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LOS ANGELES  
SUPERIOR COURT

Attorneys for Real Party in Interest  
BEVERLY O'NEILL

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 FOR THE COUNTY OF LOS ANGELES

11 NORM RYAN,

12 Plaintiff,

13 v.

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  
20 DAN BAKER and BEVERLY O'NEILL,

21 Real Parties in Interest.  
22

CASE NO. BC 272211

REAL PARTY BEVERLY O'NEILL'S  
RESPONSE TO ORDER TO SHOW CAUSE  
RE PRELIMINARY INJUNCTION

Date: April 25, 2002  
Time: 10 a.m.  
Dept.: 85 (Hon. Dzintra Janavs)

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REAL PARTY BEVERLY O'NEILL'S RESPONSE TO ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION

## INTRODUCTION

This case requires the Court to decide which of three alternative interpretations of the Long Beach City Charter best comports with the statutory language and legislative intent underlying the Charter's conflicting provisions governing the printing of candidates' names for the upcoming June 4, 2002, run-off election for Mayor:

- Real Party in Interest Beverly O'Neill, who *finished first* in the April primary nominating election as a write-in candidate, contends that her name must be printed on the run-off election ballot along with the name of the *second* leading vote-getter in the April primary, Real Party Dan Baker.
- Plaintiff Norm Ryan agrees that two candidates' names must appear on the June run-off election ballot, but he contends that *his name* — as the candidate who *finished third* in the primary election — should appear on the ballot along with the name of Councilman Baker, and that Beverly O'Neill cannot participate in the run-off election except as a write-in candidate.
- Real Party in Interest Dan Baker and the City Attorney take the position that *only one name* — that of Dan Baker — should be printed on the run-off election ballot, and that neither Beverly O'Neill nor Norm Ryan are entitled to have their names appear on the June ballot together with Councilman Baker's.

The dispute in this case arises because there are two conflicting sets of provisions in the Long Beach City Charter that arguably address the present circumstances. On the one hand, section 1905, which has been an integral part of the City Charter since it was first adopted back in 1921, declares that “[i]n the event that no candidate for nomination to an elective office receives a majority of the votes cast for all candidates for nomination to such office at any primary nominating election, *the two candidates receiving the highest number of votes* for any given office at the primary nominating election *shall be the candidates* and the only candidates for such office *whose names shall be printed upon the ballots* to be used at the general municipal election.” (Emphasis added.)<sup>1</sup> Under the mandate of this section, the names of Beverly

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<sup>1</sup>Virtually identical language, pertaining specifically to elections for the office of Mayor, is also contained in City Charter section 202, subdivision (b).

1 O'Neill and Dan Baker must be printed on the June general election ballot, because they were the two  
2 candidates receiving the highest number of votes for Mayor in the April primary nominating election.

3 On the other hand, section 214, subdivision (a), which was added to the City Charter as part of a  
4 citizen-drafted term limits initiative in 1992, states that "*the City Clerk . . . shall not accept or verify the*  
5 *signatures on any nomination paper for any person, nor shall he or she certify or place on the list of*  
6 *certified candidates, nor print or cause to be printed on any ballot, ballot pamphlet, sample ballot or*  
7 *ballot label, the name of any person who . . . is elected to two full terms as Mayor after November 3, 1992*  
8 *and thereafter seeks to become a candidate for Mayor . . .*" (Emphasis added.) Subdivision (b) of City  
9 Charter section 214 further explains that this section should not be construed as "prohibiting any person  
10 from standing or campaigning for any elective office by means of a write-in campaign." The City and  
11 Plaintiff Ryan contend that this provision bars the name of Mayor O'Neill — who has previously been  
12 elected to two full terms as Mayor — from being printed on the June run-off election ballot.

13 Real Party O'Neill submits that the conflict between these two provisions must be resolved by  
14 applying the well-established principle of statutory interpretation calling for the courts to attempt to  
15 *harmonize any inconsistent provisions and to give effect to both, wherever possible.* In this case, the only  
16 resolution that is consistent with and gives effect to the legislative intent underlying *both* City Charter  
17 section 1905 and section 214 — while simultaneously avoiding unreasonable and absurd consequences  
18 — is to construe the City Charter to require Mayor O'Neill or any other termed-out candidate to run as a  
19 write-in candidate in the primary nominating election, but to permit her name to appear on the run-off  
20 election ballot if she has succeeded, as here, in being nominated for that election as one of the two  
21 candidates receiving the highest number of votes in the primary. As we show below, this interpretation  
22 gives effect both to the legislative purpose underlying City Charter section 1905 that the general election  
23 constitutes a run-off election between the two candidates who received the most votes in the primary  
24 election, as well as to City Charter section 214's purpose of requiring termed-out candidates to  
25 demonstrate sufficient public support for their candidacies through a successful write-in campaign. This  
26 interpretation likewise avoids the absurd consequence of having a "run-off" election with only one  
27 candidate on the ballot or, even worse yet (in the case of two termed-out candidates who finish first and  
28 second in the primary), a run-off election with *no candidates* on the ballot.

## STATEMENT OF FACTS

1  
2 For the past 75 years, since the enactment of its City Charter in 1921, the City of Long Beach has  
3 employed a primary nominating election followed by a general run-off election for its municipal elective  
4 offices, including for the election of Mayor. Under this two-stage, primary-general election system of  
5 winnowing out candidates, "[c]andidates for elective offices . . . to be voted for at any general municipal  
6 election, shall be nominated by the City at large at the primary nominating election." (City Charter,  
7 § 1904.) "In the event that no candidate for nomination to an elective office receives a majority of the  
8 votes cast for all candidates for nomination to such office at any primary nominating election, the two  
9 candidates receiving the highest number of votes for any given office at the primary nominating election  
10 shall be the candidates and the only candidates for such office whose names shall be printed upon the  
11 ballots to be used at the general municipal election." (*Id.*, § 1905.)<sup>2</sup>

12 In November 1992, Long Beach voters enacted a citizen-sponsored Charter Amendment,  
13 Proposition G, entitled "The Long Beach Term Limitations and Ballot Access Act of 1992" (the "Term  
14 Limits" initiative). As described in the City Attorney's title and summary, the Term Limits initiative  
15 "prohibits the City Clerk or other elections officials from accepting or verifying signatures on any  
16 nomination papers, or placing the name on certified candidate lists, or printing the name on ballots or  
17 ballot materials" of any person who seeks to become a candidate for City Council or Mayor after having  
18 served as Council Member or Mayor for two terms. (See Declaration of Fredric D. Woocher, Exh. A,  
19 p. 3.) To that end, and as it relates specifically to the present case, the Term Limits initiative added section  
20 214 to article II of the City Charter, which section reads in pertinent part:

21 "(a) Notwithstanding any other previously enacted provision of law or of the Charter,  
22 the City Clerk, or other election official authorized by law, shall not accept or  
23 verify the signatures on any nomination paper for any person, nor shall he or she  
certify or place on the list of certified candidates, nor print or cause to be printed

24 <sup>2</sup>Section 202, subdivision (b), of the City Charter contains almost identical language in prescribing  
25 the procedure for the "nomination and election of mayor":

26 "Candidates for the office of Mayor shall be nominated by the City at large at the  
27 primary nominating election. In the event that no candidate for nomination to the office  
28 of Mayor receives a majority of the votes cast for all candidates for the office of Mayor at  
the primary nominating election, the two candidates receiving the highest number of votes  
for the office of Mayor at the primary nominating election shall be the candidates and the  
only candidates for such office whose names shall be printed upon the ballots to be used  
at the general municipal election."

1 on any ballot, ballot pamphlet, sample ballot or ballot label, the name of any person  
2 who either:

3 \* \* \*

4 (3) Is elected to two full terms as Mayor after November 3, 1992 and thereafter  
5 seeks to become a candidate for Mayor

6 \* \* \*

7 (b) **Write-In Candidacies.** Nothing in this article shall be construed as prohibiting  
8 any qualified voter of this City from casting a ballot for any person by writing the  
9 name of that person on the ballot, or from having such ballot counted or tabulated,  
10 nor shall any provision of this article be construed as prohibiting any person from  
11 standing or campaigning for any elective office by means of a write-in campaign.

12 (c) **Construction.** Nothing in this article shall be construed as preventing or  
13 prohibiting the name of any person from appearing on the ballot at any direct  
14 primary or general election unless that person is specifically prohibited from doing  
15 so by the provisions of Section 214(a) of this Article, and to that end Section 214(a)  
16 shall be strictly construed. This act shall be liberally construed to accomplish its  
17 purposes.”

18 Real Party in Interest Beverly O'Neill was elected to office as Mayor of the City of Long Beach  
19 in 1994 and was re-elected to a second full term in office in 1998. Still enjoying tremendous popular  
20 support and desiring to continue to serve the people of the City of Long Beach, Mayor O'Neill decided  
21 to seek nomination to a third term in office as a write-in candidate in the April 2002 primary election under  
22 the provisions of City Charter section 214. Accordingly, Mayor O'Neill timely filed a statement of write-  
23 in candidacy and submitted the requisite number of signatures on her nomination papers pursuant to  
24 California Elections Code sections 8600 and 8062.<sup>3</sup> The names of six other candidates for Mayor appeared  
25 on the April 9, 2002, primary election ballot, including those of Plaintiff Norm Ryan and Real Party Dan  
26 Baker.

27 The final vote tally from the primary election established that despite running as a write-in  
28 candidate, Mayor O'Neill received the highest number of votes — 11,032, or approximately 28% of the  
29 vote total. Councilman Baker finished second, with 9,628 votes (25%), and Norm Ryan finished third,  
30 with 8,909 votes (23%). Because no candidate for nomination to the office of Mayor received a majority  
31 of the votes cast at the primary nominating election, a run-off election between the two candidates

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32 <sup>3</sup>Although the Long Beach City Charter contains no procedures or other provisions governing  
33 write-in candidacies, section 1910 of the City Charter declares that “[u]nless otherwise provided by this  
34 Charter or ordinance adopted by the City Council, all municipal elections shall be held in accordance with  
35 the provisions of the Elections Code of the State of California governing municipal elections.”

1 receiving the highest number of votes must be held at the general municipal election scheduled for June  
2 4, 2002.

3 The April primary election results thus confront the City and the Court for the first time with the  
4 necessity to reconcile the apparent conflict between Charter sections 202 and 1905 on the one hand — both  
5 of which unambiguously state that the names of the two candidates receiving the highest number of votes  
6 at the primary nominating election (and *only* those two candidates' names) "*shall be printed* upon the  
7 ballots to be used at the general municipal election" — and Charter section 214 on the other, which  
8 arguably *prohibits* the City Clerk from printing termed-out Mayor O'Neill's name on "*any* ballot, ballot  
9 pamphlet, sample ballot or ballot label," including the June 4, 2002, run-off election ballot. The resolution  
10 of this question will determine which candidates' names will appear on the June ballot.

11 **I. THE CONFLICTING PROVISIONS OF THE LONG BEACH CITY CHARTER  
12 CAN ONLY BE HARMONIZED AND GIVEN EFFECT BY HAVING THE NAMES  
13 OF BEVERLY O'NEILL AND DAN BAKER — THE TWO CANDIDATES  
14 RECEIVING THE HIGHEST NUMBER OF VOTES IN THE PRIMARY  
15 ELECTION — APPEAR ON THE JUNE RUN-OFF ELECTION BALLOT**

16 The answer to the conundrum of which candidates' names should be printed on the June ballot is  
17 found in the established canons of statutory construction. Chief among those canons is the principle that  
18 "[w]here possible, all parts of a statute should be read together and construed to achieve harmony between  
19 seemingly conflicting provisions rather than holding that there is an irreconcilable inconsistency."  
20 (*Wemyss v. Superior Court* (1952) 38 Cal.2d 616, 621; see Code Civ. Proc., § 1858.) An equally  
21 fundamental rule of construction is the presumption against implied repeals: "[A]ll presumptions are  
22 against a repeal by implication." (*Garcia v. McCutchen* (1997) 16 Cal.4th 469, 476.) As the Court of  
23 Appeal recently summarized these twin principles in *Medical Board v. Superior Court* (2001) 88  
24 Cal.App.4th 1001:

25 "It is the duty of this court to harmonize statutes on the same subject, giving effect to all  
26 parts of all statutes if possible. We will find an implied repeal 'only when there is no  
27 rational basis for harmonizing the two potentially conflicting statutes, and the statutes are  
28 'irreconcilable, clearly repugnant, and so inconsistent that the two cannot have concurrent  
operation.'" (*Id.*, at p. 1013 (internal quotations, footnotes and citations omitted).)

In the present case, there is only one interpretation of the Long Beach City Charter that harmonizes

1 and gives effect to *both* Charter section 214 *and* Charter sections 202 and 1905. That is the interpretation  
2 put forward by Real Party O'Neill, which requires her name to be printed on the June run-off election  
3 ballot along with the primary election's second-place finisher, Real Party Baker. This interpretation gives  
4 effect to Charter section 214 by prohibiting the name of termed-out Mayor O'Neill from appearing on the  
5 April primary election ballot and by instead requiring her to run for Mayor by means of a write-in  
6 campaign; it likewise gives effect to Charter sections 202 and 1905 by having the names of the two  
7 candidates who received the highest number of votes in the primary election be printed on the June run-off  
8 election ballot. And it is an interpretation that serves the legislative purposes underlying all three Charter  
9 sections, eliminating the advantages of extended incumbency in the primary election and thereby  
10 encouraging a broad cross-section of qualified citizens to seek election to the office of Mayor,<sup>4</sup> while  
11 simultaneously preserving the traditional function of the primary as a nominating election that reduces the  
12 field for the general election to a run-off between the top two — and only the top two — candidates.

13 By contrast, the alternative interpretations put forward by Plaintiff Ryan and the City Attorney  
14 would not only read Sections 202 and 1905 right out of the City Charter — disregarding their explicit  
15 mandate that the names of the two candidates receiving the highest number of votes at the April primary  
16 election "*shall be printed upon the ballots to be used at the general municipal election*" — but they would  
17 totally subvert the operation and purposes underlying the City Charter's longstanding and carefully-crafted  
18 primary-general election scheme. Under that system, two — and only two — candidates are nominated  
19 at the primary election to run against each other in the ensuing general election.<sup>5</sup> Through this two-stage  
20 process, the field of potential candidates is winnowed down to the top two candidates, so that the voters'  
21 attention in the general election can be focused solely on them and so that the candidate who eventually  
22 prevails in that election will hopefully be able to govern with the support of a majority of the electorate.  
23 As the United States Supreme Court explained in *Storer v. Brown* (1974) 415 U.S. 724, referring to  
24 California's statewide partisan primary system, this primary-general election process serves several

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25  
26 <sup>4</sup>See Proposition G, Section Two (Findings and Declaration): "The citizens of the City of Long  
27 Beach hereby find and declare as follows: (a) Extended incumbency discourages a broad cross section of  
qualified citizens from seeking elected office." (Declaration of Fredric D. Woocher, Exh. A, p. 3.)

28 <sup>5</sup>Of course, if one candidate receives a majority of all the votes cast at the primary election, then  
there is no need for a run-off election, and the primary election in that event is said to be "converted" into  
a general election.

1 important governmental interests:

2 "After long experience, California came to the direct party primary as a desirable  
3 way of nominating candidates for public office. . . . The direct party primary in California  
4 is not merely an exercise or warm-up for the general election but an integral part of the  
5 entire election process, the initial stage in a two-stage process by which the people choose  
6 their public officers. It functions to winnow out and finally reject all but the chosen  
7 candidates. The State's general policy is to have contending forces within the party employ  
8 the primary campaign and primary election to finally settle their differences. The general  
9 election ballot is reserved for major struggles; it is not a forum for continuing intraparty  
10 feuds. The provision against defeated primary candidates running as independents  
11 effectuates this aim, the visible result being to prevent the losers from continuing the  
12 struggle and to limit the names on the ballot to those who have won the primaries and those  
13 independents who have properly qualified. The people, it is hoped, are presented with  
14 understandable choices and the winner in the general election with sufficient support to  
15 govern effectively." (*Id.*, at pp. 734-35 (footnotes and citations omitted).)

16 In adopting the City Charter, Long Beach voters intentionally selected this two-stage primary  
17 nominating/general run-off election process over the more common single-election system used by most  
18 other cities in California.<sup>6</sup> Every effort should therefore be made to preserve the efficacy and operation  
19 of this two-stage electoral process when construing and implementing the election provisions of the City  
20 Charter. Yet the interpretations advanced by Plaintiff Ryan and the City Attorney in this case negate the  
21 entire structure and purpose of the primary-general election scheme: The City Attorney's position — in  
22 which only the name of the second-place finisher in the primary election would appear on the general  
23 election ballot — would eliminate the *run-off* election altogether and would instead convert the general  
24 election into a coronation of sorts for the single candidate whose name would appear on the ballot;  
25 Plaintiff Ryan's interpretation — in which his name would appear on the ballot along with Real Party

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26  
27 "In all general law cities in California, city council members and elected mayors (if any) are elected  
28 in a single election, with the candidates who receive the highest number of votes for each office being  
declared elected, even if they fall substantially short of receiving a majority of the votes cast. (See  
generally Elec. Code, § 10262.) Many charter cities use this single-election system, as well, and do not  
provide for any run-off elections in the event no candidate receives a majority of votes cast.



1 Baker's — at least preserves the two-stage process and results in a true run-off election between two  
2 candidates, but it ignores the critical fact that both by design and by the express language of the Charter,  
3 the run-off election must occur between “the two candidates receiving the highest number of votes . . . at  
4 the primary nominating election,” not between one of those two candidates and a third candidate who was  
5 actually defeated in the primary.

6 In short, neither of these alternative interpretations put forward by Plaintiff Ryan and the City  
7 would even remotely serve the underlying purposes of the City Charter's long-established two-stage  
8 primary-general election system. To the contrary, *they would effectively render the primary nominating*  
9 *election a nullity.* According to the City's interpretation — and especially under Ryan's interpretation —  
10 it matters not one whit whether Mayor O'Neill finished first, second, or seventh in the primary nominating  
11 election; whether she received 11,000 votes or 11 votes, her name will not appear on the run-off election  
12 ballot and she still must run as a write-in candidate in the general election.<sup>7</sup> In fact, under the City's and  
13 Ryan's perverse construction of the City Charter, Mayor O'Neill *did not even need to participate at all*  
14 *in the primary nominating election; she would have been better off skipping the primary election,*  
15 *conserving her resources, and devoting all of her efforts to the write-in campaign for the general election.*  
16 Such a result, however, would fly in the face of the very purpose of the City Charter's direct primary  
17 nominating system. As the Supreme Court reminded in *Storer, supra*, “The direct party primary in  
18 California is not merely an exercise or warm-up for the general election but an integral part of the entire  
19 election process, the initial stage in a two-stage process by which the people choose their public officers.”  
20 (415 U.S. at p. 735.)

21 As noted above, it is a fundamental principle of statutory construction that all presumptions are  
22 against a repeal by implication. Yet the essence of the City's and Ryan's arguments in the present case  
23 is that when the voters enacted the Term Limits initiative in 1992, they impliedly and effectively repealed

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24  
25 <sup>7</sup>Arguably, a termed-out incumbent like Mayor O'Neill would actually be better off *not winning*  
26 *or finishing second in the primary election under the City's interpretation, because if she is required to run*  
27 *as a write-in candidate in the general election, it is probably to her political advantage to have two other*  
28 *candidates' names appear on the ballot rather than just a single candidate; in that event, the other two*  
*candidates might at least split the vote and permit the termed-out write-in candidate to win with a plurality,*  
*rather than an outright majority, of the votes cast. Of course, one of the principal objectives of the two-*  
*stage primary-general election process was to have the eventual winner receive the support of a majority*  
*of the voters. This is yet another way in which the City's interpretation fails to serve the City Charter's*  
*underlying purposes.*

1 the requirement contained in Charter sections 202 and 1905 that the names of the two candidates receiving  
2 the highest number of votes at the primary nominating election "shall be printed upon the ballots to be  
3 used at the general municipal election." If it were indeed the case that the Term Limits initiative had  
4 intended to repeal this requirement and to thereby fundamentally restructure the two-stage primary-general  
5 election system embraced in the City Charter, however, surely one would expect that there would have  
6 been some indication or notice provided to the voters in the ballot materials accompanying Proposition G.  
7 But the City Attorney's analysis and the ballot arguments for and against the Term Limits initiative were  
8 completely silent regarding this issue, and there is not a word in those materials suggesting that the primary  
9 and run-off elections would be rendered meaningless in the event a termed-out incumbent chose to run for  
10 re-election as a write-in candidate. (See Declaration of Fredric D. Woocher, Exh. A.)

11 In sum, in marked contrast to the constructions suggested by Plaintiff Ryan and Defendant City,  
12 the interpretation of the City Charter advanced by Real Party O'Neill fully harmonizes the conflicting sets  
13 of provisions of the Charter and gives effect to both. The purposes of the Term Limits initiative are  
14 achieved by requiring Mayor O'Neill to be nominated for the general election by running as a write-in  
15 candidate in the primary nominating election; the absence of her name from the printed ballot removed  
16 any advantages she might have received from her extended incumbency and encouraged a diverse field  
17 of other candidates — six in number — to enter the race and make their case to the voters. But now that  
18 Mayor O'Neill has, through her successful write-in campaign, demonstrated her continuing community  
19 support in her own right — and not simply as the result of her ballot name identification or the advantages  
20 of incumbency — the competing purposes underlying the City Charter's two-stage primary-general  
21 election process must be honored, as well, and Mayor O'Neill's name must be printed on the general  
22 election ballot, resulting in the true run-off election contemplated by the City Charter between the top two  
23 vote-getters in the primary nominating election.<sup>8</sup>

24  
25 <sup>8</sup>The Court's obligation to adopt a construction of the City Charter that harmonizes and gives effect  
26 to both sections 202 and 1905 and section 214 is not lessened by the precatory language in subdivision (a)  
27 of section 214 "[n]otwithstanding any other previously enacted provision of law or of this Charter . . ."  
28 That boilerplate language, which in context was evidently intended to refer to the provisions in the City  
Charter and state law regarding the filing and certifying of nomination documents for candidates, is  
insufficient by itself to overcome the express and unambiguous mandates contained in sections 202 and  
1905, the latter of which is found in a completely different article of the City Charter. Moreover, any  
implication from the above-quoted language that section 214(a) should be given an expansive

1 **II. HAVING THE NAMES OF BOTH MAYOR O'NEILL AND COUNCILMAN**  
2 **BAKER APPEAR ON THE GENERAL ELECTION RUN-OFF BALLOT IS THE**  
3 **ONLY INTERPRETATION OF THE CONFLICTING PROVISIONS OF THE**  
4 **CITY CHARTER THAT DOES NOT RESULT IN ABSURD CONSEQUENCES**

5 There is another well-accepted canon of statutory construction that is applicable in the present case:

6 "When uncertainty arises in a question of statutory interpretation, consideration must be given to the  
7 consequences that will flow from a particular interpretation. In this regard, it is presumed that the  
8 Legislature intended reasonable results consistent with its expressed purpose, not absurd consequences."  
9 (*Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142, 1165-66.) Real Party O'Neill's  
10 interpretation of the City Charter is the only such construction that does not result in absurd consequences.

11 The City's interpretation, for example, yields the wholly unreasonable result that *only one name*  
12 *will appear on the June run-off election ballot for Mayor*. What kind of "run-off" election is held with  
13 only one candidate appearing on the ballot? *By definition*, the general municipal election in Long Beach  
14 and in other jurisdictions adopting the two-stage primary-general election process is a run-off election  
15 between the *two candidates* who received the highest number of votes in the primary nominating election.  
16 To be sure, there are many instances in which only one candidate might choose to run for a particular  
17 office and thus only one candidate's name will appear on the ballot. *But none of those instances occur in*  
18 *general run-off elections, only in primary nominating elections or in the single elections held in most*  
19 *municipalities. Indeed, precisely in order to ensure that run-off elections are conducted with the names*  
20 *of two candidates* appearing on the ballot, the Elections Code prohibits candidates who are nominated in  
21 a primary nominating election from withdrawing or having their names removed from the general election  
22 ballot except under very limited circumstances (death or appointment to a higher office), and in those  
23 limited circumstances in which the name of a candidate who was nominated at the primary election does  
24 not appear on the general election ballot, the Elections Code specifies a procedure for selecting a  
25 *replacement candidate* to appear on the ballot instead. (See Elec. Code, §§ 8800-8811.) Under state law,  
26 then, *there is no circumstance* under which only one candidate's name is permitted to appear on the

27 interpretation that impliedly repeals any and all other sections of the City Charter is refuted by the text of  
28 section 214(c), admonishing that nothing in the Term Limits law should be construed as prohibiting the  
name of any candidate from appearing on the ballot "unless that person is specifically prohibited from  
doing so by the provisions of Section 214(a) of the Article, and to that end Section 214(a) *shall be strictly*  
*construed.*" (Emphasis added.)

1 general election ballot under the primary-general election system. The City's interpretation, however,  
2 yields precisely this absurd and unprecedented consequence.

3 Indeed, as Plaintiff Ryan points out, under the City's interpretation, it is quite possible for there  
4 to be a run-off election in which *no candidates' names* will appear on the ballot. Because the Term Limits  
5 initiative was only enacted in 1992 and did not apply retroactively, this is the first year in which its  
6 provisions have "kicked in," and Mayor O'Neill is the first termed-out candidate to seek re-election under  
7 that law. In future years, however, the number of termed-out city officials will increase, and there may  
8 well be situations in which *two or more* termed-out candidates, each having previously served two terms  
9 in office, decide to run as write-in candidates for the same city office. If those two write-in candidates  
10 finish first and second in the primary nominating election, *no one's name* will appear on the general run-  
11 off election ballot according to the City Attorney's interpretation. What will the ballot even look like in  
12 that instance? A more absurd consequence is hard to imagine.

13 Plaintiff Ryan's interpretation likewise would yield the absurd consequence that a *losing candidate*  
14 in the primary nominating election would make the run-off election, contrary to the entire structure of the  
15 two-stage process. Indeed, under Ryan's interpretation, in a typical situation in which two candidates vie  
16 against each other in the primary election (in addition to the termed-out incumbent's write-in candidacy),  
17 those same two candidates will have their names appear on the general election run-off ballot, rendering  
18 the primary election entirely meaningless. Again, this is a consequence that should be avoided if at all  
19 possible in construing the City Charter.

20 By contrast, there is nothing absurd or unreasonable about the consequences that flow from Real  
21 Party O'Neill's interpretation of the Charter. Indeed, it is quite reasonable to conclude that the candidate  
22 who finished first in the primary nominating election would be entitled to participate in the run-off election  
23 and have her name appear on the ballot with the second-leading vote-getter. That is precisely the match-up  
24 and general election contest that the voters called for and that the City Charter contemplated.

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1 **III. IN LIGHT OF THE FUNDAMENTAL RIGHT TO RUN FOR AND HOLD OFFICE**  
2 **IN CALIFORNIA, AS WELL AS THE DEMOCRATIC GOAL OF ATTAINING A**  
3 **FREE AND PURE EXPRESSION OF THE VOTERS' CHOICE OF CANDIDATES,**  
4 **THE COURT MUST AVOID AN INTERPRETATION OF THE CITY CHARTER**  
5 **THAT UNFAIRLY DISADVANTAGES INCUMBENT OFFICEHOLDERS SUCH**  
6 **AS REAL PARTY O'NEILL**

7 There is one final set of principles that should guide this Court's construction of the City Charter  
8 provisions in this case. Those are the principles recognizing that because the right to run for and hold  
9 public office in California is a fundamental right of citizenship, any ambiguities in the law should be  
10 interpreted in favor of eligibility to office, and because a fundamental goal of the democratic process is  
11 to ascertain the free and pure expression of the voters' choice of candidates, the government must avoid  
12 any restriction that arbitrarily prefers one candidate over another.

13 As our Supreme Court has repeatedly admonished, "the right to hold public office, either by  
14 election or appointment, is one of the valuable rights of citizenship . . . The exercise of this right should  
15 not be declared prohibited or curtailed except by the plain provisions of law. Ambiguities are to be  
16 resolved in favor of eligibility to office . . ." (*Carter v. Commission on Qualifications for Judicial*  
17 *Appointments* (1939) 14 Cal.2d 179, 182; see generally *Helena Rubenstein Internat. v. Younger* (1977)  
18 71 Cal.App.3d 406, 408.) Moreover, there is a "close interlocking conceptual and functional relationship"  
19 between the right to vote and the right to hold office (*Johnson v. Hamilton* (1975) 15 Cal.3d 461, 470),  
20 such that any restrictions imposed upon candidates for office necessarily implicate the fundamental right  
21 of citizens to vote for the candidate of their choice. As the California Supreme Court explained in *Gould*  
22 *v. Grubb* (1975) 14 Cal.3d 661, 677:

23 "A fundamental goal of a democratic society is to attain the free and pure  
24 expression of the voters' choice of candidates. To that end, our state and federal  
25 Constitutions mandate that the government must, if possible, avoid any feature that might  
26 adulterate or, indeed, frustrate, that free and pure choice; the state must eschew arbitrary  
27 preferment of one candidate over another by reason of incumbency. . . . In our  
28 governmental system, the voters' selection must be untainted by extraneous artificial  
advantages imposed by weighted procedures of the election process."

In the present case, these basic principles underlying our democratic process call for the Court to  
adopt an interpretation of the Long Beach City Charter that, so far as is reasonably possible, does not

1 unfairly "weight the procedures of the city's election process" against the candidacy of Mayor O'Neill and  
2 which will instead promote the "fundamental goal" of "attaining the free and pure expression of the voters'  
3 choice of candidates." Those objectives can best be served by adopting an interpretation of the Long  
4 Beach City Charter that permits Mayor O'Neill to compete fairly and freely in the June run-off election  
5 against Real Party Baker by having her name appear alongside his on the printed ballot, and by avoiding  
6 an interpretation that unfairly — and *unnecessarily* — burdens her candidacy and her chance to be freely  
7 elected to the office of Mayor by requiring that she run again as a write-in candidate. There can be no  
8 doubt that having to run as a write-in imposes a severe disability on Mayor O'Neill's candidacy. (See  
9 *Williams v. Rhodes* (1968) 393 U.S. 23, 37 ("To force a candidate to rely on write-ins is to burden him  
10 with disability. It makes it more difficult for him to get elected, and for the voters to elect him.") (conc.  
11 opn. of Douglas, J.)) There are a significant number of voters who might otherwise wish to express their  
12 free will by voting for Mayor O'Neill who nevertheless are unable to circumnavigate the somewhat-  
13 complicated procedures for casting a write-in ballot; many other voters, particularly the elderly or those  
14 who do not closely follow the news regarding Long Beach politics, will likely be confused by receiving  
15 a general election ballot containing the name of only a single candidate and may not realize that they are  
16 even permitted to cast a write-in vote for Mayor O'Neill.

17 If, as the Supreme Court held in *Gould v. Grubb, supra*, a "fundamental goal of a democratic  
18 society is to attain the free and pure expression of the voters' choices of candidates," then this Court  
19 should strive to adopt an interpretation of the Long Beach City Charter that achieves that goal. The  
20 interpretation that achieves that goal is one that places candidate O'Neill on an equal footing with  
21 candidate Baker in the upcoming general run-off election by placing the names of *both candidates* on the  
22 ballot.

#### 23 **IV. THE VOTERS' REJECTION OF MEASURE K ON THE NOVEMBER 2000** 24 **BALLOT PROVIDES NO SUPPORT FOR THE CITY ATTORNEY'S** 25 **INCORRECT CONSTRUCTION OF THE CITY CHARTER**

26 In his April 16, 2002, memorandum opining that Real Party O'Neill's name may not appear on the  
27 June run-off election ballot, City Attorney Robert Shannon suggested that the voters' rejection at the  
28 November 2000 election of a proposed charter amendment, Measure K, that would have addressed and  
rectified the conflict between Charter section 214 and sections 202 and 1905 "reinforc[es] the intent of

1 the Charter that a termed-out incumbent could not, under any circumstance, appear on the ballot in a  
2 general election.” (See Exhibit B to Plaintiffs’ Ex Parte Application for Order to Show Cause re  
3 Preliminary Injunction, p. 2.) That is simply not the case.

4 Measure K was a proposed charter amendment placed on the November 2000 ballot by the Long  
5 Beach City Council. It would have made two amendments to the term limits provisions for the offices of  
6 City Council and Mayor. First, and most significantly, it would have changed the *lifetime ban* of the Term  
7 Limits initiative to a ban on *consecutive terms only*, thereby permitting a councilmember or mayor to serve  
8 two terms, sit out one term, and have his or her name appear on the ballot when running for office again  
9 thereafter. Second, Measure K would have clarified the operation of the Term Limits initiative in the  
10 context of general run-off elections, adding a subdivision to Section 214 making it explicit that “[i]n the  
11 case of a general election, a write-in candidate who was one of the two candidates receiving the highest  
12 number of votes in the primary election shall have his or her name printed upon the ballot to be used at  
13 the general election.” (See Declaration of Fredric D. Woocher, Exh. B (Measure K, § 214(c)).)

14 The voters’ rejection of Measure K has no bearing on the proper interpretation of the City Charter.  
15 As a general matter, courts have frequently cautioned that the defeat of proposed legislation is exceedingly  
16 unreliable as an indicator of legislative intent. (See, e.g., *Miles v. Workers’ Comp. Appeals Bd.* (1977) 67  
17 Cal.App.3d 243, 248, fn. 4; *Sacramento Newspaper Guild v. Sacramento County Bd. of Supervisors*  
18 (1968) 263 Cal.App.2d 41, 58; *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247,  
19 264-265.) That is because there may be any number of reasons why the proposed legislation was not  
20 adopted, including reasons having absolutely nothing to do with the issue under consideration.

21 Such caution is especially necessary with respect to the defeat of Measure K. As noted above, the  
22 primary feature of Measure K was its proposal to weaken the existing Term Limits law by changing it from  
23 a lifetime ban to a ban on *consecutive terms only*. The clarification of the law’s operation in general run-  
24 off elections was essentially an after-thought, tacked on to the main proposal regarding consecutive terms.  
25 As the ballot arguments for and against Measure K confirm, there was *virtually no mention* of the issue  
26 involved in the present case, and *absolutely no opposition* to the proposed charter amendment on that  
27 ground. (See Declaration of Fredric D. Woocher, Exh. B, pp. 2-3.)

28 In short, the defeat of Measure K had nothing to do with the fact that it proposed to make clear that

1 the name of a termed-out candidate could appear on the run-off election ballot and everything to do with  
2 the fact that it proposed to weaken the substance of the term limitations by changing them from lifetime  
3 to consecutive bans. The voters' rejection of Measure K has no bearing on the proper interpretation of the  
4 City Charter.


5 **CONCLUSION**

6 Mayor Beverly O'Neill played by the rules of the Term Limits initiative and ran as a write-in  
7 candidate in the primary nominating election. Having finished first in that election, she is now entitled  
8 to have her name placed on the June run-off election ballot together with the name of the other candidate  
9 nominated for the office of Mayor at the April primary election. This Court should issue the requested  
10 injunction ordering the Long Beach City Clerk to print the ballots with Mayor O'Neill's name on them.

11  
12 Dated: April 22, 2002

Respectfully submitted,

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14 Fredric D. Woocher  
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17 By   
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19 **BEVERLY O'NEILL**