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ORIGINAL FILED
APR 25 2002
LOS ANGELES
SUPERIOR COURT

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF LOS ANGELES

11 NORM RYAN,
12 Plaintiff,
13 vs.
14 SHELBA POWELL, individually and in her
15 official capacity as City Clerk for the City of
16 Long Beach, CITY OF LONG BEACH, and
17 Does 1 through 10 inclusive,
18 Defendants.
19 DAN BAKER and BEVERLY O'NEILL,
20 Real Parties in
21 Interest.

CASE NO. BC272211
Judge DZINTRA JANAVS
~~PROPOSED~~ ORDER DENYING
PRELIMINARY INJUNCTION
Date: April 25, 2002
Time: 10:00 a.m.
Dept: 85

22
23 ORDER

24 The motion of Plaintiff Norm Ryan (Ryan) for injunctive relief came on for hearing at the
25 above time and place. Appearing for Plaintiff Norm Ryan, Manuel Klausner and Patrick J.
26 Manshardt; appearing for defendants Shelba Powell and City of Long Beach, Dan Murphy;
27 appearing for Real Party in Interest Dan Baker, Laurence S. Zakson; appearing for Real Party in
28

1 Interest Beverly O'Neill, Frederic Woocher.

2 A request by Real Party in Interest/Cross-Complainant Beverly O'Neill (O'Neill) was also
3 included in her responsive papers and this application was heard on the above date and at the time
4 as well.

5 After reviewing the papers filed by the parties and the argument of counsel, the Court finds
6 that Plaintiff's request for injunctive relief is unwarranted. The Court finds that O'Neill's request for
7 relief is ~~both~~ ^{not} procedurally defective, and ~~lacking in merit.~~ ^{vs}

8 In so concluding the Court finds as follows:

9 1. On April 9, 2002, the City of Long Beach (City) conducted a municipal primary
10 ^{NOMINATING} selection for, among other things, the office of Mayor. Among the candidates in that race were
11 plaintiff Norm Ryan, Real Party in Interest Dan Baker, the City's Vice-Mayor, and Real Party in
12 Interest/Cross-Complainant Beverly O'Neill, the City's Mayor. O'Neill finished in first place and
13 Baker finished in second place; Ryan finished in third place.

14 2. Prior to the election, Ryan and his campaign committee both filed suit against the
15 City, challenging Baker's ballot designation on the primary ballot, and sought both a temporary
16 restraining order (TRO) and a preliminary injunction precluding Baker from using the ballot
17 designation "Long Beach Councilmember/Vice-Mayor." Both the request for the TRO and for a
18 preliminary injunction were denied, and a writ seeking to overturn the decision denying the
19 preliminary injunction was also denied in a memorandum decision.

20 3. In the primary election, O'Neill ran as a write-in candidate.

21 4. Because no candidate received a majority of the votes cast, there will be a run-off
22 election on June 4, 2002. Charter Sections 1905 & 1906.

23 5. The Long Beach City Charter precludes O'Neill as a person previously twice elected
24 to the mayor's office after the November 3, 1992 trigger date set forth therein from having her name
25 listed on the ballot.

26 6. Ryan's contention that his name belongs on the ballot to fill a vacancy created by the
27 ineligibility of O'Neill's name to appear on the ballot lacks a legal foundation. A vacancy has not
28 been created, as O'Neill is still an eligible nominee for the office of mayor.

1 7. The Charter's preclusion of both Ryan's and O'Neill's names from being listed on the
2 general election ballot is a valid exercise of the City's authority under Article 11, Section 5 of the
3 California Constitution.


4 8. Ryan's challenge to Baker's ballot designation is barred by Elections Code Section
5 13107(e) and/or Long Beach Municipal Code Section 1.21.040. Further, for the reasons set forth in
6 the orders of Judge Yaffe in Los Angeles Superior Court Case No. BC 256928, and the Court of
7 Appeal in California Court of Appeal Case No. B156493 Ryan has also failed to show that there is
8 any basis for enjoining Baker's ballot designation of "Long Beach Councilmember/Vice-Mayor"
9 from being listed on the ballot.

10 This Court having found that plaintiff and Real Party in Interest/Cross-Complainant O'Neill
11 are unlikely to succeed on the merits and have failed to prove that a balance of the harm and
12 equities involved weigh in their favor, IT IS HEREBY ORDERED THAT:

- 14 1. Ryan's request for a preliminary injunction is DENIED.
- 15 2. O'Neill's request for preliminary injunctive relief is DENIED.

18 DATED: 4-25-02

DZINTRA I. JANAVS
Superior Court Judge

19 Submitted by:
20 LAURENCE S. ZAKSON and
21 AMARYLLIS SEABROOKS, Members of
22 REICH, ADELL, CROST & CVITAN,
A Professional Law Corporation
23 
24 Laurence S. Zakson