

Superior Court of California, Contra Costa County

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Court Executive Officer

MINUTE ORDER	
COALITION FOR RICHMOND'S FUTURE VS. PAMELA CHRISTIAN	N24-1181
HEARING DATE: 08/12/2024	
PROCEEDINGS: HEARING IN RE: WRIT OF MANDATE PER COURT ORDER 07/17/24	
DEPARTMENT 09 JUDICIAL OFFICER: JOHN P DEVINE	CLERK: ANNIE YOUNG COURT REPORTER: ; NOT REPORTED
<u>JOURNAL ENTRIES:</u>	
No appearance.	
Oral argument is requested on the following tentative ruling that issued on August 9, 2024:	
Introduction	
Before the Court is Petitioners Coalition for Richmond’s Future & Daniela Dickey’s (“Petitioners”) Petition for Writ of Mandate (“Writ”) to remove the following language in the Ballot Label: “such as clean air and water treatment, roads, parks, fire and emergency response, toxic land cleanup, and improving community health and youth services.”	
For the following reasons, <u>Petitioners’ Writ of Mandate is granted. Petitioners’ request following language in the Balot Label: “such as clean air and water treatment, roads, parks, fire and emergency response, toxic land cleanup, and improving community health and youth services” is also granted.</u>	
Factual Background	
This case challenges the wording of a Ballot Label, which is the specific language that each voter will see on their ballots when they cast their votes, for a measure proposing a tax in the City of Richmond on November 5, 2024. The California Elections Code prohibits a municipality from adopting a false, misleading, or biased ballot label. (Elec. Code § 9295.)	
The City Council adopted Resolution No. 63-24 at its meeting on June 18, 2024. (Pet. RJN, Ex. 1, p. 5.) Resolution No. 63-24 submits a proposed tax measure to the voters of the City of Richmond and contains the Ballot Label for the measure that will appear on the General Election ballot on November 5, 2024. The Resolution unequivocally specifies that the measure would enact a general tax, making it subject to the less exacting simple majority vote threshold of Cal. Const. art. XIII C, § 2(b). (See Pet. RJN, Ex. 1, p. 8 (Ord. § 13.58.020 [Purpose].))	
Resolution No. 63-24 was adopted after a memorandum received by the City Council, dated May 16, 2024, from counsel for Communities for a Better Environment (“CBE”) and Asian Pacific Environmental Network (“APEN”), which “proposed to the City Council that it place before the voters a general tax on the privilege of conducting the business of refining in the City of Richmond.” (See Pet. RJN, Ex. 2.)	
Unusually, it was a representative of the proponent group CBE, not a public official, that summarized the merits of the proposed measure to the City Council and encouraged adoption of Resolution No. 63-24 at the Council’s public meeting, even proposing the specific text of the Ballot Label that the Council adopted. (See Pet. RJN, Ex. 3, p. 11; see also Pet. RJN Ex. 7 [Council Agenda Report acknowledges that City Attorney “prepared the necessary documents in coordination with CBE and APEN per [] direction from City Council”].)	

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A ballot measure committee called "Polluters Pay Sponsored by Asian Pacific Environmental Network Action and Service Employees International Union Local 1021" (i.e., a campaign committee sponsored in part by the same organization that initially proposed the tax) is already running a political ad campaign in support of the measure called "Richmond Polluters Pay." (Pet. RJN, Ex. 4.) The campaign's landing page asserts, in nearly exact language found in the Ballot Label, that the measure will fund "critical services Richmond residents need now, like clean air and water treatment, funding our parks, repairing our streets, improving public health access and youth services." (Opening Brief at p.9: 8-18.)

The Ballot Label at issue reads:

To fund general City services, such as clean air and water treatment, roads, parks, fire and emergency response, toxic land cleanup, and improving community health and youth services, and for general government use, shall the measure establishing a business license tax on the privilege of conducting oil refining in the City of Richmond at the rate of \$1.00 per barrel of feedstock refined in the City of Richmond, providing approximately \$60 million to \$90 million annually for 50 years, be adopted? (See Pet. RJN, Ex. 1, p. 3.)

Petitioners' RJN

Petitioner moves for seven exhibits to be judicially noticed. Exhibits 1-3, and 5-7 are all Richmond city records or are part of the Richmond City Council Agenda for its June 18, 2024, meeting. Judicial notice may be taken of the official acts of government entities under Evidence Code § 452(c) ("Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States."). This basis for judicial notice extends to municipal and county records. (*Cooke v. Superior Court* (1989) 213 Cal.App.3d 401, 416 [taking judicial notice of county resolution and "records of a county"]; *Cedar Fair, L.P. v. City of Santa Clara* (2011) 194 Cal.App.4th 1150, 1156-1158 [judicial notice taken of City Council resolutions, meeting agendas, and minutes].)

Exhibit 4 consists of campaign statements published by the primarily formed ballot measure committee that is advocating in support of the enactment of the proposed measure placed on the ballot by the City Council of the City of Richmond. A court may also take judicial notice of "[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy" under Evidence Code § 452(h). Courts recognize that websites of local government agencies are judicially cognizable under the Evidence Code. (*Howard Jarvis Taxpayers Ass'n v. Bay Area Toll Auth.* (2020) 51 Cal.App.5th 435, 443 fn. 3.) The Court notes that Petitioners' RJN is not opposed. Since all requested exhibits are supported by proper authority, judicial notice is granted for all exhibits.

Legal Standard of Review

The movant must demonstrate by "clear and convincing proof that the material in question is false, misleading, or inconsistent with the requirements of this chapter" to invoke the court's authority to order edits. (Elec. Code, § 9295; *Becerra v. Superior Court* (2017) 19 Cal.App.5th 967, 975.)

Substantial compliance suffices here. (E.g., *Horneff v. City and County of San Francisco* (2003) 110 Cal.App.4th 814, 820, citations omitted.) If a label complies with the "chief purpose and points" of statute, it suffices. (*Yes on 25, Citizens for an On-Time Budget v. Superior Court* (2010) 189 Cal.App.4th 1445, 1452.) Further, if reasonable minds can differ as to a ballot label's sufficiency, "it should be held sufficient." (*Ibid.*) Only in a "clear case" should a court find a ballot label insufficient. (*Epperson v. Jordan* (1938) 12 Cal.2d 61, 66; *Brennan v. Board of Supervisors* (1981) 125 Cal.App.3d 87, 92, *Horneff, supra*, 110 Cal.App.4th at p. 820.)

Applicable Law

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A ballot label for a tax must “state the nature” of the proposal. (Elec. Code, § 13119; cf. Elec. Code, § 13247, subd. (d) [rule for ballot labels generally].) The entire text of the ordinance must be printed in the voter pamphlet or made available to voters on request so voters may have access to the entire text and need not rely solely on the ballot label, which is limited to 75 words. (Elec. Code, § 9223.) A tax ballot label “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.” (Elec. Code § 13119, subd. (c), cf. § 9295 [rule for non-tax measures].) A ballot label need not be the most accurate, most comprehensive, most complete, or fairest statement “that a skilled wordsmith might imagine.” (*Martinez v. Superior Court* (2006) 142 Cal.App.4th 1245, 1248; *Monette–Shaw v. San Francisco Bd. of Supervisors* (2006) 139 Cal.App.4th 1210, 1218, fn. 5; *Horneff v. City and County of San Francisco* (2003) 110 Cal.App.4th 814, 820–821.) A ballot label should not leave a voter “as much in the dark regarding the real purpose of the proposed measure after reading the short [ballot] title as he was before he had read it.” (*Boyd v. Jordan* (1934) 1 Cal.2d 468, 472.)

The title must only contain words that are neither false, misleading, nor partial. When a ballot label meets that standard, courts are not free to substitute their judgment for the city council’s. (*Martinez, supra*, 142 Cal.App.4th at p. 1248.) Courts must give substantial deference to those who drafted the ballot label. (*Yes on 25, supra*, 189 Cal.App.4th at pp. 1452–1453.) As *Yes on 25* stated, the drafter is afforded “considerable latitude” in composing a ballot title. (*Ibid.*) Such deference recognizes that drafting a 75-word-or-shorter ballot question “can be a difficult task where multiple reasonable interpretations of [a measure] and the complex underlying legislation are possible.” (*Zarembeg v. Superior Court* (2004) 115 Cal.App.4th 111, 117.)

Analysis

The Court separately analyzes whether the subject ballot label is false, misleading or impermissibly biased.

The Ballot Label Does Not Falsely State the Tax Will Fund Specific Projects

Petitioner contends that the ballot label fails to reflect a true and accurate statement of the type of tax being proposed. (Opening Brief at p. 12: 13-14.) The actual text of the ballot label suggests that the tax is a general tax, as it opens with, “to fund general city services” and mentions that the “tax is for general government use.” (See RJN, Ex. 1, p. 3.) The Court does not find that the ballot label falsely states anything about the proposed tax since the ballot label does generally indicate the subject tax as general in nature. (See RJN, Ex. 1, p. 3.)

The Ballot Label is Misleading About the Use of the Proposed Tax

In determining whether statements are false or misleading, courts look to whether the challenged statement is subject to verifiability, as distinct from “typical hyperbole and opinionated comments common to political debate.” (See *San Francisco Forty-Niners v. Nishioka* (1999) 75 Cal.App.4th 637, 649.) The *Huntington Beach* Court found that some statements may be literally true, but *in context* it is misleading in light of objective facts. (*Huntington Beach City Council v. Superior Court* (2002) 94 Cal.App.4th 1417, 1432.)

Petitioner argues that the ballot label is fundamentally misleading because it implies that proceeds of the proposed tax will finance specific purposes when, in fact, they will be deposited in the general fund to be used for any governmental purpose selected at the full discretion of the current City Council and any future City Council. (Opening Brief at p. 12: 13-14.)

Respondent argues that the ballot label does not mislead the voters since the label states the “tax proceeds are for general government use,” “to fund general city services,” and the list is introduced with the language, “such as” indicates a non-exclusive list of examples of how the funding can be used but

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not promises. (Oppo Brief at p. 11: 12-21.)

It is important not only to analyze the language of the ballot label but also the context behind the ballot label. It is uncontroverted that the proposed tax is a general tax. (RJN, Ex. 1, Section 10.) It is uncontroverted that employee wages and benefits take up around 70 to 80 percent of the City's general fund. (Opening Brief at p. 6: 20-22; Oppo Brief at p. 11: 22-24.) The ordinance attached to the resolution for the measure states that the Tax Collector need not trace the funds beyond the allocation to the general fund. (RJN, Ex. 1, Ex A, p. 13, § 13.58.20, Annual Aduit; Deposit in City's General Fund.) Therefore, it would be objectively verifiable that the ballot label is misleading because the label lists examples, which does not include employee wages and benefits, of services to be provided by a general tax held in a general fund where there is a lack of accountability on the part of the City to provide any listed examples in the ballot label since there is not requirement to trace funds after the tax is allocated to the general fund. This creates a situation where a ballot label used to decide a vote on a proposed general tax, contains a list of services, without the line item that makes up at least 70% of the general tax allocation, to provide as examples of what the tax money would fund which City or any of its employees have no duty or responsibility to be held accountable for the services listed in the ballot label. The Court finds there is clear and convincing evidence that the ballot label is misleading. Respondent unconvincingly analogizes this case to *Owens*. (Oppo Brief at p. 11: 12-17.) Specifically, Respondent relies on footnote thirteen. Considering Petitioner's argument that the subject tax was a special tax and not a general tax, the *Owens* Court noted that the ballot summary indicated that the tax was a general tax as it states the tax would fund, "essential services, including sheriff's deputies, parks, libraries, street repairs, and other general fund services." (*Owens v. County of Los Angeles* (2013) 220 Cal.App.4th 107, 131, fn. 13.) However, this was a general comment made by the Court that was examining whether the subject measure violated Proposition 218 which generally prohibits local governments from imposing taxes without voter approval. Thus, the analysis in *Owens* is inapposite to the current facts because *Owens* was about a post-election evaluation of the measure and ballot materials which have a significantly higher standard of profoundly misleading the electorate rather than the demonstration by clear and convincing proof that the material in question is false, misleading, or inconsistent with the requirements of this chapter standard that applies to this case. (See Elec. Code § 9295.)

The Ballot Label is Impermissibly Partisan

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. (Elec. Code § 13119(c).)

Ballots, on the other hand, are hemmed in by the constitutional guarantees of equal protection and freedom of speech. (See *Citizens for Responsible Government v. City of Albany* (1997) 56 Cal. App. 4th 1199, 1228-1229; see also *Stanson v. Mott* (1976) 17 Cal. 3d 206, 219 ["the First Amendment precludes the government from making public facilities available to only favored political viewpoints"].) The ballot title and summary must be true, impartial, and not argumentative or likely to create prejudice for or against a proposed measure. (Elec. Code, § 9051, subd. (c); *Lungren, supra*, 48 Cal.App.4th at p. 440.) "The main purpose of these requirements is to avoid misleading the public with inaccurate information." (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 243.)

These guarantees mean, in practical effect, that the wording on a ballot or the structure of the ballot cannot favor a particular partisan position. (See *Citizens for Responsible Government v. City of Albany, supra*, 56 Cal. App. 4th at p. 1228.) We understand 'partial' to mean [that] 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 [issue]

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while disparaging the opposing view." (*Martinez v. Superior Court* (2006) 142 Cal.App.4th 1245, 1248; see also § 9051, requiring ballot title in statewide measure to be "true and impartial.")

Stanson v. Mott (1976) 17 Cal. 3d 206, concerned the use of public funds in election campaigns, the court observed, "A fundamental precept of this nation's democratic electoral process is that the government may not 'take sides' in election contests or bestow an unfair advantage on one of several competing factions. A principal danger feared by our country's founders lay in the possibility that the holders of governmental authority would use official power improperly to perpetuate themselves, or their allies, in office (see, e.g., Madison, *The Federalist Papers*, Nos. 52, 53; 10 Richardson, *Messages and Papers of the Presidents* (1899) pp. 98-99 (President Jefferson)); the selective use of public funds in election campaigns, of course, raises the specter of just such an improper distortion of the democratic electoral process." (*Id.* at p. 217; see also *Citizens for Responsible Gov't v. City of Albany* (1997) 56 Cal.App.4th 1199, 1227.)

Petitioner contends the subject ballot label, with its list of specific programs and services that voters may favor (and that are being promoted as a reason to enact the tax by its proponents) impermissibly takes a side heavily in favor of a "Yes" vote. (Opening Brief at p. 14: 24-26.) Petitioner points to the quirky fact that a proponent of the measure, CBE, not a public official, proposed the specific text of the ballot label that the Council adopted. (See Pet. RJN, Ex. 3, p. 11; see also Pet. RJN Ex. 7 [Council Agenda Report acknowledges that City Attorney "prepared the necessary documents in coordination with CBE and APEN per [] direction from City Council"].) In this instance, we have a ballot label that was not only drafted by proponents of the measure but whose ballot label also echoes the same messages as advertisement campaigns in support of the measure. (See RJN Ex. 2-4.)

Respondent contends that *Citizens* is distinguishable because it involved a proposal to amend zoning requirements, not a measure for a new tax, and that the procedural posture in *Citizens* was an order sustaining Demurrer, not a final ruling on a contested ballot question. (Oppo Brief at pp. 12-13.)

However, the Court looks to *Citizens* for guidance regarding the analysis of how the first appellate district interpreted certain language as partisan positions on a ballot measure. (*Citizens* at p. 1226.) *Citizens* found that by selectively mentioning two favorable impacts without mentioning possible adverse 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. (*Citizens for Responsible Gov't v. City of Albany* (1997) 56 Cal.App.4th 1199, 1226.) By describing the measure as a means to "provide for an Albany Bay Trail, and allow Albany waterfront access," the ballot language favored the perspective of the proponents of the measure. (*Citizens for Responsible Gov't v. City of Albany* (1997) 56 Cal.App.4th 1199, 1227.)

Citizens held "based rather on the inclusion of language, overtly favoring a partisan position, which implicated interests protected by the constitutional guarantee of equal protection and freedom of expression. The use of the ballot form to favor a particular side in the election directly conflicts with the legislative intent to submit the measure to the voters in a concise and neutral manner. In the present case, the use of partisan language was a sufficiently egregious deviation from the prescribed form to fall outside the limits of substantial compliance. (*Citizens for Responsible Gov't v. City of Albany* (1997) 56 Cal.App.4th 1199, 1228.)

Similarly here, it is uncontroverted that the proponent group CBE, not a public official, drafted the specific text of the ballot label and the ballot label in turn, but not surprisingly, echoed the same stances that proponents to the measure were advertising. The use of such partisan language impermissibly falls outside the limits of substantial compliance of Election Code §§ 9295, and 9280.

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Conclusion

The Elections Code explicitly authorizes issuance of a writ of mandate to correct errors, omissions, and illegalities that would undermine the ability of voters to be informed and to protect their fundamental rights. (See Elec. Code § 13314.) Section 13314 sweeps broadly, requiring that a court issue a peremptory writ upon proof that an “error, omission or neglect of duty” is about to occur in the printing of a ballot or other official matter in violation of the Code or Constitution. This Court has the equitable power to amend the Ballot Label to bring it into compliance with state law and the California Constitution. (Elec. Code § 13314; see also McDonough, supra, 204 Cal.App.4th at 1176-77 [issuing writ of mandate ordering biased ballot label to be altered].)

For the reasons provided above, Petitioners’ Writ of Mandate is granted. Petitioners’ request following language in the Balot Label: “such as clean air and water treatment, roads, parks, fire and emergency response, toxic land cleanup, and improving community health and youth services” is also granted.

Petitioners are ordered to submit a proposed order approved by Respondents as to form.

FUTURE HEARING(S):

AUGUST 14, 2024 9:00 AM HEARING IN RE: ORAL ARGUMENT RE: WRIT OF MANDATE PER COURT ORDER 07/17/24

DEPARTMENT 09

DATED: 8/12/2024

BY: _____

A. YOUNG, DEPUTY CLERK