Sections 1405 and 9214.~~

1. Is it appropriate for this court to review the substantive validity of the proposed ordinance in this proceeding and, if so, is the proposed ordinance invalid because it conflicts with the City Charter?

2. Did the proponents “substantially comply” with the procedural requirements of the elections laws?

The court concludes that it is appropriate to review the substantive validity of the proposed ordinance because the issue was raised as an affirmative defense in Respondent’s Answer and by the Complaint in Intervention, and because a writ of mandate will not issue when it would be useless, ineffective, or of no practical benefit to the petitioner. In addition, case law establishes that pre-election review is appropriate where, as here, the challenge goes to the electorate’s power to adopt the initiative in the first instance.

The court further concludes that the proposed ordinance should be excluded from the ballot because the proposed ordinance conflicts with the City Charter, and is therefore beyond the power of the voters to adopt. Adoption of the proposed ordinance would be a futile act.

In addition, the court finds that the volume and magnitude of the proponents’ procedural errors undermined the integrity of the electoral process, thereby precluding application of the substantial compliance doctrine.

A. Illegal Charter Amendment

In reviewing the sufficiency of an initiative petition, the role of the city clerk is limited to the ministerial function of determining whether the procedural requirements have been met. (*Lin v. City of Pleasanton* (2009) 176 Cal.App.4th 408, 420.) Thus, the City Clerk reviewed the proponents’ submission without regard for what a court might determine as “substantial compliance.” (Declaration of Cathcart, Exh. G.) The role of this court is broader, and so the court must consider the doctrine of substantial compliance.

However, before discussing whether the proposed initiative “substantially complied” with the procedures required to qualify for the ballot, the court first considers a more fundamental objection to the proposed initiative: namely, that the initiative measure is substantively invalid because it seeks to compel legislative action which the electorate has no power to compel.

Although as a general rule substantive challenges to initiative measures are determined after the election, pre-election review is proper where the challenge goes to the electorate's power to adopt the initiative in the first instance. (See *Bighorn-Desert View Water Agency v. Verjil* (2006) 39 Cal.4th 205, 221; *deBottari v. City Council* (1985) 171 Cal.App.3d 1204, 1209-10; see also *American Federation of Labor v. Eu* (1984) 36 Cal.3d 687, 696 [allegations charging that a measure exceeds the initiative power are properly justiciable before the election].) As the Supreme Court stated in *American Federation of Labor v. Eu*,

The presence of an invalid measure on the ballot steals attention, time and money from the numerous valid propositions on the same ballot. It will confuse some voters and frustrate others, and an ultimate decision that the measure is invalid, coming after the voters have voted in favor of the measure, tends to denigrate the legitimate use of the initiative procedure. (*American Federation of Labor v. Eu* (1984) 36 Cal.3d 687, 697.)

An initiative measure is not a public opinion poll; it is a method of enacting legislation: "[I]f the proposed measure does not enact legislation, or if it seeks to compel legislative action which the electorate has no power to compel, it should not be on the ballot." (*Id.* at p.695; see also *Citizens for Responsible Behavior v. Superior Court* (1991) 1 Cal.App.4th 1013, 1023 [if an initiative ordinance is invalid, no purpose is served by submitting it to the voters].) The present proceeding challenges the power of the people to adopt the proposed initiative, and therefore pre-election review is proper.

The court rejects the argument that Respondents should be required to file a cross-petition. The issue before this court is whether the City Clerk properly refused to certify the petition as sufficient. A writ of mandate does not issue if it will be useless or ineffective or of no practical benefit to the petitioner. If the Arena Initiative is beyond the power of the voters to adopt, it was properly rejected from the ballot and a writ of mandate should not issue. Moreover, the City raised the issue as an affirmative defense in its Answer, alleging that the proposed initiative is "preempted" by the City Charter and beyond the power of the electorate to enact.

Turning to the merits, the court agrees with Respondents that the proposed initiative is beyond the power of the people to enact because it conflicts with the City Charter.

A city charter is the equivalent of a local constitution. "It is the supreme organic law of the city, subject only to conflicting provisions in the federal and state constitutions and to preemptive state law." (*Creighton v. City of Santa Monica* (1984) 160 Cal.App.3d 1011, 1017.) Within its scope, a charter is to a city what the state Constitution is to the state.

(*Ibid.*) A charter bears the same relationship to ordinances that the state Constitution does to statutes. While a city charter may be amended by a majority vote of the electorate, an ordinance, being an inferior law, cannot alter or limit the provisions of a city charter any more than a statute can modify or supersede a provision of the state Constitution. (*Luchhesi v. City of San Jose* (1980) 104 Cal.App.3d 323, 328; *Marculescu v. City Planning Com.* (1935) 7 Cal.App.2d 371, 373-74.) Thus, to be valid, an ordinance must harmonize with the charter. (*Citizens for Responsible Behavior, supra*, 1 Cal.App.4th at p.1034; *City & County of San Francisco v. Patterson* (1988) 202 Cal.App.3d 95, 103, 102.)

Here, the Arena Initiative is a proposed initiative ordinance. Not only is the Arena Initiative formatted as an initiative ordinance, but Petitioners concede it is an initiative ordinance.⁴ (See Opening Brief, at III.C.4; see also Cathcart Declaration, Exh. B [submitting proposed initiative under Elections Code § 9214].) The question therefore is whether the proposed Arena Initiative would alter or limit the City's authority under the Charter. The court is persuaded that it would.

The City's Charter plainly vests the City Council with control over the City's financial decision-making processes. The Charter grants the City Council sole and exclusive authority to (1) adopt proposed expenditures and appropriations; (2) create, reduce, or eliminate funds as are required to fulfill obligations of the city; (3) make appropriations of city funds; and (4) issue revenue bonds. (Sac. City Charter, art. IX, §§ 111, 114, 116, 119.)

Additionally, to the extent a particular financial power is not expressly stated in Article IX, the City Council retains that power through the "residual powers" clause of the Charter: "All powers of the city shall be vested in the city council except as otherwise provided in this Charter." (Sac. City Charter, art. III, § 20.) Thus, under the Charter, the Sacramento City Council has full authority over the City's fiscal affairs.

Because the Charter grants the City Council such fiscal authority, the electorate cannot, by ordinance, take it away. (See *Citizens for Responsible Behavior, supra*, 1 Cal.App.4th at p.1034; *Patterson, supra*, 202 Cal.App.3d at p.102; see also *Hermosa Beach Stop Oil Coalition v. City of Hermosa Beach* (2001) 86 Cal.App.4th 534, 549 [voters may not enact an ordinance that the legislative authority itself has no power to enact].)

⁴ Moreover, the Arena Initiative must be treated as a proposed ordinance because it does not comply with the procedural requirements that govern proposed charter amendments. (See Cal. Elections Code §§ 9255 [petition to amend city charter must be signed by 15% of registered voters], 9260 [required form of petition to amend charter].)

The Arena Initiative, which seeks to restrict the City from using, diverting, obligating, or borrowing against the general fund for the development of any professional sports arena, conflicts with the Charter because it alters and limits the City Council's charter-granted fiscal powers. Under the City Charter, the City Council currently has plenary power over financial affairs, including the authority to use public funds for the development or construction of a sports arena. The Arena Initiative seeks to restrict the City Council's future power to manage its financial affairs. The Arena Initiative would allow the City Council to use public funds for a sports arena, but only upon approval by the voters. Thus, the Initiative seeks to impose restrictions upon otherwise authorized powers.

In *Citizens for Responsible Behavior*, the Court considered an initiative ordinance that sought to restrict, except by voter approval, the power of the city council to enact or fund certain measures relating to sexual orientation discrimination. The Court held that the proposed initiative was an unlawful attempt to amend the city charter by ordinance. The Court reasoned that the city charter gave the city council plenary power to address issues of discrimination and take whatever actions it may find advisable to encourage fair treatment and address inequities. By prohibiting funding and requiring voter approval for future ordinances, the ordinance proposed to carve out a significant exception to the council's charter powers and illegally "tie the hands" of the city council. Thus, the Court concluded, the proposed ordinance was an illegal attempt to amend the city charter. (*Citizens for Responsible Behavior, supra*, 1 Cal.App.4th at pp.1026, 1033-36.)

The Court in *Patterson* reached a similar conclusion in respect to a proposed ballot initiative entitled "Stop the Great Land Giveaway Ordinance" that would have imposed new restrictions on the City of San Francisco's power to lease or sell real property. The Court held that the electorate lacks the authority to impose any such restrictions on the governing body of the City of San Francisco without amending the city charter. (*Patterson, supra*, 202 Cal.App.3d at pp.103-105.) Any attempt to amend the charter by the proposed initiative ordinance was patently invalid. (*Id.* at p.104; see also *Citizens for Jobs and the Economy v. County of Orange* (2002) 94 Cal.App.4th 1311 [initiative measure that placed spending and procedural restrictions upon the county board of supervisors was void and unenforceable because it impermissibly interfered with the county's fiscal management powers].)

Because the City Charter expressly reserves the power of initiative for the people, Petitioners argue that the City's financial decision-making processes are subject to initiative. However, this same argument was raised, and rejected, in *Patterson*. (*Patterson, supra*, 202 Cal.App.3d at p.104.)

Petitioners also argue that initiative ordinances restricting future acts have been upheld by courts when the restrictions are sharply limited in scope. (Petitioners' Post-Hearing Brief, p.5.) However, in both of the cases relied upon by Petitioners, the initiative ordinance at issue was found to be within the scope of the power of the legislative body. (See *Citizens for Responsible Behavior*, *supra*, 1 Cal.App.4th at p.1035.) This court is not aware of any case holding that the electorate may enact a legislative measure that is in conflict with a city charter provided the restrictions are "limited in scope."

Further, even if such a rule existed, the court does not agree with Petitioners that the Arena Initiative is "sharply limited in scope." The Initiative does not seek to impose specific restrictions on the approval or funding of a particular arena proposal. Rather, it seeks to broadly restrict the City Council from using, diverting, obligating, or borrowing against the general fund for the development and/or construction of any professional sports arena.

The court likewise finds no merit in Petitioners' argument that the City should be estopped from challenging the measure on substantive grounds. Petitioners have failed to show that the City Attorney and City Clerk had any duty to opine on the substantive validity of the proposed initiative ordinance during the qualification process, or that Petitioners could (and did) reasonably rely on their failure to do so.

Only a duly-qualified charter amendment may limit or reduce the City Council's existing authority to manage the City's finances. The Arena Initiative, which is not a duly-qualified charter amendment, restricts the City Council's existing authority to manage the City's financial affairs. Thus, there has been a compelling showing that the proposed Arena Initiative is an unlawful initiative, which the electors do not have the power to enact.

Since there is no value in putting before the voters a measure which they have no power to enact, the proposed initiative is properly excluded from the ballot.

B. The Doctrine of Substantial Compliance

Even if the proposed Arena Initiative were not substantively invalid, the court would uphold its exclusion because the proponents failed to substantially comply with the procedures required to qualify the measure for the ballot.

The doctrine of substantial compliance is a judicially created rule to avoid the harsh result of forfeiture/default when a party attempts to comply with the law, and

“substantially complies” with the essential requirements of the law, but does not fully comply with all of the technicalities of the law. Courts have applied the doctrine of substantial compliance to determine whether a departure from election laws should invalidate circulated petitions.

In determining whether a petition is valid despite a defect, reviewing courts must bear in mind the duty of courts to jealously guard the people’s right of initiative and referendum. (*Costa v. Superior Court* (2006) 37 Cal.4th 986, 1013.) Courts must avoid unreasonably literal or inflexible applications of statutory requirements that fail to take into account the purpose underlying the particular requirement at issue.

At the same time, case law emphasizes the importance of ensuring the integrity of the electoral process and of interpreting and applying the applicable constitutional and statutory requirements in a manner that closely safeguards the integrity of the process. (*Ibid.*) When a departure from a statutory requirement has been found to pose a realistic threat to the integrity of the electoral process or the purposes underlying the relevant statutory requirements, courts have not been tolerant of departures from procedural requirements. (*Id.* at pp.1012-13.)

The paramount concern in determining whether a petition is valid despite an alleged defect of form is whether the purpose of the requirement is frustrated by the defective form of the petition. (*Costa, supra*, 37 Cal.4th at p.1017.) California decisions hold that technical defects may be excused if the petitions are in “substantial compliance” with the requirements, but that actual compliance is required in matters essential to the objective or purpose of the statute. (See *Ibarra v. City of Carson* (1989) 214 Cal.App.3d 90, 99.) Thus, whether a failure to comply with a statutory requirement is excusable depends on the nature and purpose of the statutory requirement. (*Ibid.*)

Past California decisions have been most concerned with departures that affect the integrity of the process by misleading, or withholding information from, voters. (See *ibid*; *Costa, supra*, 37 Cal.4th at p.1016.) Where the purpose of the statutory requirement is to assist voters in deciding whether to support or oppose the measure, or protect voters from confusing or misleading information, rigorous compliance with the requirement may be required. (*Ibarra, supra*, 214 Cal.App.3d at p.99; see also *Defend Bayview Hunters Point Com. v. City and County of San Francisco* (2008) 167 Cal.App.4th 846, 853-58; *Hebard v. Bybee* (1998) 65 Cal.App.4th 1331, 1338-1344; *Mervyn’s v. Reyes* (1998) 69 Cal.App.4th 93, 101-05.)

The proponents in this case failed to substantially comply with the essential requirements of the election laws in at least two ways: by failing to include the

mandatory enactment clause in the petition, and by failing to include the names of the measure's proponents in the published Notice of Intent.

The Sacramento City Charter and the Elections Code require an enactment clause. (Cal. Elections Code § 9224; Sacramento City Charter § 32.) Petitioners admit that the circulated petitions failed to comply with this requirement. Nevertheless Petitioners contend they should be deemed to have "substantially complied" with the requirement, either because the requirement serves no essential purpose, or because other portions of the petition served the purpose.

The court does not agree that the enactment clause served no essential purpose. The purpose of requiring an enactment clause is to inform the electorate of the scope and legal effect of the measure. In this case, the enactment clause indicates that the proposed initiative measure is an ordinance to be submitted to the voters of a city.

Both ordinances and charter amendments may be proposed by petition, however, the Elections Code specifies different language that must be included for each so that signers will know what they are signing. (Cf. Cal. Elections Code § 9224 [enacting clause for ordinance] and § 9260 [enacting clause for charter amendment].) By failing to include an enactment clause, the proponents deprived the electorate of this essential information.

Petitioners argue that it is clear from other language in the petitions that the proposed measure will be enacted by a vote of the people. Petitioners specifically rely on (i) the petition heading; (ii) the "preamble" language inserted between the ballot title/summary and the text of the measure; and (iii) the Notice of Intent.

However, in the majority of the petitions, the preamble language indicated that the measure would be "present[ed] to the City Council." Faced with that internal contradiction, voters were likely to be confused as to whether the measure was a petition to be submitted "directly to the voters," as the heading and Notice of Intent suggests, or a petition "to the City Council," as the "preamble" language suggests. Thus, even if the court could overlook the complete absence of an enactment clause, most versions of the petition (Versions 1, 3, 4, and 6-9) did not substantially comply with the statutory requirement.⁵

The proponents also failed to substantially comply with the statutory requirement to include the names of the proponents in the published Notice of Intent. Petitioners admit that the published Notice of Intent failed to include the names of the proponents, which

⁵ Further, none of the versions made clear that the measure was a proposed ordinance.

violated the requirements of Elections Code section 9205.⁶ Nevertheless, Petitioners argue that the proponents substantially complied with the publication requirement. The court does not agree.

A central purpose of the statutory publication requirement is to inform the public about the identity of the official proponents prior to circulation of the petition. California voters have a legitimate and substantial interest in knowing the identity of the official proponents of a ballot initiative. (*Chula Vista Citizens For Jobs and Fair Competition v. Norris* (S.D. Cal. 2012) 875 F.Supp.2d 1128, 1144, 1149; *Myers v. Patterson* (1987) 196 Cal.App.3d 130, 138-39.) By requiring the proponent to publish the names of the proponents before circulation, section 9205 is directly related to that informational interest. By omitting the names from the published Notice of Intent, the proponents defeated this core purpose of the publication requirement. (See *Chula Vista, supra*, 875 F.Supp.2d at p.1149 [concluding that omission of proponents' names from circulated petitions would not be in substantial compliance with § 9207, even if the proponents already disclosed their names by publication of the Notice of Intent].)

Petitioners argue that the failure to publish the proponents' names should be excused because the names were included in the circulated petitions.⁷ However, the requirement to publish the names of the proponents is separate from the requirement to include the names in the petition itself, and courts have recognized that the publication requirement serves a different and unique informational purpose. (See *Ibarra, supra*, 214 Cal.App.3d at pp.94-95, 99-100; *Chula Vista, supra*, 875 F.Supp.2d at pp.1139, 1144-45; see also *Myers, supra*, 196 Cal.App.3d at pp.138-39; see also 83 Ops. Cal. Atty. Gen. 139 (2000).)

Adopting Petitioners' construction essentially would negate the publication requirement completely: so long as a proponent included a copy of the Notice of Intent with the petition, the proponent could be excused for failing to publish the Notice of Intent prior to circulation. Such construction is not reasonable or consistent with the case law. (See *Ibarra, supra*, 214 Cal.App.3d at p.99).

In addition, Petitioners' construction conflates the purpose of Elections Code sections 9202 and 9207 [governing filing and circulation of a notice of intent] with the purpose of the publication requirement of Elections Code section 9205. The purpose of the

⁶ Petitioners' argument that the names were not required to be included on the published Notice of Intent is contradicted by the statutory language and case law. (See Cal. Elections Code § 9202; *Chula Vista, supra*, 875 F.Supp.2d at pp.1139, 1144-45.) (While lower federal court decisions are not binding, they are citable as persuasive authority.)

⁷ The court notes that Version 1 of the petition misspelled Mr. Camacho's first name.

publication requirement is to publish (and disclose) information in the notice of intent, including the names of the proponents, prior to circulation of the petition.

In this case, the proponents completely failed to publish the names of the proponents prior to circulation of the petition. Thus, the proponents failed to substantially comply with the statutory publication requirement.

In reaching its decision, the court also has taken into account the sheer number of violations committed by the proponents. The court is not aware of any case where the petition process, from beginning to end, was so infected with errors. The law should not demand perfection, but neither should it condone carelessness or indifference. The integrity of the electoral process demands that proponents make a serious and determined effort to understand and comply with the election requirements. The court simply is not persuaded that occurred here. The evidence before the court suggests that the proponents were, at best, careless regarding the requirements of the election laws. As Respondents argue, allowing the measure to move forward when the petition process was so infected with errors and omissions undermines the integrity of the election process.

Disposition

The petition is denied.

This order shall be effective immediately. No formal order pursuant to CRC Rule 3.1312 or further notice shall be required.

Date: Feb 26, 2014



Timothy M. Frawley
Timothy M. Frawley
Judge of the Superior Court of California
County of Sacramento